

PROSPECTIVE PURCHASER AGREEMENT

DEQ No. 04-08

BETWEEN: Oregon Department of Environmental Quality

AND: Advanced American Construction Properties, LLC

EFFECTIVE DATE: 11/16/04 (Date of last signature below)

This Agreement is entered between the Oregon Department of Environmental Quality (DEQ) and Advanced American Construction Properties, LLC (Advanced American) pursuant to ORS 465.260 and 465.327. This Agreement contains the following provisions:

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1. RECITALS

A. The subject property (Property) is located at 8444 N.W. St. Helens Road, Portland, Oregon. The legal description of the Property is set forth as Attachment A to this Agreement. For purposes of the PPA, the Property includes only the area above Ordinary High Water.

B. The Property is used for office trailer storage, warehousing, and houseboat construction. Hendren Tow Boat Company (Hendren) operates a tugboat dock on the Willamette River, accessed via the site, and uses part of the site for parking and equipment storage. Since at least the 1920s, a variety of businesses have operated at the site, including metal salvaging, tow boat/barge operations, and maintenance and construction companies. Many of the businesses supported or were associated with the over-water activities at the site.

C. In January 1998, the US Coast Guard expressed concern about Hendren's waste-handling practices, noting in a spill report the presence of numerous drums of oily rags, antifreeze and other wastes in the upland portion of the site. In September 1999, DEQ's Site Assessment program recommended an expanded Preliminary Assessment (XPA) to assess the nature and extent of contamination at the facility. In January 2000, DEQ began conducting the XPA using a state contractor, but Marine Finance Company requested an opportunity to conduct the XPA itself. DEQ and Marine Finance Company signed a Voluntary Cleanup Agreement in April 2000 under which Marine Finance Company agreed to perform the XPA; however, Marine Finance Company failed to perform the required actions.

D. DEQ declared the site an Orphan project in July 2000 after determining that Marine Finance Company was "unwilling" to investigate or clean up the site. In August 2000, DEQ's Orphan contractor collected soil, groundwater and sediment samples at the site. DEQ completed removal of abandoned waste containers, batteries, and drums at the facility in May 2001. The DEQ assessment included collecting six groundwater samples, five Willamette River sediment samples, and 13 soil samples. In general, samples were analyzed for metals, total petroleum hydrocarbons (TPH), volatile organic compounds (VOCs; except sediments), semi-volatile organics (SVOCs), total organotins (includes tributyltin (TBT)), and polychlorinated biphenyls (PCBs).

E. In general, the XPA indicated that there is not widespread contamination at the site, but a full evaluation of potential impacts to the Willamette River has not been completed. Due to the limited scope of the XPA, DEQ identified additional tasks that need to be completed to fully characterize the site and facilitate completion of an appropriate evaluation. These tasks included 1) collecting additional surface soil samples at approximately 10 locations to better define the lateral extent of surface soil contamination; 2) collecting soil samples at two or more discrete depth intervals at locations with the highest contaminant levels in surface soil (SS-2, -7, -9) and from the former UST location; and 3) installation and quarterly monitoring (one year minimum) of approximately 6 monitoring wells across the eastern side of the Property to assess shallow groundwater contaminants potentially discharging to the Willamette River.

F. In 2003, Marine Finance Corporation conducted additional field investigation at the Property without DEQ oversight. The new information was provided

to DEQ in an August 2004 memorandum with a screening-level risk evaluation for soil and groundwater prepared on behalf of Advanced American. DEQ has reviewed the new information and has concluded that the required tasks referred to in Paragraph E. above were satisfactorily completed. In September 2004, DEQ noted that upland human health and ecological risk evaluations would be required as well as a source control evaluation for upland soil, groundwater, and surface water to evaluate possible impacts to the river. Advanced American completed a source control evaluation that includes an evaluation of human health and ecological risks in the upland part of the site (including a Level I Scoping Ecological Risk Assessment) and a source control evaluation. The source control evaluation indicated that limited areas of surface soil could present a risk to both occupational site workers through direct contact and the Willamette River through overland soil runoff. Advanced American developed a Source Control Plan to mitigate these pathways. The source control evaluation and the plan (Plan) for mitigating possible impacts to the river are included as Attachment B to this Agreement, which is incorporated herein by reference.

