

When Recorded Return To:

City of Tacoma
Public Works Department
Real Property Services
747 Market Street, Room 737
Tacoma WA 98402-3701

Document Title:	AGREEMENT
Reference No.	13-043
Grantor:	ADVANCED TECHNOLOGY CONSTRUCTION
Grantee:	CITY OF TACOMA
Legal Description:	Southwest ¼ of the Northeast ¼ of Section 15, Township 20 North, Range-03 East
Additional Legal Description:	SEE EXHIBIT "A", Page 6
Assessor's Tax Parcel Number:	032015-120-4

RESTRICTIVE COVENANT

ADVANCED TECHNOLOGY CONSTRUCTION, a Washington Corporation, hereinafter referred to as "Grantor", and the **CITY OF TACOMA**, a municipal corporation," hereinafter referred to as "Grantee", pursuant to that certain Purchase and Sale Agreement dated _____, have contracted for the sale/disposition of certain surplus City property located at 3828 Portland Avenue, Tacoma, Washington, 98404, legally described in Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter the "Property"), which Property has been conveyed to Grantor by a Quit Claim Deed of even date herewith, referenced as City of Tacoma Deed #7220 and recorded under Auditor's File No. _____, (the "Warranty Deed"). Conveyance and recording of the Warranty Deed has been conditioned upon Grantor granting the covenant contained herein to Grantee.

Whereas, Grantor was selected, by way of a public solicitation process, to acquire the Property based upon Grantor's promised use(s) and development of the Property as provided in Grantor's proposal; and based further upon Grantor's representations made in its proposal detailing Grantor's future use(s) of the Property and the alignment of Grantor's representations and proffered use(s) of the Property with the desires and goals of the City of Tacoma and the neighboring community; and in order to ensure that Grantor uses the Property consistent with the representations made in Grantor's proposal, upon which Grantor was selected for acquisition, Grantee requires that Grantor enter this 'Restrictive Covenant' (this "Covenant") as a condition of the acquisition of the Property.

Therefore, Grantor hereby agrees to execute and adhere to the terms of this Covenant in consideration of the terms and conditions provided in the aforementioned Purchase and Sale Agreement, including but not limited to the conveyance and recording of the Statutory Warranty Deed to Grantor.

Grantor, intending to bind its successors and assigns, hereby agrees to use the Property for the following types of activities: **the operation of a licensed construction company business office**, (herein "Designated Purpose") for a period of five (5) years commencing on the date of the recording of this Covenant (the "Covenant Period"). All of the foregoing is referenced herein as the "Covenant of Use."

Should Grantor fail to use the Property consistent with the Covenant of Use, Grantor, its successors and assigns, hereby agrees to pay the sum shown on the table in Paragraph 2 below to the Grantee. This payment is hereinafter referred to as the 'Neighborhood Reinvestment Payment' or 'NRP'. By executing this Covenant, Grantor acknowledges and warrants that the NRP is a reasonable estimation of the loss to the Grantee and the neighboring community if Grantor fails to adhere to the Covenant of Use and that this estimation of loss includes but is not limited to the following: **(a)** Grantee's actual costs incurred and associated with conducting a public solicitation process that evaluated and relied upon Grantor's representations made in its proposal detailing Grantor's future use(s) of the Property and the alignment of Grantor's representations and proffered use(s) of the Property with the desires and goals of the City of Tacoma and the neighboring community including but not limited to the costs to conduct the public solicitation and selection process, draft and negotiate the transactional documents, and Grantee's internal staff costs incurred as necessary to consummate the transaction and obtain the appropriate government approvals; and **(b)** Grantee's opportunity costs and the incidental costs incurred by the neighboring community which Grantee serves, associated with the permanent conveyance of City property that, because of Grantor's failure to conform to the Covenant of Use, the Property is being utilized inconsistent with the express goals of the City of Tacoma and the neighboring community, and therefore, by definition, to the detriment of the Grantee. Grantor hereby expressly acknowledges that the Grantor's failure to adhere to the Covenant of Use is a violation of the promise upon which Grantor obtained the Property and therefore the violation of the same has deprived the Grantee of the ability to otherwise repurpose the Property consistent with the goals of the City and the neighboring community and that the NRP constitutes a reasonable estimation of Grantee's loss as a result thereof; and **(c)** that the NRP constitutes a reasonable estimation of Grantee's actual, consequential, and incidental damages (except attorneys fees and costs), should Grantor its successors and assigns fail to adhere to the Covenant of Use for all reasons stated herein, and all other unstated reasons to the extent the same supports the determination that the NRP constitutes a reasonable estimation of Grantee's loss.

