

**DISCOVERY CLEAN WATER ALLIANCE
OPERATOR 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, Clark Regional Wastewater 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 provides services through regional wastewater transmission and treatment facilities (the "Regional Assets"). The Alliance Agreement designates the initial Operators of certain Regional Assets. The Alliance Agreement does not designate the Operators of new Regional Assets or any successors to the initial Operators.

D. On July 1, 2017, the Board designated the District as Operator of the Regional Biofilter described in the attached Exhibit A (the "Assigned Regional Assets"), and the Parties entered into this Agreement to set forth the terms and conditions of the District's service as Operator of the Assigned Regional Assets.

E. 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, and to additionally designate the District as Operator of the Ridgefield Treatment System as among the Assigned Regional Assets.

F. 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 and expanded service as Operator of the Assigned Regional Assets.

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. 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 Operator of the Assigned Regional Assets 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 Asset Management Services.

2.1.1 Operate the Assigned Regional Assets.

2.1.2 Make decisions on the use or application of processes, equipment and facilities, and control other operating decisions over the Assigned Regional Assets.

2.1.3 Manage, administer and implement capital improvements, repairs, upgrades, betterments and expansions of the Assigned Regional Assets for individual projects or contracts of up to \$50,000 or as otherwise limited 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).

2.1.4 Accommodate Alliance capital improvements, repairs, upgrades, betterments and expansions of the Assigned 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).

2.1.5 Report periodically to the Alliance and appropriate standing committees regarding its duties and responsibilities under this Agreement and the capacity of the Assigned Regional Assets.

2.1.6 Coordinate its duties and responsibilities under this Agreement actively with the Administrative Lead.

2.1.7 Notify the Alliance of significant service contracts relating to the Assigned 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.

2.2 Wastewater Treatment Services.

2.2.1 Receive, transport and treat wastewater discharged by Alliance Members up to the combined Allocated Capacity expressed as MGD of MMF for the Assigned Regional Assets and under the terms of this Agreement.

2.2.2 Receive, transport and treat wastewater from non-Members under contract with the Alliance or as determined by the Alliance up to the combined Allocated Capacity.

2.2.3 Receive, transport and treat wastewater exceeding the combined Allocated Capacity under terms agreed to by the Parties.

2.2.4 Receive, transport and treat septage under terms approved by the Alliance.

2.3 Hiring, Personnel and Other Services.

2.3.1 Hire and designate employees, contractors and consultants to assist the District in carrying out its duties and responsibilities under this Agreement.

2.3.2 Perform all other Operator duties and responsibilities with respect to the Assigned Regional Assets under this Agreement and the Alliance Agreement.

3. Authority; Compliance with Laws; Levels of Service.

3.1 Powers and Authority. The District shall have full power and authority to control the Assigned Regional Assets in providing the Services, including, but not limited to, hiring and designating employees, contractors and consultants, making decisions on the use or application of processes, equipment and facilities, and controlling other operating decisions. Neither the Alliance, nor an individual Board member or a governmental Member (other than the District), may direct the District to

appoint or remove its employees, contractors or consultants, nor shall the Alliance, an individual Board member or a governmental Member (other than the District) give orders to any employee, contractor or consultant working for the District. This restriction does not prohibit the Board, in open session, from fully and freely discussing, with representatives of the District, anything pertaining to appointments and removals of employees, contractors or consultants.

3.2 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 Assigned Regional Assets. Without limitation, the District shall:

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

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

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

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

3.3 Levels of Service and Operating Standards. The District shall comply with the minimum levels of service and basic operating standards adopted by the Alliance. The minimum levels of service and standards adopted by the Alliance shall be consistent with customary practices for wastewater facilities in Washington State of the size and type comprising the Assigned Regional Assets.

