

REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of _____, 2013, (hereinafter the "Effective Date") between the City of Tacoma, a first class municipal corporation ("Seller") and Advanced Technology Construction, a Washington Corporation. ("Buyer").

RECITALS

WHEREAS, Seller is the owner of certain real property more particularly described in Section 1, below.

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer the real property on the terms and conditions set forth herein; and

WHEREAS, the real property described in Section 1 below, is being sold by Seller via direct negotiated disposition to acquire the real property; and

WHEREAS Buyer's Proposal to acquire the real property has been selected by the Seller; and

WHEREAS Seller is conveying the real property as a negotiated disposition pursuant to the authority provided in Tacoma Municipal Code Section 1.06.280; and

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

AGREEMENT

1. **Real Property.** Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, all of Seller's interest in the real property located in the City of Tacoma, County of Pierce and State of Washington, legally described in Exhibit "A" and generally depicted in Exhibit "B", (herein, the "Property").

2. **Purchase Price.** The total purchase price for the Property (the "Purchase Price") will be ONE HUNDRED TWENTY THOUSAND DOLLARS AND 00/100 (\$120,000.)

2.1 **Earnest Money:** As partial consideration for this Agreement, Buyer will tender in cash or an approved bond to Seller (in) the amount of FIVE THOUSAND DOLLARS (\$5,000.00), as earnest money for acquisition of the Property (the "Earnest Money"). Following the Effective Date of this Agreement, Seller shall transfer the Earnest Money to the Closing Agent specified herein (First American Title). The Earnest Money shall be fully applicable to the Purchase Price at Closing. The Earnest Money is, however, non-refundable following expiration of the Feasibility Contingency Period as set forth within Section 7.1, unless Seller is unable to obtain City Council approval as set forth in Section 7.2 below or unless Seller defaults as set forth in Section 11 below.

3. **Title to Property.** The Seller shall convey to Buyer, all of Seller's right, title and interest in the Property, by duly executed and acknowledged Warranty Deed (the "Deed"). The Seller shall convey title to Buyer by executing and delivering the Deed to Buyer at Closing.

4. Restrictive Covenant. Contemporaneous with Closing and immediately subsequent to the recording of the Deed, Buyer will execute and record a Restrictive Covenant against the Property as a covenant running with and burdening the Property as provided therein. A copy of this Restrictive Covenant is attached hereto as Exhibit "C" and incorporated herein. Execution and recording of this Restrictive Covenant is a condition of this sale.

5. Closing Agent. Chantale Stiller-Anderson of First American Title has been designated as the Closing Agent by mutual agreement of Seller and Buyer.

6. Title Insurance. Seller shall cause the Title Company to issue to Buyer at closing a standard coverage owner's policy of title insurance insuring Buyer's title to the Property in the full amount of the Purchase Price subject only to the Permitted Encumbrances (the "Title Policy"). The Title Policy must be dated as of the Closing Date. To the extent Buyer desires an Extended Coverage Owner's Policy of Title Insurance, Buyer shall be responsible for the difference in cost.

7. Conditions to Closing.

7.1 Feasibility Contingency. Buyer's obligations under this Agreement are conditioned upon Buyer's satisfaction concerning all aspects of the Property, including its physical condition, hazardous substances, financial performance of the Property, the availability of government permits and approvals and feasibility of the Property for Buyer's intended purposes for a period of THIRTY (30) days from full Execution of this Agreement. Buyer shall issue a notice indicating the feasibility period has been satisfied and proceed to Closing.

7.2 City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma City Council prior to Closing. Assuming buyer acceptance to the terms contained herein, City staff will seek City Council approval of this transaction at its regular meeting on December 17, 2013, or later, if necessary. If Tacoma City Council approval is not obtained, this Agreement will terminate, and all documents and other funds will be returned to the Buyer, and neither party will have any further rights, obligations, or remedies under this Agreement, except as otherwise provided herein. Nothing in this Paragraph 7.2 will obligate the Seller to obtain City Council approval beyond the ordinary course of City procedure.

7.3 Condition of Title. Seller hereby agrees from and after the Effective Date, until the Closing or the termination of this Agreement, that it (a) will take no action that will adversely affect title to the Property; (b) will not lease, rent, mortgage, encumber, or permit the encumbrance of all or any portion of the Property without Buyer's prior written consent; and (c) will not enter into any written or oral contracts or agreements with respect to the Property.

8. Closing.

8.1 Deposit with Closing Agent and Escrow Instructions. Following the Effective Date of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with Closing Agent, as identified in Section 5 above.