G. Contaminants identified at the Property include petroleum and related compounds, and metals. These contaminants are “hazardous substances” within the meaning of ORS 465.200(15). The presence of hazardous substances at the Property constitutes a “release” of hazardous substances within the meaning of ORS 465.200(21), and makes the Property a “facility” within the meaning of ORS 465.200. The site was placed on DEQ’s Confirmed Release List on March 13, 2003.

H. On June 22, 2004, Advanced American applied to DEQ for entry of this Agreement, and agreed to reimburse DEQ's costs of technical review and approval, and agreement preparation.

I. Advanced American is a limited liability corporation organized under the laws of Oregon and a "person" within the meaning of ORS 465.200(20). According to information provided by Advanced American, Advanced American is not currently liable under ORS 465.255 for the release of hazardous substances existing at the facility as of the date of this Agreement.

J. Advanced American agrees to perform the activities described in Section 2 of this Agreement at its expense. Advanced American's goal is to return the Property to productive use. DEQ has determined that a "substantial public benefit" will result from this Agreement, within the meaning of ORS 465.327 (1)(d).

K. Based upon the information submitted by Advanced American, DEQ has further determined that the proposed development activities at the Property will not contribute to or exacerbate existing contamination, increase health risks, or interfere with remedial measures which may be necessary at the Property.

L. In determining to enter into this Agreement, DEQ has consulted with the City of Portland and has considered reasonably anticipated future land uses at the Property and surrounding properties.

M. Advanced American recognizes that implementation of remedial measures at the Property in the future might interfere with Advanced American's use of the Property.

2. MEASURES TO BE UNDERTAKEN

A. Within 15 days of closing on the Property, Advanced American will pay to DEQ the sum of \$100,000 in partial payment of remedial action costs incurred by DEQ before the effective date of this Agreement. Payment will be made to “DEQ, Hazardous Substances Remedial Action Fund.” Upon receipt of payment by DEQ, Advanced American will have no further responsibility for remedial action costs incurred by DEQ before the effective date of this Agreement.

B. Advanced American will work under DEQ oversight and perform the work described in Attachment B at Advanced American’s own expense. In general, and without limiting the requirements of Attachment B, Advanced American will:

(1) Implement the source control measures and best management practices outlined in the Plan in Attachment B, including conducting additional soil sampling to verify areas requiring removal to achieve source control objectives, excavation of soil exceeding source control screening criteria, installation of a stormwater management system during site development, and once constructed, quarterly sampling of the stormwater management system for one year for analysis of metals, polycyclic aromatic hydrocarbons, and petroleum hydrocarbons.

(2) Advanced American will provide DEQ copies of the proposed storm drain system prior to initiation of installation. After installation of the storm drain system, Advanced American will collect storm water samples on a quarterly basis for one year. One of the four sampling events shall be conducted during the first significant rain following the summer (“first-flush”). Storm water samples shall be analyzed for total

petroleum hydrocarbons (TPH), selected metals, and PAHs; and a storm water monitoring report will be submitted to DEQ within 14 days of receipt of the laboratory data. If contaminant concentrations are detected above source control screening criteria, Advanced American will implement best management practices (BMPs) to minimize storm water contaminants. At DEQ's discretion, additional source control measures, such as catch basin cleaning, pavement sweeping, installation of additional pavement, and/or additional soil removal actions may be required.

(3) Advanced American will implement the soil screening, handling and management protocols identified in the Plan during site development if previously unknown, potentially contaminated soil is encountered.

E. Nothing in this Agreement obligates DEQ or the state of Oregon or any of its commissions, agencies, officers or employees to conduct or pay for any actions related to releases at or from the Property, including but not limited to any releases from the Property into the Willamette River.

F. Advanced American will comply with substantive requirements of all applicable federal, state and local laws and regulations, and shall obtain all necessary permits for the activities described in this Agreement.

G. Advanced American will record and abide by any necessary restrictions on the use of the Property as described in Subsections 2.K and 3.C. below. Such use restrictions may include without limitation restrictions on the use of groundwater, restrictions on land use, restrictions on the location of structures on the property,

restrictions on the use of the Property for residential purposes, and cap maintenance requirements.