4. Operating Budget; Compensation; Payment for Services.

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

4.2 Budget Process.

4.2.1 The District shall propose and submit to the Administrative Lead a budget for providing the Services as a component of the Operating Budget no later than September 1 of the year the Operating Budget is to be adopted and

shall recommend to the Administrative Lead capital improvements as a component of the Capital Budget no later than September 1 of the year the Capital Budget is to be adopted.

4.2.2 The District shall submit to the Alliance quarterly reports for all actual and reasonable costs incurred by the District for providing the Services.

4.2.3 If the District determines that its allocation in the Operating Budget is 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 with the District consistent with fund reserve requirements in the Financial Policies (Exhibit A to the Alliance Agreement). It is the intent of the Parties that the District's adjusted allocation from the Operating Budget will cover all of the District's actual and reasonable costs of providing the Services.

4.2.4 If actual and reasonable costs of providing the Services 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) will be taken into account in the Operating Budget or Budgets in subsequent years.

4.3 Calculation of Payments.

4.3.1 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 up to \$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).

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

4.3.3 The Alliance shall include in the Operating Budget all actual and reasonable costs estimated to be incurred by the District for providing the Services and shall remit to the District each month one-twelfth of its total allocation in the Operating Budget over the applicable year.

4.4 Calculation of Wastewater Flow and Capacity.

4.4.1 The District shall accept wastewater volumes up to the combined Allocated Capacity expressed as MGD of MMF in Exhibit B of the Alliance Agreement (as may be adjusted from time to time by the Board), within the authorization of the Operating Budget and Capital Budget, and irrespective of individual Member contribution levels. The District shall compensate the Alliance for costs, penalties, and liabilities associated with the District failing to accept up to the combined Allocated Capacity of wastewater caused by the District's gross negligence or willful actions or omissions in violation of this Agreement. This provision does not limit the District from providing wastewater services beyond the combined Allocated Capacity expressed in Exhibit B of the Alliance Agreement, if approved by the Alliance.

4.4.2 Neither the Alliance nor any Alliance Member may discharge into the Assigned Regional Assets wastewater in excess of its combined Allocated Capacity. The District may decline to accept and treat any wastewater volumes in excess of the combined Allocated Capacity. Unless otherwise provided in this Agreement or by agreement between the District and the Alliance, the District will not serve non-Member customers.

4.4.3 If the District determines the volume of wastewater discharge by Alliance Members is in excess of the combined Allocated Capacity of any given month as measured by MGD of MMF, the Alliance shall pay any additional costs incurred by the District to treat the excess discharged wastewater, as well as related costs to treat and transport the excess amount and including any costs, penalties and liabilities associated with the treatment or discharge of that wastewater in excess of the NPDES permit or other applicable regulations. The District shall provide the Alliance an accounting of its additional costs resulting from receiving, transporting and treating excess wastewater. The District's acceptance of excess wastewater on any occasion or occasions shall not bind the District to accept excess wastewater on any other occasion.

4.4.4 When the wastewater discharge reaches 85% of the combined Allocated Capacity, the District shall notify the Alliance. The Alliance shall commence the preparation of plans for the usage of its remaining combined

Allocated Capacity and, if needed, provide for additional capacity beyond the combined Allocated Capacity limit.

4.4.5 If the Assigned Regional Assets are unable to receive, transport and treat the combined Allocated Capacity for wastewater in the Alliance Agreement and maintain compliance with its NPDES permit, the Alliance shall develop a capital improvement plan to ensure future compliance.

4.4.6 The Alliance and the District shall cooperate with each other to determine the source of possible violations of applicable law, regulations and permits (including applicable NPDES Permits). To the extent not covered by insurance required under **Section 11** of this Agreement, if the District is fined or otherwise penalized by local, State or Federal agencies for failure to operate or maintain the Assigned Regional Assets in accordance with the requirements of those agencies, the Alliance shall pay the costs of such agency fines or penalties, including associated administrative, legal and engineering costs incurred by the District. If the Alliance desires the District to pay such agency fines and penalties not covered by insurance required under **Section 11** of this Agreement, it must notify the District, and the District shall do so as an actual and reasonable cost of providing the Services and adjust its internal budget for operating the Assigned Regional Assets accordingly. The District shall undertake all reasonable efforts to seek recovery for the costs of such liabilities under applicable insurance or self-insurance risk pool insurance. To the extent not covered by insurance required under **Section 11** of this Agreement, the District shall be responsible for any agency fines or penalties and associated administrative, legal and engineering costs caused by its grossly negligent or willful actions or omissions or by actions in violation of this Agreement.

