

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

THIS AGREEMENT is made and entered into by and between the CITY OF RIDGEFIELD, Clark County, Washington ("Ridgefield") 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 Ridgefield agree as follows.

**RECITALS**

A. On September 27, 2012, Clark County, Clark Regional Wastewater District (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 Ridgefield as Operator of the Ridgefield Treatment Plant and Outfall described in the attached Exhibit A, as may be amended from time to time (the "Assigned Regional Assets"), for at least five years after the Alliance Operations Date, which occurred on January 1, 2015. Section V.A of the Alliance Agreement further provides: "The initial designation of ... Ridgefield as Operator[ ] may be adjusted upon the mutual agreement of the Board and ... Operator."

D. The initial Term of this Agreement was scheduled to expire on December 31, 2019. It is in the Parties' best interests to modify the Term of this Agreement, as amended and restated as of July 1, 2018, to terminate on December 31, 2018. For the final six months of this Agreement (July 1, 2018 to December 31, 2018), Ridgefield will cease to be the Operator of the Assigned Regional Assets and will assist the Alliance in transitioning Operator duties and responsibilities to the District.

E. Consistent with the Alliance Agreement, and pursuant to RCW 39.106.040 and RCW 35A.11.010, the Alliance and Ridgefield desire to enter into this Agreement to set forth the terms and conditions of Ridgefield's provision of operational transition services for the Assigned Regional Assets to the Alliance.

## **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. Ridgefield Services. Consistent with the Alliance Agreement, resolutions and policies, and in consultation with the relevant Member agency committees established by the Board, Ridgefield shall provide operational transition services for the Assigned Regional Assets described in this **Section 2** and any other services authorized by the Alliance (collectively, the “Services”). Without limitation, Ridgefield shall:

### 2.1 Operational Transition Services.

2.1.1 Assist the Alliance in transitioning all support functions and Operator duties and responsibilities from Ridgefield to the District during the final six months of this Agreement, July 1, 2018 to December 31, 2018.

2.1.2 Upon the request of the Alliance, provide consultation reasonably necessary for the District to operate the Assigned Regional Assets in substantially the same manner as Ridgefield had initially provided.

2.1.3 Inventory and transfer, assign or cause to be assigned to the District all contracts and agreements, all personal property and intangibles and all rights, duties and responsibilities relating to the Assigned Regional Assets.

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

2.1.5 Take all other necessary actions and execute all other necessary documents to transition Operator duties and responsibilities to the District.

### 2.2 Alliance Reserve Management Services.

2.2.1 On or before July 1, 2018, wire, transfer or otherwise remit 50 percent of all Alliance reserves held by Ridgefield to the Alliance under fund transfer instructions mutually agreeable between the Parties.

2.2.2 Manage the remaining Alliance reserves (the “Transition Reserves”) to pay all actual and reasonable costs incurred in providing the Services and all budgeted indirect costs through December 31, 2018.

2.2.3 On or before December 31, 2018: first, pay all outstanding bills and invoices and settle all accounts with third parties from the Transition Reserves; second, provide a final accounting of the Transition Reserves to the Alliance; and third, wire, transfer or otherwise remit all remaining Transition Reserves held by Ridgefield to the Alliance under fund transfer instructions mutually agreeable between the Parties.

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

3.1 Powers and Authority; Compliance with Laws. Except as otherwise provided in the Alliance Agreement, Ridgefield shall provide the Services in accordance with Title 35A RCW, the Ridgefield Municipal Code and all other applicable laws, regulations and operating permits of the Assigned Regional Assets. Neither the Alliance, nor an individual Board member or a governmental Member (other than Ridgefield), may direct Ridgefield to appoint or remove its employees, contractors or consultants, nor shall the Alliance, an individual Board member or a governmental Member (other than Ridgefield) give orders to any employee, contractor or consultant working for Ridgefield. This restriction does not prohibit the Board, in open session, from fully and freely discussing, with representatives of Ridgefield, anything pertaining to appointments and removals of employees, contractors or consultants. Without limitation, Ridgefield shall:

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

3.1.2 Apply Ridgefield personnel laws to Ridgefield employees in providing the Services.

3.2 Levels of Service and Operating Standards. Ridgefield 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. Transition Reserve; Compensation; Payment for Services. 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.

4.1 Transition Reserve Draws. Effective July 1, 2018, Ridgefield shall provide the Services within, and by periodic draws from, the Transition Reserves allocation provided under **Section 2.2.2**, and Ridgefield will no longer receive payments from Operating Budget allocations. Ridgefield shall submit to the Alliance quarterly reports for

all actual and reasonable costs incurred by Ridgefield for providing the Services that it reimburses through draws from the Transition Reserves. If Ridgefield determines that the Transition Reserves will be insufficient to cover all actual and reasonable costs of providing the Services, then Ridgefield shall promptly notify the Alliance of that deficiency. The Alliance shall coordinate fund transfers to the extent necessary to cover all actual and reasonable costs of providing the Services.

