

**DISCOVERY CLEAN WATER ALLIANCE
ADMINISTRATIVE LEAD AGREEMENT
[AMENDED AND RESTATED AS OF JULY 1, 2018]**

THIS AGREEMENT is made and entered into by and between CLARK REGIONAL WASTEWATER DISTRICT, Clark County, Washington (the "District") and the DISCOVERY CLEAN WATER ALLIANCE, Clark County, Washington (the "Alliance"), each a Washington municipal corporation (collectively, the "Parties"). In consideration of the following terms and conditions, the Alliance and the District agree as follows.

RECITALS

A. On September 27, 2012, Clark County, the District, the City of Ridgefield, and the City of Battle Ground (collectively, the "Alliance Members") entered into the "Discovery Clean Water Alliance Interlocal Formation Agreement" (the "Alliance Agreement"). The Alliance Agreement provides for the formation of the Discovery Clean Water Alliance, pursuant to the Joint Municipal Utility Services Act, Chapter 39.106 RCW. On January 4, 2013, the Alliance Agreement was filed with the Washington Secretary of State and the Alliance was formed.

B. The purpose of the Alliance is to jointly provide regional wastewater transmission and treatment services to Alliance Members and other contracting municipal wastewater utilities.

C. The Alliance Agreement designates the District as the Administrative Lead to administer and manage the overall affairs of the Alliance for at least five years after the Alliance Operations Date, which occurred on January 1, 2015.

D. The initial Term of this Agreement was scheduled to expire on December 31, 2019. It is in the Parties' best interests to extend the Term of this Agreement, as amended and restated as of July 1, 2018, for an additional five years to December 31, 2024.

E. Consistent with the Alliance Agreement, and pursuant to RCW 39.106.040 and RCW 57.08.005, the Alliance and the District desire to enter into this Agreement to set forth the terms and conditions of the District's continuing service as Administrative Lead.

AGREEMENT

1. Definitions. Unless otherwise provided in this Agreement, capitalized terms have the same meanings as the terms that are defined in the “Definitions” section of the Alliance Agreement.

2. District Services. Under the direction of the Board, and consistent with the Alliance Agreement, resolutions and policies, and in consultation with the relevant Member agency committees established by the Board, the District shall serve as the Administrative Lead and shall provide the services described in this **Section 2** and any other services authorized by the Alliance (collectively, the “Services”). Without limitation, the District shall:

2.1 Executive and Administrative Services.

2.1.1 Assist and support the Board and its committees and advisory boards by performing necessary executive and administrative services, including preparation of agendas and packets for all Board, committee and advisory board meetings.

2.1.2 Represent the Alliance on regional and local wastewater initiatives, issues and matters.

2.1.3 Report periodically to the Board regarding Administrative Lead services and Alliance activities and projects.

2.1.4 Monitor and carry out levels of service and standards associated with Alliance functions, defined in consultation with the relevant Alliance committees, and after review and endorsement by the Board.

2.1.5 Coordinate Administrative Lead duties and responsibilities with Operators and Members.

2.1.6 Implement public outreach and engagement services, as directed by the Board.

2.1.7 Serve as the Alliance SEPA lead agency.

2.1.8 Provide for an Alliance public records officer.

2.2 Financial and Treasury Services.

2.2.1 Prepare or oversee preparation of Operating Budgets.

2.2.2 Prepare or oversee preparation of Capital Budgets.

2.2.3 Develop and utilize financial accounting systems for Alliance functions, duties and reporting.

2.2.4 Monitor and carry out investment, debt or other financial policies defined in consultation with the relevant Member agency committees, and after review and endorsement by the Board.

2.2.5 Prepare or oversee preparation of computations and recommendations regarding the setting of Regional Service Charges.

2.2.6 Bill for and collect Regional Service Charges.

2.2.7 Prepare reports and recommendations regarding assumption of debt and/or issuance of bonds by the Alliance.

2.2.8 Provide compliance and post-issuance services for any Bonds issued by the Alliance consistent with Alliance debt policies.

2.2.9 Monitor and carry out Alliance Financial Policies (Exhibit A to the Alliance Agreement, as may be amended or replaced).

2.2.10 Prepare Comprehensive Annual Financial Reports.

2.2.11 Oversee and handle audits of Alliance operations and functions.

2.2.12 Serve as the Alliance Treasurer and designate the chief financial officer or treasurer of the District to serve as the Alliance Treasurer.

2.2.13 Invest excess cash reserves consistent with Alliance investment policies.

2.2.14 Carry out, or cause to be carried out, all usual, customary, statutory and regulatory duties and responsibilities of the Alliance Treasurer.

2.3 Capital Asset Program Management Services; Engineering Services.

2.3.1 Capital Plan Development. Prepare Capital Plans that assess regulatory requirements, industry trends, levels of service, capacity needs and restoration and replacement for Regional Assets; facilitate Board capital policy development in support of the Capital Plan.