1. At any time during the Covenant Period, except for that time reasonably required to build-out the Property, secure an occupancy permit, and secure a lease with a construction company, in the event that Grantor ceases to use the Property for the Designated Purpose for longer than three (3) non-consecutive months in any given calendar year, or three (3) consecutive months at any time during the Covenant Period, Grantee may give written notice to Grantor of its intent to collect the NRP (the "NRP Notice"). Upon receiving the NRP Notice, Grantor may cure its breach of the Covenant by **(a)** resuming use of the Property in accordance with the Designated Purpose within one (1) month of the date of the NRP Notice in order to avoid an obligation to forfeit the NRP, **(b)** utilizing the Property for uses substantially similar to those provided in the Designated Purpose (herein "Substitute Purpose"); provided Grantee shall have sole discretion to determine whether the Substitute Purpose is acceptable to the City of Tacoma, or **(c)** paying the NRP in lieu of re-adherence to the Covenant; provided said payment is paid within thirty calendar days of Grantor's receipt of the NRP Notice and in accordance with Section 2 provided herein. Any period of non-use in accordance with the Designated Purpose (or Substitute Purpose) during the Covenant Period shall be tacked on to the end of the Covenant Period as an effective extension thereof. Grantee shall be allowed a maximum of two (2) cures pursuant to 1. (a) and (b) above, during the Covenant Period.

2. Through the course of the Covenant Period, Grantor may pay the NRP in lieu of adherence to the Covenant in accordance with the following schedule:

Covenant Period	NRP Payable
Year One	40,000
Year Two	40,000
Year Three	30,000
Year Four	30,000
Year Five	20,000

Year one shall include those days falling within one calendar year from the date of execution of this Covenant; and the following Years of the Covenant shall be calculated for like successive periods.

3. In the event that Grantor and/or its successors and assigns, fail(s) to adhere to the Covenant and fail to otherwise cure as provided herein, Grantor hereby expressly acknowledges that the value of the NRP shall constitute a valid lien against and attaching to the Property in favor of Grantee, and further that Grantee shall have the express right to file and attach a lien against the Property for the value of the NRP, as well as all lawful rights for the collection of enforcement of the lien against the Property, as provided by law.

4. This Covenant runs with the land, and shall bind all successors and assigns in title to the Property until such time as the Covenant expires or is otherwise terminated through Grantee's payment of the NRP.

5. At the conclusion of the Covenant Period, if there have been no breaches (or prior NRP payoff) of the Covenant, or any such breach has been effectively cured, this Covenant shall terminate and be of no further force or effect. Upon expiration of the Covenant Period (or earlier termination), at Grantor's request, Grantor agrees to sign an acknowledgement in recordable form that the Covenant has terminated.

6. **Attorney's Fees and Costs.** If Grantor fails to perform any of its obligations under this Covenant, or if a dispute arises concerning the meaning or interpretation of any provision of this Covenant, 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 Covenant, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

IN WITNESS WHEREOF, the Grantor has hereunto set their hand and seal the _____ day of _____, 2013.

**GRANTOR
ADVANCED TECHNOLOGY CONSTRUCTION**

Dennis Farrow, President

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that **Dennis Farrow** is the person who appeared before me, and he acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **President of Advanced Technology Construction**, a Washington Corporation, to be the free and voluntary act of such company for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2013.

Notary Public in and for the
State of Washington
Residing in _____
My Commission Expires _____

**GRANTEE
CITY OF TACOMA**

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

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.