H. Upon satisfactory completion of actions under 2.B. above by Advanced American, DEQ will provide a written notice that such measures have been completed. When DEQ determines that the Property meets DEQ's requirements for a No Further Action determination, DEQ will issue such a determination. Advanced American may request such a determination at any time that Advanced American reasonably believes the Property meets DEQ's requirements for a No Further Action determination. Advanced American agrees that it will pay DEQ's costs incurred in making any No Further Action determination, including but not limited to costs for reviewing documents and analytical reports, preparing the determination, and providing public notice. If DEQ issues a determination of No Further Action or Certificate of Completion for the Property, such determination or Certificate shall serve as notice of completion of the remedial measures required under 2.B.

I. Any development, construction, or other use of the Property shall be consistent with and shall not interfere with investigative or remedial activities necessary at the Property. To ensure such consistency and prevent exacerbation of existing contamination at the Property, Advanced American must notify DEQ before any material physical changes or disturbances are made to any area of the Property that is subject to use restrictions under Section 2.D and 3.C. At DEQ's request, Advanced American must submit for DEQ review and approval, any development, use, and building plans, or other

similar and adequate documentation, for the proposed activities before any material changes or disturbances occur to any area of the Property that is subject to such use restrictions. This review and approval requirement will expire upon the Property receiving an unconditional No Further Action determination or Certificate of Completion from DEQ.

J. Advanced American shall require all tenants, employees, authorized and regular users, and other occupants of the Property who perform activities on the Property that might affect the soils, groundwater, other contaminated media, or affect necessary investigative or remedial measures, to also submit development and/or construction plans to Advanced American for review by DEQ, as per Subsection 2.D. of this Agreement. This requirement is necessary to ensure that the actions of others do not exacerbate existing contamination. This review and approval requirement will expire upon the Property receiving an unconditional No Further Action determination or Certificate of Completion from DEQ.

K. Advanced American shall record and abide by any use restrictions on the Property that DEQ deems necessary to protect human health or the environment. Any such restrictions, pursuant to ORS 465.327(5), shall run with the land.

3. GENERAL PROVISIONS

A. DEQ Oversight

DEQ shall provide review, approval/disapproval, and oversight as described in Section 2 and Paragraph 3.F.(2) of this Agreement. Where DEQ approval is required for any plan or activity under this Agreement, Advanced American shall not proceed to implement the plan or activity until DEQ approval is received. DEQ will make good faith

efforts to conduct plan and activity review promptly so that any proposed development activities are not unduly delayed.

B. DEQ Access

(1) Advanced American grants an irrevocable right of entry to DEQ and its authorized representatives to enter and move freely about the Property at all reasonable times for purposes of overseeing implementation of this Agreement, or conducting removal or remedial measures DEQ deems necessary.

(2) Advanced American shall allow DEQ to inspect and copy all records in Advanced American's possession or control relating to measures undertaken at the Property under this Agreement. Advanced American shall preserve all such records for six (6) years after the effective date of this Agreement, and, after such six-year period, shall provide DEQ with sixty (60) days notice before destruction or other disposal of such records and make the records available for inspection and copying.

(3) Advanced American may assert a claim of confidentiality regarding any records submitted to or copied by DEQ pursuant to this Agreement. DEQ shall treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 to 192.505. If Advanced American does not make a claim of confidentiality at the time the records are submitted to or copied by DEQ, the records may be made available to the public without notice to Advanced American. DEQ reserves any rights to obtain documents withheld from DEQ as privileged.

C. Use Restrictions

DEQ may impose use restrictions and institutional controls on the Property. Such restrictions would be imposed only as necessary to prevent exposure to contaminated soil, surface water, vapors or groundwater, or to prevent exacerbation of existing contamination. Based on site conditions as of the date of this Agreement, no such restrictions or institutional controls are deemed necessary. If previously unknown contamination is discovered at the property, DEQ may require institutional controls if necessary to protect human health and the environment.