2.3.2 Capital Plan Delivery. Manage, administer and implement capital improvements, repairs, upgrades, betterments and expansions of the Regional Assets for individual projects of more than \$50,000 (such dollar amount originated in 2012 dollars and indexed annually consistent with Alliance Resolution No. 2014-05, Section 3, as may be amended or replaced). Capital plan delivery includes execution of contracts related to Capital Plan delivery, including but not limited to planning, permitting, right-of-way acquisition, surveying, engineering, design, construction and construction management.

2.3.3 Regional Asset Development Review. Coordinate and review plans for public and private development projects occurring within the vicinity of Regional Assets. Where projects involve work that may affect Regional Assets, review and approve engineering design and construction plans to protect or modify the Regional Assets, as appropriate.

2.3.4 Regional Asset Wastewater Volume and Quality. Administer, manage and oversee Alliance resolutions and regulatory requirements related to wastewater volume and quality, including industrial wastewater pretreatment; report to the Board periodically on the status of wastewater volume and quality provided by Members and contracting municipal wastewater utilities discharging into the Regional Assets; coordinate and oversee preparation and adoption of member pretreatment regulations; report on Alliance, Member and contracting municipal wastewater utility compliance with wastewater volume and quality regulations.

2.3.5 Alliance Regulatory Compliance. Administer, manage, oversee and perform Alliance monitoring, testing, reporting, duties and responsibilities under NPDES permits and other permits and approvals for activities not performed by Operators.

2.3.6 Contract Notification. Notify the Alliance of significant contracts relating to the Regional Assets, consistent with Alliance Resolution No. 2014-05, "Procedure to Notify the Board and Standing Committees of Large Contracts Entered into by Contract Service Providers," as may be amended or replaced.

2.4 Hiring, Personnel and Other Services.

2.4.1 Hire and designate employees, contractors and consultants, including but not limited to legal counsel, engineers and planners, to assist the District in carrying out its duties and responsibilities under this Agreement.

2.4.2 Perform all other Administrative Lead duties and responsibilities under this Agreement and the Alliance Agreement.

3. Powers and Authority; Compliance with Laws. Except as otherwise provided in the Alliance Agreement, the District shall provide the Services in accordance with Title 57 RCW, the District Code and all other applicable laws, regulations and operating permits of the Regional Assets. Without limitation, the District shall:

3.1 Apply federal, state and local building, land use and environmental laws applicable to the District in providing the Services.

3.2 Apply District personnel laws to District employees in providing the Services.

3.3 Apply public works and procurement laws applicable to the District in providing the Services.

3.4 Apply and exercise the powers respecting surplus property applicable to the District in providing the Services.

4. Operating and Capital Budgets; Compensation; Payment for Services.

4.1 Consistent with Sections IV, V and VI of the Alliance Agreement, the Alliance operates under an Operating Budget and a Capital Budget. The District shall provide the Services within the authorizations of the Operating Budget and the Capital Budget.

4.2 The Alliance shall pay the District for all actual and reasonable costs incurred by the District for providing the Services, including but not limited to: allocable employee salaries and benefits; contractor and consultant services; administrative overhead, equipment, materials, supplies, utilities, taxes, fees and permits; allocable costs associated with full participation in the District's insurance and risk management program customary to all District departments, including district-wide (i) insurance premiums (or self-insurance risk pool insurance premiums) and (ii) liability fund contributions for the potential incurrence of any deductible costs (or self-insured retention costs); and capital improvements, repairs, upgrades, betterments and expansions to the Assigned Regional Assets managed and implemented by the District for individual projects of more than \$50,000 or as otherwise approved by the Alliance (such dollar amount originated in 2012 dollars and indexed annually consistent with Alliance Resolution No. 2014-05, Section 3, as may be amended or replaced).

4.3 The District shall charge for providing the Services in accordance with rates and schedules set forth in the Operating Budget and in the Capital Budget.

4.4 The District shall submit monthly invoices for the Services provided under the authorization of the Operating Budget in a form and containing information reasonably required by the Alliance. Monthly invoices shall be equal to one-twelfth of the annual budget for the Services provided under the authorization of the Operating Budget, unless a separate schedule is set forth in the Operating Budget. If actual and reasonable costs of providing the Services under the authorization of the Operating Budget are less than the budgeted amounts paid to the District in any year, any fund reserves in excess of the amounts required by the Financial Policies (Exhibit A to the Alliance Agreement, as may be amended or replaced) will be taken into account in the Operating Budget or Budgets in subsequent years.

4.5 The District shall submit monthly invoices for the Services provided under the authorization of the Capital Budget in a form and containing information reasonably required by the Alliance. Monthly invoices shall be equal to the actual and reasonable costs incurred in that month for providing the Services under the authorization of the Capital Budget.