4.4.7 The District shall make all reasonable efforts to accommodate the Alliance in implementing and completing capital improvements to the Assigned Regional Assets.

4.5 Wastewater Quality Standards and Programs.

4.5.1 Members and non-Member contributors shall not discharge into the Assigned Regional Assets any wastewater that does not meet the wastewater quality standards required by the Alliance. The Alliance shall enforce compliance with this provision.

4.5.2 The District is obligated to treat only wastewater that meets the wastewater quality standards required by the Alliance. The District may decline to transport and treat wastewater from Members that does not conform to

applicable state or federal standards for wastewater. If the District receives wastewater not in compliance with Alliance standards, the District shall notify the Alliance. The Alliance shall compensate the District for costs, penalties and liabilities associated with receiving, treating and discharging nonconforming wastewater.

4.5.3 The District and the Alliance shall cooperate to develop, as needed, resolutions, procedures and programs to mitigate Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) levels, metals and other pollutant levels that are higher or lower than acceptable norms, as determined by either regulatory requirements or by generally accepted environmental practices.

4.5.4 The Alliance shall adopt an industrial wastewater pre-treatment resolution, procedure or program, as appropriate, meeting applicable state and federal requirements. The Alliance is responsible for implementing the industrial wastewater pre-treatment program, in compliance with the Clean Water Act, as a condition of the NPDES Permit. The Alliance shall be responsible for identification of dischargers, issuance of control documents, issuance of permits, compliance enforcement and collection of any special fees, penalties or other associated extraordinary charges.

5. Term and Effective Date. This Agreement shall be effective and replace the existing Operator 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 Operator 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 assumes the responsibilities of Operator of Regional Assets previously assigned to the District, 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 Operator services over Regional Assets previously assigned to the District 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. Upon the approval of the Alliance, the District may perform retail and wholesale services with respect to the Assigned Regional Assets 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. This **Section 8** does not limit the District from carrying out the purposes of chapter 57.08 RCW in its discretion with respect to non-Alliance facilities or activities.

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 Insurance 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 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 4.3.1** and its corresponding budget proposals under **Section 4.2.1** 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 under **Section 4.2.3** 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 Operator, 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, and the exhibits attached hereto or referenced herein, 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:



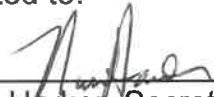
Steven Phelps, Secretary

Approved as to form:




Lee Marchisio, Alliance Attorney

Attested to:



Norm Harker, Secretary

Approved as to form:



Rod Kaseguma, District Attorney

EXHIBIT A

ASSIGNED REGIONAL ASSETS (CLARK REGIONAL WASTEWATER DISTRICT)

System Name	No.	Regional Asset Name	Regional Asset Description
Salmon Creek Wastewater Management System (SCWMS)	2a	Regional Biofilter – Upper Kline Interceptor	A regional biofilter located near Salmon Creek Avenue at Liberty Bible Church of the Nazarene that mitigates H ₂ S from BG Force Main and St. John Interceptor.
Ridgefield Treatment System	8	Ridgefield Treatment Plant & Outfall	Secondary treatment plant originally constructed in 1959 with several upgrades since then. The plant is located on West Cook St in Ridgefield. The plant outfall is a 10-inch diameter pipeline routed west of the plant 0.2 miles, terminating in Lake River. The discharge location is latitude 45° 49' 18" N, longitude 122° 45' 09" W.