D. Notice

All reports, notices, and other communications required under or relating to this Agreement shall be directed to:

For DEQ:

Mark Pugh
2020 SW 4th Avenue, #400
Portland, Oregon 97201
Tel: (503) 229-
Fax: (503) 229-6945

For Advanced American:

Advanced American Construction
Properties, LLC
415 McLoughlin Blvd./ P.O. Box 1630
Oregon City, Oregon 97045
Tel: (503) 650-8207
Fax: (503) 650-8230

E. DEQ Costs

(1) Advanced American will pay costs incurred to prepare this Agreement, and costs incurred after the effective date of this Agreement by DEQ in connection with the oversight of Advanced American's implementation of this Agreement. Prior to the effective date of this Agreement, Advanced American provided to DEQ a deposit of

\$8,870 to pay for DEQ costs in preparing this Agreement and for DEQ costs in providing oversight for implementation of this Agreement.

(2) DEQ oversight costs payable by Advanced American shall include both direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs. Indirect costs include general management, support, and program development costs of DEQ and the Land Quality Division allocable to DEQ oversight of this Agreement and not charged as direct site-specific costs. Indirect costs are based on a percentage of direct personal service costs.

(3) As DEQ incurs oversight costs after the effective date of this Agreement, DEQ will draw against the \$8,870 deposit described in (1) above. DEQ will submit to Advanced American a monthly statement of costs incurred. Advanced American will be responsible for any oversight costs incurred by DEQ in excess of \$8,870.

(4) If DEQ oversight costs under this Agreement do not exceed the \$8,870 deposit, DEQ will refund within 60 days of the close of the project any amount of the deposit remaining in excess of the actual costs.

F. Dispute Resolution

In the event of any disagreement between DEQ and Advanced American regarding implementation of this Agreement, including but not limited to review and approval of a plan or activity or DEQ costs, DEQ and Advanced American shall, in the following order:

(1) Make a good faith effort to resolve the dispute between project managers;

(2) If necessary, refer the dispute for resolution by the immediate supervisors of

the project managers; and

(3) If necessary, provide to each other their respective positions in writing and refer the dispute for resolution to DEQ's Administrator of the Land Quality Division or Northwest Regional Division Administrator, and Advanced American's President or General Manager. DEQ's final decision after such dialogue shall be enforceable in accordance with Subsection 3.H. of this Agreement.

G. Enforcement of Agreement and Reservation of Rights

(1) In the event of any failure of Advanced American to comply with any obligation of this Agreement, DEQ may enforce this Agreement under ORS 465.260(5) or exercise any authority or pursue any claim or cause of action that DEQ might have. Advanced American reserves any defenses or counterclaims it might have in the event of such action by DEQ.

(2) Except as provided in Subsections 3.I and 3.J of this Agreement, DEQ and Advanced American reserve any claim or cause of action they respectively have as to any person or entity not a signatory to this Agreement.

(3) Advanced American does not admit any liability or violation of law by virtue of entering this Agreement.

(4) DEQ reserves its authority to perform source control or remedial measures regarding a release of hazardous substances at or from the Property.

H. Waivers

(1) Advanced American waives any claim or cause of action it might have against the State of Oregon arising from contamination at the Property existing as of the date of acquisition of ownership or operation of the Property.

(2) Advanced American waives any right it might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for cost incurred under this Agreement.

I. Hold Harmless and Indemnification

Advanced American shall save and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, agents, and authorized representatives, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Agreement of Advanced American or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by Advanced American or its agents in carrying out activities under this Agreement.

J. Public Notice

(1) Upon execution of this Agreement, DEQ will provide public notice of this Agreement in a local newspaper of general circulation, describing the measures to be undertaken under this Agreement. Copies of the Agreement will be made available to the public. DEQ shall provide Advanced American a draft of such notice and consider any comments by Advanced American on the draft notice, before publication. Advanced American is responsible for the publication costs, if any, of such notice.

(2) Before approval of any remedial action, DEQ will provide public notice and opportunity for comment on the proposed action in accordance with ORS 465.320.

K. Recording

Within thirty (30) days of the date Advanced American receives an ownership interest in the Property, Advanced American shall submit a copy or original of this Agreement (whichever is required by the county) to be recorded in the real property records of Multnomah County, State of Oregon. Advanced American shall provide DEQ with written evidence of such recording within seven (7) days of recording.

L. Transfer of Interest

Until DEQ issues a No Further Action determination or Certificate of Completion for the Property and Advanced American completes all obligations required under this Agreement, upon transfer of any interest in the Property, or a portion of the Property, from Advanced American to another person or entity, Advanced American shall provide written notice to the DEQ project manager within thirty (30) days of such transfer.

