

## ACCESS AGREEMENT

This Access Agreement (“Agreement”) is made as of November 5, 2020, between Northwest Natural Gas Company (“NW Natural”) and Advanced American Construction Properties LLC (“Advanced American”).

### RECITALS

A. Advanced American owns and/or has leasehold interests in the property and submerged and submersible lands adjacent to the real property located at 8444 NW. St. Helens Road in Portland, Oregon (the “Property”).

B. NW Natural is required by the Administrative Settlement Agreement and Order on Consent for Removal Action (“Consent Order”) with the U.S. Environmental Protection Agency (“EPA”), CERCLA Docket No. 10-2009-0255, as amended March 4, 2020, to complete remedial design work, including pre-remedial design investigations, in the US Moorings Project Area of the Portland Harbor Superfund Site (the “Site”). Portions of the Property are within or adjacent to the Site.

C. NW Natural is conducting remedial design investigations pursuant to the Consent Order Statement of Work and Pre-Design Investigation Work Plan for the US Moorings Project Area (the “Work Plan”). EPA approved the Work Plan on September 8, 2020, The Statement of Work Plan is attached hereto as Exhibit A.

D. NW Natural requires access to the Property to implement portions of the Work Plan (the “Work”). The Work will require access to the Property by NW Natural’s consultant and its subcontractors (“the Access Grantee”) and by EPA, EPA’s contractors and oversight officials accompanied by EPA to oversee the performance of the Work by the Access Grantee (collectively, “the Oversight Grantees”).

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E. Advanced American desires to reasonably cooperate with the Access Grantee and Oversight Grantees by allowing access to the submerged and submersible portion of the Property as described in this Agreement. The parties will discuss access to upland and riparian portions of the property prior to Spring 2021 with the goal of reaching an agreement as shown on Exhibit B.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties do hereby covenant and agree to and with each other as follows:

1. Subject to the provisions of this Agreement, Advanced American grants permission to the Access Grantee and Oversight Grantees to enter the Property solely during operating and daylight hours to perform (or, with respect to Oversight Grantees, to oversee) the Work. Access granted under this Agreement to the Access Grantee and Oversight Grantees shall be for the sole purpose of undertaking or overseeing the Work, as applicable.

2. NW Natural shall be responsible under this Agreement for ensuring that the Access Grantee complies with the requirements and obligations of this Agreement.

3. Access permitted under this Agreement shall be limited to the access required to perform the Work identified in Exhibit A.

4. NW Natural agrees that the Access Grantee shall perform the Work in a manner that minimizes interference with the use or enjoyment of the Property by Advanced American to the greatest extent reasonably possible. At least two days prior to commencement of on-site sampling, the Access Grantee shall meet (in person or by telephone) with Advanced American's designated representative to discuss the anticipated schedule for the sampling and coordinate to minimize interference with Advanced American's operations. Without Advanced American's prior consent otherwise (which consent shall not be unreasonably withheld), Access Grantee

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shall limit on-site sampling to normal business hours (Monday through Friday, 8 a.m. to 5 p.m.). The Access Grantee shall not cause or permit the Work to be performed in a manner that would cause or exacerbate any contamination at the Property or otherwise negatively impact Advanced American's obligations under its Prospective Purchaser Agreement with the Oregon Department of Environmental Quality, a copy of which has been provided to NW Natural.

5. NW Natural acknowledges that, from time to time for the duration of this Agreement, Advanced American may need to restrict access to the Property due to operational and/or safety issues. NW Natural further acknowledges that Advanced American is not required to move or relocate barges from their current locations to facilitate the Work, including the collection of sediment samples, and that NW Natural shall coordinate with EPA to identify alternative sampling locations. NW Natural further agrees to copy Advanced American on all communications with EPA regarding the access provided for under this Agreement. Advanced American shall have the right to restrict their access to the Property at any time for the duration of this Agreement. Advanced American agrees that its unilateral right to restrict access to the Property shall not be exercised unreasonably and Advanced American shall provide advanced notice of any restrictions to access whenever reasonably possible. Advanced American further agrees to permit access as soon as practicable.

6. NW Natural expressly agrees that neither they nor any of their officers, employees, representatives, agents, contractors or consultants of any kind employed by or otherwise retained by NW Natural shall have any lien rights under ORS Chapter 87 or any other lien or claim of any kind (including, but not limited to, claims for lien, lien foreclosure, negligence, breach of contract, warranty of any kind, quantum meruit, misrepresentation, or any other claim) against the Property or any other real or personal property of Advanced American

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relating to labor, materials, equipment or services performed or supplied at any time pursuant to this Agreement to, for, on, or relating to the Property or any other real or personal property of Advanced American (such lien or claim rights, "Agreement Lien Rights"). To the extent any such Agreement Lien Rights exist, the NW Natural and its officers, employees, representatives, agents, contractors and consultants hereby fully waive and release such lien and claim rights and agree not to assert now or in the future any such liens or claims against Advanced American or its tenants, the Property or the real or personal property of Advanced American at any time.