4.6 If the District determines that its allocations in the Operating Budget and in the Capital Budget are insufficient to cover all actual and reasonable costs of providing the Services, then the District shall promptly notify the Alliance of that deficiency. The Alliance shall coordinate adjustments to the Operating Budget and to the Capital Budget, as the case may be, with the District consistent with fund reserve requirements in the Financial Policies (Exhibit A to the Alliance Agreement, as may be amended or replaced). It is the intent of the Parties that the District's adjusted allocations from the Operating Budget and from the Capital Budget will cover all of the District's actual and reasonable costs of providing the Services.

4.7 Any payment that is delinquent after 60 days shall accrue interest at 12% per annum.

5. Term and Effective Date. This Agreement shall be effective and replace the existing Administrative Lead Agreement between the Parties as of July 1, 2018 and shall terminate on December 31, 2024 (the "Term").

5.1 Automatic Extensions. The Term shall be automatically extended for additional one-year periods unless the Alliance or the District notifies the other Party on or before December 31 of the calendar year prior to the calendar year in which the Agreement will expire, that the Agreement shall not be extended. The Parties may also mutually agree to extend the Term for greater than one-year periods.

5.2 Transition Planning. Upon either Party's receipt of notice that the Agreement shall not be extended, the Parties shall work together to develop a mutually agreed upon transition plan, which shall include, but not be limited to, a process that incorporates the best reasonable effort of any successor Administrative Lead to hire District employees, as outlined in **Section 7** of this Agreement.

6. Early Termination. Either Party may terminate this Agreement for a material and substantial default by the other Party, if the default has not been cured in a reasonable period of time after written notice of default.

7. District Employees. If the Alliance transfers the Administrative Lead services to itself, the Alliance will use its best reasonable effort to hire the employees of the District who request continued employment in their previous or similar positions. If the Alliance transfers the Administrative Lead services to another entity, the Alliance shall require the other entity to use its best reasonable effort to hire the employees of the District who request continued employment in their previous or similar positions.

8. Performance of Non-Alliance Services By the District. The District may perform any retail and wholesale services that are not in conflict with the Services provided to the Alliance or in conflict with the District's duties and responsibilities under this Agreement.

9. Cooperation. The Parties shall cooperate fully in executing documents that are necessary for the District to provide the Services.

10. Records.

10.1 The District shall maintain accounts and records that sufficiently and properly document its provision of the Services and charges under this Agreement.

10.2 Upon reasonable notice, each Party shall have the right to inspect and copy, without charge, all non-privileged records held by the other Party relating to this Agreement.

11. Insurance and Indemnification.

11.1 General. The Alliance shall insure, at replacement cost value, the Assigned Regional Assets. The Alliance and the District shall obtain and maintain insurance, or self-insurance risk pool insurance, for their acts and omissions under this Agreement, with the same coverage and in the same amounts as is provided by each Party for its officers, employees and agents. Upon request of the Alliance or the District,

the other Party shall provide evidence of insurance, or self-insurance risk pool insurance, coverage in a form acceptable to the requesting Party.

11.2 Alliance Liability Insurance. The Alliance certifies that it is, and the Alliance shall remain, a member of the Water & Sewer Risk Management Pool (“WSRMP”) as provided by RCW 48.62.031 (or by a comparable self-insurance risk pool or insurance provider or providers), and that it is covered by the WSRMP’s Joint Self-Insurance Liability Policy. For any claim submitted under Chapter 4.96 RCW (“*Actions against political subdivisions, municipal and quasi-municipal corporations*”) against the Alliance, its employees, officials, officers, volunteers and agents and/or actions in connection with or incidental to the performance of this Agreement which the Alliance and/or its employees, officials, officers, volunteers and agents are found to be liable for, the Alliance shall seek coverage under applicable insurance or self-insurance risk pool insurance.

11.3 Alliance Minimum Coverage. The following insurance types and limits shall be maintained by the Alliance:

11.3.1 General Liability - \$10,000,000 each occurrence Bodily Injury, Property Damage Liability, Public Officials Errors and Omissions and Automobile Liability; and

11.3.2 Workers Compensation per state statute and federal law.

11.4 District Liability Insurance. The District certifies that it is, and the District shall remain, a member of the Water & Sewer Risk Management Pool (“WSRMP”) as provided by RCW 48.62.031 (or by a comparable self-insurance risk pool or insurance provider or providers), and that it is covered by the WSRMP’s Joint Self-Insurance Liability Policy. For any claim submitted under Chapter 4.96 RCW (“*Actions against political subdivisions, municipal and quasi-municipal corporations*”) against the District, its employees, officials, officers, volunteers and agents and/or actions in connection with or incidental to the performance of this Agreement which the District and/or its employees, officials, officers, volunteers and agents are found to be liable for, the District shall seek coverage under applicable insurance or self-insurance risk pool insurance.