4.2 Calculation of Payments. The Alliance shall pay Ridgefield for all actual and reasonable costs incurred by Ridgefield for providing the Services, including, but not limited to: allocable employee salaries and benefits; administrative overhead; and allocable costs associated with full participation in Ridgefield's insurance and risk management program customary to all Ridgefield departments, including city-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).

5. Term and Effective Date. This Agreement shall be effective January 1, 2015 and shall terminate on December 31, 2018 (the "Term").

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. Ridgefield Employees. Ridgefield makes the following representations to the Alliance: it has appropriately notified affected employees and any union representing the affected employees that Ridgefield will no longer serve as Operator of the Assigned Regional Assets; and no affected employees have requested continued employment in their previous or similar positions with any successor Operator. Accordingly, Ridgefield releases the Alliance from any obligation to use or cause any successor Operator to use its best reasonable effort to hire any employees of Ridgefield.

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

9. Records.

9.1 Ridgefield shall maintain accounts and records that sufficiently and properly document its provision of the Services and charges under this Agreement.

9.2 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.

10. Insurance and Indemnification.

10.1 The Alliance shall insure, at replacement cost value, the Assigned Regional Assets. The Alliance and Ridgefield 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 Ridgefield, the other Party shall provide evidence of insurance, or self-insurance risk pool insurance, coverage in a form acceptable to the requesting Party.

10.2 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.

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

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

10.3.2 Workers Compensation per state statute and federal law.

10.4 Ridgefield Liability Insurance. Ridgefield certifies that it is, and Ridgefield shall remain, a member of the Washington Cities Insurance Authority Risk Pool ("WCIA") 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 WCIA's (or a comparable self-insurance risk pool's or insurance provider'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 Ridgefield, its employees, officials, officers, volunteers and agents and/or actions in connection with or incidental to the performance of this Agreement which Ridgefield and/or its employees, officials, officers, volunteers and agents are found to be liable for, Ridgefield shall seek coverage under applicable insurance or self-insurance risk pool insurance.

10.5 Ridgefield Minimum Coverage. The following insurance types and limits shall be maintained by Ridgefield:

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

10.5.2 Workers Compensation per state statute and federal law.

10.6 Indemnification. Ridgefield 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 10.6** shall survive the expiration or termination of this Agreement. It is the understanding of the Parties that Ridgefield's actual and reasonable costs of providing the Services under **Section 4.2** will include participation in Ridgefield's insurance and risk management program. Ridgefield's insurance and risk management program will cover all costs incurred by Ridgefield under this **Section 10.6**, and such costs shall not be included in draws from the Transition Reserves under **Section 4.1** of this Agreement.

10.7 Participation in Legal Action. In the event any suit under **Section 10.6** is brought against either Party, each Party retains the right to participate in the suit if any principle of law is involved.

11. Dispute Resolution; Remedies. The Parties shall first attempt to resolve a dispute by discussions between representative(s) of the Alliance and Ridgefield. 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 Ridgefield.

12. 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 52<sup>nd</sup> Court  
PO Box 8979  
Vancouver WA 98668-8979

with a copy to:

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

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

City of Ridgefield  
P.O. Box 608  
Ridgefield, WA 98642  
Attention: City Manager

with a copy to:

Janean Parker  
Kenyon Disend PLLC  
11 Front Street South  
Issaquah, WA 98027-3820

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.

13. 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.

14. 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.

15. 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.

16. Survival. **Section 10.6**, Indemnification, shall survive the Term, and any extensions thereof, of this Agreement.

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

18. 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.

19. 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.

20. 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.

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


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

*[Remainder of page intentionally left blank; signature page follows]*




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

DISCOVERY CLEAN WATER ALLIANCE

  
\_\_\_\_\_  
Ron Onslow, Chair

Date: 3/16/2018

CITY OF RIDGEFIELD

  
\_\_\_\_\_  
Steve Stuart, City Manager

Date: 4/12/18

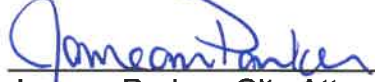
Attested to:

  
\_\_\_\_\_  
Steven Phelps, Secretary

Approved as to form:

  
\_\_\_\_\_  
Lee Marchisio, Alliance Attorney

Approved as to form:

  
\_\_\_\_\_  
Jarean Parker, City Attorney



**EXHIBIT A**  
**ASSIGNED REGIONAL ASSETS (RIDGEFIELD)**

System Name	No.	Regional Asset Name	Regional Asset Description
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.