8.2 Closing. The Closing hereunder shall occur at the offices of the Closing Agent THIRTY (30) calendar days after the feasibility period identified in Section 7.1 has been satisfied and City Council approval has been obtained, but in no event later than January 31, 2014 ("Closing Date"). If the Closing Date falls on a Saturday, Sunday, or Holiday, the deadline for Closing shall extend to the following business day. In accordance with the foregoing, Closing shall occur on or before the Closing Date unless the parties extend or shorten the foregoing

date by mutual, written agreement. Closing will be initiated by Buyer, when Buyer notifies Seller of Buyer's 'Intent to Close' by providing Buyer with written notification of its Intent to Close. Closing will occur on the date upon which the Closing Agent has been delivered the following from the Buyer and Seller:

8.2.1 Delivery by Seller. Within five business days from Seller's receipt of Buyer's written notice of Intent to Close, Seller will deposit the following with the Closing Agent:

- (a) The Deed, duly executed and acknowledged by Seller, in recordable form, and ready for recordation at Closing together with a duly executed real estate excise tax affidavit;
- (b) Such resolutions, authorizations, certificates, or other corporate and/or partnership documents or agreements relating to Seller, as shall be reasonably required by Buyer or a title company or the Closing Agent in connection with this transaction; and
- (c) Any other documents, instruments, data, records, correspondence, or agreements called for hereunder which have not previously been delivered.

8.2.2 Delivery by Buyer. Within five business days from Seller's receipt of Buyer's written notice of Intent to Close, Buyer will deposit the following with the Escrow Agent:

- (a) Buyer shall deposit with the Closing Agent the Purchase Price and any Closing Costs which are the responsibility of Buyer hereunder;
- (b) Buyer shall deposit with the Closing Agent the Restrictive Covenant duly executed and acknowledged by Buyer, in recordable form, and ready for recordation at Closing;
- (c) Buyer shall deposit with Closing Agent a signed copy of Seller's Disclosure, acknowledging waiver of the receipt of said disclosure as allowed by applicable law; and
- (d) Any other documents, instruments, data, records, correspondence, or agreements called for hereunder which have not previously been delivered.

8.2.3 Other Instruments. Seller and Buyer shall each deposit such other instruments as are reasonably required by the Closing Agent or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

8.3 Prorations. All expenses of the Property, including, but not limited to, water and utility charges, surface water fees and charges, and other expenses normal to the ownership, use, operation, and maintenance of the Property shall be prorated as of 12:01 a.m. on the date of Closing. It is acknowledged that any expense amount which cannot be ascertained with certainty as of Closing shall be prorated on the basis of the parties' reasonable estimate of such amount and shall be the subject of a final proration forty five (45) days after Closing or as soon thereafter as the precise amounts can be ascertained. A statement setting forth such agreed upon prorations signed by Seller and Buyer shall be delivered to Closing Agent.

8.4 Costs and Expenses.

8.4.1 Seller and Buyer agree to split the cost of closing in the following manner:

- (a) Seller agrees to pay the premium for the owner's standard coverage policy of title insurance.
- (b) Buyer shall pay the premium for any extended coverage and the cost of any new surveys if required.
- (c) Buyer shall pay all recording costs.
- (d) Buyer shall pay the cost of escrow and closing fees for the sale including but not limited to: extended title insurance, recording fees, escrow fees, lender and underwriting fees and costs, excise and other taxes, land segregation or development costs that may be required by Pierce County.

8.4.2 Seller shall pay 6% commission of the total sale price to Seller's Broker, First Western Properties – Tacoma, Inc., represented by Kyle Prosser. This commission shall be divided with Buyer's Broker equally. Buyer agrees to fund into escrow an additional Five Thousand Dollars (\$5,000.00) of commission payable solely to ORION Commercial Partners, LLC.

8.5 Recordation and Payment. Provided that Closing Agent has not received prior written notice from either party that an obligation of either party made hereunder has not been performed, or to the effect that any condition set forth herein has not been fulfilled, then upon fulfillment of Buyer and Seller's fulfillment of their respective obligations set forth in this Section 8, or as soon thereafter as is possible, Closing Agent will provide the Purchase Price to Seller and Record the Deed and Restrictive Covenant in the official records of Pierce County, Washington;

8.6 Delivery of Documents. At Closing, all statements and documents to be delivered to Buyer shall be delivered to:

Buyer Contact Info.

Dennis Farrow
Advanced Technology Construction
1150 SW Raymond Ave. SW
Renton, WA 98055

Dan Foster
Orion Commercial Partners, LLC
411 First Avenue South, Suite 610
Seattle, WA 98104

At Closing, all statements and documents to be delivered to Seller shall be delivered to:

Attn: Richard Price
Public Works – Real Property Services
City of Tacoma
747 Market Street, Rm. 737
Tacoma, WA 98402

9. Condition of the Property.

9.1 "As Is" Buyer acknowledges that the Property will be conveyed under this Agreement in an "as is" condition. No warranties shall be given or implied.