7. NW Natural agrees that the Access Grantee shall not cause or permit the Work to be performed in a manner that would cause damage to the Property which cannot be remedied and restored before, or promptly after, the completion of the Work.

8. NW Natural agrees that, as soon as it is reasonably possible, the Access Grantee shall restore the affected portion of the Property to its condition before the Work commenced and shall promptly and properly dispose of all waste generated during the Work.

9. Advanced American shall have the right to be present during any Work at the Property. NW Natural agrees that the Access Grantee will provide Advanced American a minimum of two business days' actual notice before beginning any Work at the Property, unless otherwise approved by Advanced American. Actual notice shall be provided via telephone to 503-793-3756 (Dee Burch), and via electronic mail to [deeb@callaac.com](mailto:deeb@callaac.com). NW Natural shall provide Advanced American with copies of all sample data results and any other data associated with its sampling conducted through the access provided under this Agreement within 7 days of the time when the data is received and validated by NWN, (not to exceed 45 days from receipt) and copies of all data submitted to EPA or the State of Oregon. Advanced American shall have

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the right to obtain, at its expense, split samples, provided that there is sufficient sample material for such split samples.

10. The Work and access to the Property under this Agreement shall comply with all federal, state, and local statutes, rules and regulations, the Consent Order, and all posted rules and oral and written safety instructions provided by Advanced American.

11. NW Natural shall indemnify, defend, and hold Advanced American harmless from and against any and all claims, causes of action, demands, fines, damages, losses, obligations, and liabilities arising out of or in the course of the Work, including but not limited to exacerbation of pre-existing contamination by NW Natural or the Access Grantee, except to the extent of any gross negligence or willful misconduct by Advanced American.

12. Nothing in this Agreement shall give rise to any liability or obligation by NW Natural or its officers, employees, representatives, or agents, or any NW Natural consultant or contractor with respect to any pre-existing contamination at the Property.

13. Neither the Access Grantee nor NW Natural, including its officers, employees, representatives, or agents, is EPA's representative with respect to liability associated with Site activities.

14. The rights of the parties under this Agreement shall be governed by the law of the State of Oregon.

15. This Agreement shall be effective through December 31, 2023 unless extended in writing by the parties or earlier terminated by either party.

16. The provisions of this Agreement shall extend to, bind, and inure to the benefit of the parties hereto and their respective successors and assigns.

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17. NW Natural agrees that the Access Grantee shall maintain, at its sole cost and expense, the following insurance and professional liability coverage for with respect to the Work.

17.1 Workers' Compensation and Employers' Liability Insurance as prescribed by applicable law. <sup>MDB 11/5/20</sup>  
*AAC WILL TENDER ALL EMPLOYMENT RELATED CLAIMS AND NW/N will ACCEPT THE TENDER RELATED TO THE PERFORMANCE OF THIS WORK.*

17.2 Comprehensive General Liability Insurance (Personal Injury and Property Damage) with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, including excess coverage.

17.3 Commercial Automobile Liability Insurance Including coverage for owned, leased, used, hired, or borrowed vehicles) with a combined single limit per accident for both bodily injury and property damage of not less than \$1,000,000, including excess coverage.

17.4 Professional Liability with limits not less than \$1,000,000 per claim and in the aggregate.

Advance American shall be named as an additional insured on each of the insurance policies set forth above that cover Access Grantee's implementation of the Work at the Property. Certificates of insurance evidencing the above coverage shall be issued to Advanced American as soon as feasible after the execution of this Agreement. The Access Grantee shall be responsible for the cost of any deductibles associated with making claims under such policies. The certificates will specify that Advanced American will be given, in writing, thirty (30) days' advance notice to the extent practicable of cancellation, termination, or alteration of the policies.

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IN WITNESS WHEREOF, the parties hereto are authorized to have executed this Agreement and agree to be bound by the terms herein.

**NW NATURAL**

**ADVANCED AMERICAN**

By:

By:

MardiLyn Saathoff

Maryin D. Burch

Name

Name

Sr. VP Regulatory & General Counsel

PRESIDENT

Title

Title



Signature

Signature