11.5 District Minimum Coverage. The following insurance types and limits shall be maintained by the District:

11.5.1 General Liability - \$10,000,000 each occurrence Bodily Injury, Property Damage Liability, Public Officials Errors and Omissions and Automobile Liability; and

11.5.2 Workers Compensation per state statute and federal law.

11.6 Indemnification. The District and the Alliance shall defend, indemnify and hold the other Party, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the indemnifying Party in performance of this Agreement, except for injuries and damages caused by the sole negligence of the indemnified Party. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Parties, the indemnifying Party's liability hereunder, including the duty and cost to defend, shall be only to the extent of the indemnifying Party's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the indemnifying Party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this **Section 11.6** shall survive the expiration or termination of this Agreement. It is the understanding of the Parties that the District's actual and reasonable costs of providing the Services under **Section 4.2** will include participation in the District's insurance and risk management program. The District's insurance and risk management program will cover all costs incurred by the District under this **Section 11.6**, and such costs shall not be included in adjustments to the Operating Budget or to the Capital Budget under **Section 4.6** of this Agreement.

11.7 Participation in Legal Action. In the event any suit under **Section 11.6** is brought against either Party, each Party retains the right to participate in the suit if any principle of law is involved.

12. Dispute Resolution; Remedies. The Parties shall first attempt to resolve a dispute by discussions between representative(s) of the Alliance and the District. If the discussions are not successful, the Parties may thereafter elect mediation or arbitration, including binding arbitration, or pursue any available remedies under law. If mediation or arbitration is selected, the costs shall be divided equally between the Alliance and the District.

13. Notices. All notices and other communications under this Agreement shall be in writing by email, facsimile, regular U.S. mail or certified mail, return receipt requested.

If to the Alliance, the notice shall be sent to:

Chair of the Board
Discovery Clean Water Alliance

c/o Clark Regional Wastewater District
8000 NE 52nd Court
PO Box 8979
Vancouver WA 98668-8979

with a copy to:

Lee Marchisio
Foster Pepper PLLC
1111 3rd Avenue STE 3000
Seattle WA 98101-3299

If to the Administrative Lead, the notice shall be sent to:

General Manager
Clark Regional Wastewater District
8000 NE 52nd Court
PO Box 8979
Vancouver WA 98668-8979

with a copy to:

Rod Kaseguma
Inslee, Best, Doezie & Ryder, P.S.
Skyline Tower
10900 NE 4th Street, Suite 1500
Bellevue WA 98004

Either Party may notify the other Party in writing of changes in the persons to whom notices are to be delivered. Notices shall be deemed given upon delivery or, if mailed, upon the earlier of actual receipt or three (3) business days after the date of mailing.

14. Severability. If any section or part of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such action shall not affect the validity or enforceability of any other section or part of this Agreement.

15. Entire Agreement; Amendment. This Agreement contains the entire written agreement of the Parties and supersedes all prior discussions and agreements. This Agreement may be amended only in writing, signed by both Parties.

16. Successors and Assigns. All of the provisions, conditions, regulations and requirements contained in this Agreement shall be binding upon the successors and assigns of the Parties.

17. Survival. **Section 11.6**, Indemnification, shall survive the Term, and any extensions thereof, of this Agreement.

18. No Third Party Rights. This Agreement is solely for the benefit of the Parties and gives no right to any other party or person.

19. No Joint Venture. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other Party.

20. Jurisdiction and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of Clark County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

21. Enforcement; No Waiver; Prevailing Party Costs. In addition to the remedies provided by law, this Agreement shall be specifically enforceable by either Party. If either Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party. The failure of a Party to exercise any right or enforce any provision of this Agreement shall not be considered a waiver of such right or enforcement remedy.

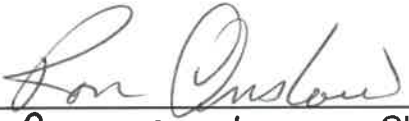
22. Independent Contractor. The District is and shall be at all times during the Term of this Agreement an independent contractor and not an employee of the Alliance. District employees are not and, at all times during the Term of this Agreement, shall not be considered Alliance employees.

23. Counterparts. This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated agreement.

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The Parties have caused this Agreement to be executed by their authorized representatives.


DISCOVERY CLEAN WATER ALLIANCE



Ron Onslow, Chair

Date: 3/16/2018

CLARK REGIONAL WASTEWATER DISTRICT



Neil Kimsey, President

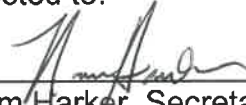
Date: 3-27-18

Attested to:



Steven Phelps, Secretary

Attested to:




Norm Harker, Secretary

Approved as to form:



Lee Marchisio, Alliance Attorney

Approved as to form:



Rod Kaseguma, District Attorney