9.2 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Property, with the exception of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Property for Buyer's intended use.

9.3 Waiver of Right to Rely on Facility Condition Assessment. Buyer hereby expressly waives any right to rely on the statements, estimates, and information provided in the "Exterior Building Envelope Evaluation" of the Property performed by Wetherholt and Associates in March of 2009.

10. Possession. Buyer is entitled to possession of the Property once the Deed is recorded with the Pierce County Auditor.

11. Events of Default. In the event Buyer fails, without legal excuse to complete the purchase of the Property, then the Earnest Money required pursuant to section 2.1 shall be forfeited to Seller. In the event Seller fails, without legal excuse, to complete the sale of the Property, Buyer shall be entitled to termination of this Agreement and immediate return of its Earnest Money as its sole remedy.

12. Environmental Liability Waiver. Buyer, its successors and assigns hereby forever waives, releases, discharges, and agrees to indemnify Seller from any and all claims, demands, causes of action, damages, liabilities, losses, expenses, and all costs and fees for legal actions related thereto caused by or resulting from Hazardous Substances existing on, at, around or under the Property on the date the Buyer acquires legal title to the Property, including Hazardous Substances which have been generated or stored on the Property, and/or disposed of on or off the Property prior to Closing. This Agreement to indemnify and hold harmless is to apply to claims brought by any party based upon any state or federal statutory or common law, including, but not limited to, any claims brought under applicable state laws described below, and shall include, but not be limited to, claims for investigation, litigation, administration, oversight, remedial action costs, response costs, and personnel costs, all costs arising out of or related to the clean-up, storage, treatment, handling, disposal, transportation, presence of, or threatened release or discharge of any contaminants at, to, from, beneath, or near the Property, and any property damage or damages for personal injury related thereto.

For purposes of this Agreement, "Hazardous Substances" shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminants," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Washington State Environmental Policy Act, RCW 90.48.010, et seq.; the Water Pollution Control Act, RCW 90.48.010, et seq.; the Hazardous Waste Management Statute, RCW 90.105, et seq.; the Toxic Substance Control Act, RCW 70.105C, et seq.; and the Model Toxics Control Act, RCW 70.105C, et seq.; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws and shall also include petroleum, oil, and petroleum by-products.

13. Loss by Fire, Other Casualty, or Condemnation. In the event that, prior to Closing, the Property is destroyed or materially damaged (as determined by Seller), Buyer shall have the right, exercisable by giving written notice of such decision to Seller within 15 business days after receiving written notice from Seller of such damage, destruction, or condemnation proceedings, to terminate this Agreement, and neither party hereto shall have any further rights under this Agreement. If Buyer elects to accept the Property in its then condition, all proceeds of insurance

awards payable to Seller by reason of such damage, destruction, or condemnation shall be paid or assigned to Buyer.

14. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, or given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Seller: City of Tacoma, Public Works Department
Real Property Services
747 Market Street, Rm. 737
Tacoma, WA 98402
Facsimile No. 253-594-7941

With a copy to: City of Tacoma, Legal Department
Attn: Jeff H. Capell, Deputy City Attorney
747 Market Street, Rm 1120
Tacoma, WA 98402
Facsimile No. 253-591-5755

Buyer: Dennis Farrow
Advanced Technology Construction
1150 SW Raymond Ave. SW
Renton, WA 98055

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

15. Counterparts; Faxed Signatures. This Agreement may be executed in any number of counterparts by the parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

16. Brokers and Finders. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the closing of this transaction. It is hereby acknowledged the Buyer is represented by a Broker, Dan Foster of Orion Commercial Partners, LLC and the Seller is represented by a Broker, Kyle Prosser of First Western Properties – Tacoma, Inc. Seller shall pay commissions claimed per Section 8.4.2.

17. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. Continuation and Survival of Representations and Warranties. Any representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of Closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of 6 (six) months whereupon they shall terminate. Such representations and warranties, however, are not assignable and do not run with

the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

19. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Washington without recourse to any principles of Conflicts of Laws.

20. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

21. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

22. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

23. Non-merger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive, the closing of the transaction contemplated under the Agreement.

24. Assignment. Buyer shall not assign this Agreement without Seller's prior written consent, which consent shall not be unreasonably withheld. Seller understands and acknowledges that Buyer may seek consent for assignment of this Agreement to an affiliated entity prior to Closing. All future assignees shall be subject to the remaining outstanding term of the restrictive covenant as agreed to by the Buyer, from the date agreed herein, and as attached as Exhibit C, any future uses of the Property shall be substantially of the same use as the original Buyer. Any future assignment and use of the Property may be subject to the approval of Tacoma City Council.

25. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

26. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to effect the Agreement contemplated herein.

27. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SELLER:

CITY OF TACOMA, a first class
Municipal Corporation

T.C. Broadnax
City Manager

Kurtis D. Kingsolver, P.E.
Interim Public Works Director/City Engineer

Andrew Cherullo
Finance Director

Jeffrey A. Jenkins
Facilities Division Manager

Approved as to form:

Deputy City Attorney

BUYER:

Dennis Farrow
Advanced Technology Construction
President

Exhibit "A"

Legal Description

That certain tract of land conveyed to the City of Tacoma by Warranty Deed dated November 8, 1984 and Statutory Warranty Deed dated October 23, 1987, recorded under Auditor's File Numbers 8411090219 and 8801150122, respectively, records of Pierce County, Washington, more particularly described as follows:

The South 100 feet of the East 175 feet of the North half of the Southwest quarter of the Southwest quarter of the Northeast quarter of Section 15, Township 20 North, Range 3 East of the Willamette Meridian;

EXCEPT Portland Avenue.

ALSO EXCEPTING THEREFROM, the East 8 feet thereof conveyed to the City of Tacoma by instrument recorded June 18, 1979, under Recording No. 2919380, records of Pierce County, Washington.

Situate in the City of Tacoma, County of Pierce, State of Washington.

Exhibit "B"

General Map Depiction

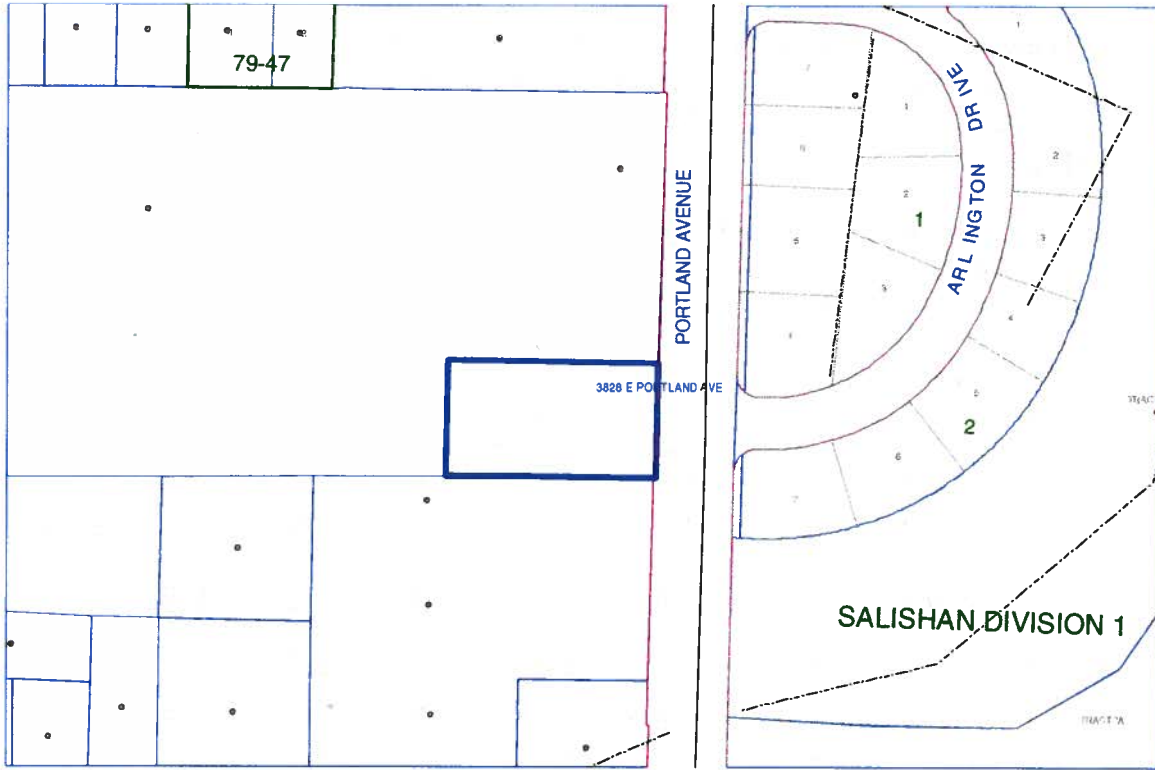


Exhibit C

Restrictive Covenant
(Attached as Separate Exhibit)