4. RELEASE FROM LIABILITY

A. Subject to the satisfactory performance by Advanced American of its obligations under this Agreement, including compliance and ongoing obligations and institutional controls, Advanced American shall not be liable to the State of Oregon under ORS 465.200 through 465.455 and 465.900 for any release of the hazardous substances described in Section 1 above at the Property existing as of the date of Advanced American's acquisition of its interest in or operation of the Property. Advanced American shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of its interest in or operation of the Property.

B. The release from liability under Subsection 4.A of this Agreement shall not apply to any liability regarding:

- (1) A release of hazardous substances at the Property after the date of acquisition of an interest in or operation of the Property;
- (2) Contribution to or exacerbation of a release of hazardous substances;
- (3) Interference or failure to cooperate with DEQ, or with persons conducting remedial measures under DEQ's oversight at the Property
- (4) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the Property;
- (5) Violation of federal, state, or local law regarding hazardous substances;
- (6) Any ownership, operation, or release of hazardous substances at the Property by Advanced American before the effective date of this Agreement;
- (7) Any ownership, operation, or other ground of liability of Advanced American for a release of hazardous substances at an off-site location affecting the Property; and
- (8) Any matters as to which the State of Oregon is owed indemnification under Subsection 3.I of this Agreement.

C. Neither the release of liability in subsection 4.A. nor any other provision of this Agreement constitutes or shall be construed as an obligation by the state of Oregon, or any commission, agency, officer or employee thereof to indemnify, defend or hold harmless any person, including without limitation Advanced American, for costs or

expenses arising from or related in any way to the Property, a release of hazardous substances at, to, or from the property, or this Agreement.

5. PARTIES BOUND

A. This Agreement shall be binding on the signatories and their respective commissions, agencies, officers, assigns, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Agreement. No change in ownership or corporate or partnership status relating to the Property shall in any way alter Advanced American's obligations under this Agreement, unless approved otherwise in writing by DEQ.

B. The benefits and burdens of this Agreement shall run with the land; however, the release from liability set forth in Subsection 4.A of this Agreement shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property and who assume and are bound by the terms of this Agreement applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

6. EFFECTIVE DATE

This Agreement shall be effective upon signature by both parties and when Advanced American receives an ownership interest in the Property.

7. SIGNATURES

Date: _____
Marvin D. Burch
President
Advanced American Construction Properties, LLC.

SUBSCRIBED AND SWORN TO
BEFORE ME this _____ day of
_____, 2004 by
Marvin D. Burch in his capacity as
President of Advanced American
Construction Properties, LLC

NOTARY PUBLIC FOR OREGON
My Commission expires: _____

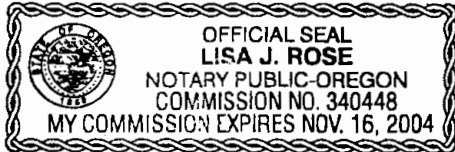
Date: _____
Alan Kiphut, Administrator
Land Quality Division
Oregon Department of Environmental Quality

SUBSCRIBED AND SWORN TO
BEFORE ME this _____ day of
_____, 2004 by,
Alan Kiphut in his capacity as
Administrator of the Land Quality
Division, Oregon Department of
Environmental Quality.

NOTARY PUBLIC FOR OREGON
My Commission expires: _____

Marvin D. Burch
Marvin D. Burch
President
Advanced American Construction Properties, LLC.

Date: 11/11/04



SUBSCRIBED AND SWORN TO
BEFORE ME this 11th day of
November, 2004 by
Marvin D. Burch in his capacity as
President of Advanced American
Construction Properties, LLC

Lisa J. Rose

NOTARY PUBLIC FOR OREGON
My Commission expires: 11/16/04

Alan Kiphut
Alan Kiphut, Administrator
Land Quality Division
Oregon Department of Environmental Quality

Date: 11/16/04

SUBSCRIBED AND SWORN TO
BEFORE ME this 16th day of
NOVEMBER, 2004 by,
Alan Kiphut in his capacity as
Administrator of the Land Quality
Division, Oregon Department of
Environmental Quality.

Denise Roth

NOTARY PUBLIC FOR OREGON
My Commission expires: 8-18-07

