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## **CLARK COUNTY AND DISCOVERY CLEAN WATER ALLIANCE SALMON CREEK WASTEWATER MANAGEMENT SYSTEM TRANSFER AGREEMENT**

THIS AGREEMENT is made and entered into by and between CLARK COUNTY, Washington, a political subdivision of the State of Washington (the "County") and the DISCOVERY CLEAN WATER ALLIANCE, Clark County, Washington, a Washington municipal corporation (the "Alliance") (collectively, the "Parties").

### **RECITALS**

A. On September 27, 2012, Clark County, Clark Regional Wastewater District, the City of Battle Ground, and the City of Ridgefield (collectively, the "Alliance Members") entered into the "Discovery Clean Water Alliance Interlocal Formation Agreement" (the "Alliance Agreement"), attached as **Exhibit A**. The Alliance Agreement provides for the formation of the 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. Section VII of the Alliance Agreement expresses the intent that the County will transfer to the Alliance the County's wastewater management system as an Initial Regional Asset listed in Exhibit B of the Alliance Agreement.

D. This transfer is a component of the Alliance's program to provide cost effective and cooperative municipal utility services to Alliance Members. The transfer will create public benefit by supporting regional economic development in an environmentally-sound manner, by helping manage Alliance Member service costs in a financially-transparent manner, by providing reliable and predictable service, and by providing a framework that encourages the participation of all Clark County municipal utilities that protects both regional and jurisdictional autonomy.

E. RCW 39.106.040 authorizes the Alliance to acquire real or personal property or property rights from the County.

F. RCW 39.106.060 authorizes the County to transfer real or personal property or property rights to the Alliance.

G. Consistent with the Alliance Agreement, and pursuant to RCW 39.106.040 and 39.106.060, the Alliance and the County desire to enter this Agreement to set forth

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the terms and conditions of the transfer of the County's wastewater management system from the County to the Alliance.

H. The Board of County Commissioners approved execution of this Agreement and the schedules attached hereto by a motion passed on the 24<sup>th</sup> day of June, 2014. The Alliance Board of Directors approved execution of this Agreement and the schedules attached hereto by Resolution No. 2014-03 on the 27<sup>th</sup> day of June, 2014.

## **AGREEMENT**

In consideration of the following terms and conditions, the County and the Alliance agree as follows:

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

2. Property Transfers. Subject to the terms and conditions of this Agreement, including all attached Schedules and Exhibits, and in consideration of the benefits described in the Recitals above, the County agrees to grant, convey, assign, and deliver to the Alliance, and the Alliance agrees to accept from the County, the County's wastewater management system, and certain real property located outside of County rights-of-way, personal property, rights and intangibles, and cash reserves associated thereto (collectively referred to as the "Salmon Creek Wastewater Management System" or the "SCWMS"), as more specifically described as follows:

2.1 SCWMS Infrastructure. The County agrees to convey to the Alliance all of the County's wastewater management system infrastructure pursuant to a Bill of Sale, substantially in the form attached as **Schedule 2.1** (the "Bill of Sale for SCWMS Infrastructure") and graphically depicted for illustrative purposes on the diagrams attached as **Exhibit 2.1.A** of **Schedule 2.1**, which shall include the following infrastructure: (i) the Salmon Creek Interceptor; (ii) the Klineline Interceptor; (iii) the 36<sup>th</sup> Avenue Pump Station; (iv) the 117<sup>th</sup> Street Pump Station (also referred to as the Klineline Pump Station); (v) the 36<sup>th</sup> Avenue Pump Station Force Main; (vi) the 117<sup>th</sup> Street Pump Station Force Main; (vii) the Salmon Creek Treatment Plant and Outfall; and, (viii) all improvements, upgrades, and appurtenances, now existing or in the process of construction that comprise of or are used by the SCWMS Infrastructure. (The items described in clauses (i) through (viii) of this **Section 2.1** are collectively referred to as the "Salmon Creek Wastewater Management System Infrastructure," or the "SCWMS Infrastructure.").

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2.2 Salmon Creek Treatment Plant and Outfall Real Property. The County agrees to convey to the Alliance the real property and improvements associated with the Salmon Creek Treatment Plant and Outfall (the "SCTPO") pursuant to a Quitclaim Deed, substantially in the form attached as **Schedule 2.2** (the first of two schedules titled "Quitclaim Deed"), which consists of approximately 1,261,664 square feet (28.964 acres), together with and subject to all improvements, appurtenances, easements, rights-of-way, and right-of-access licenses thereto. (The real property interests and improvements in this **Section 2.2** are collectively referred to as the "SCTPO Real Property").

2.3 36<sup>th</sup> Avenue Pump Station Real Property. The County agrees to convey to the Alliance the real property outside of County rights-of-way and improvements associated with the 36<sup>th</sup> Avenue Pump Station pursuant to a Quitclaim Deed, substantially in the form attached as **Schedule 2.3** (the second of two schedules titled "Quitclaim Deed"), which consists of approximately 15,736 square feet (0.361 acres), together with and subject to all improvements, appurtenances, easements, rights-of-way, and right-of-access licenses thereto. (The real property interests and improvements in this **Section 2.3** are collectively referred to as the "36<sup>th</sup> Avenue Pump Station Real Property").

2.4 SCWMS Easements. The County agrees to grant, convey, assign, and deliver to the Alliance all of the County's rights and interests in land on which the SCWMS Infrastructure is located outside of County rights-of-way, pursuant to an Omnibus Assignment and Assumption of Easements, substantially in the form attached as **Schedule 2.4** (the "Omnibus Assignment, Assumption and Quitclaim of SCWMS Easements"), which shall consist of all easements acquired by the County over, under, along, across, upon, and through private property necessary for purposes of installing, maintaining, and operating certain portions of the SCWMS Infrastructure. (The easement interests in this **Section 2.4** are collectively referred to as the "SCWMS Easements.").

2.5 SCWMS Personal Property. The County shall retain all right, title, and interest in all personal property used to operate the SCWMS Infrastructure until the County no longer serves as Operator under the terms of the "Clark County and Discovery Clean Water Alliance Operator Agreement" (the "Clark County Operator Agreement"), attached as **Exhibit B**. Upon expiration or termination of the Clark County Operator Agreement, the County shall convey to the Alliance those items of personal property that have been purchased solely through funds dedicated to, and used exclusively for, the SCWMS Infrastructure, the SCTPO Real Property, the 36<sup>th</sup> Avenue Pump Station Real Property, and/or the SCWMS Easements, including the following personal property pursuant to a Bill of Sale substantially in the form attached as **Schedule 2.5** (the "Bill of Sale for SCWMS Personal Property"), or in a form or under a process then agreed to by the Parties: (i) all laboratory equipment and supplies

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purchased for and stored in the on-site laboratory; (ii) all maintenance and operations tools and specialized equipment; (iii) all spare parts purchased for or furnished by equipment manufacturers; (iv) all operational fixtures, furniture, furnishings, appliances, and related items; (v) all operating and processing chemicals; (vi) all maintenance and operations vehicles and rolling stock; (vii) all maintenance and operations information technology hardware, equipment, software, and systems; and, (viii) all associated forms of documentation, including, but not limited to, reports, plans, specifications, estimates, designs, drawings, maps, surveys, construction records, photos, documentation, maintenance and operation manuals and correspondence, any component thereof, and any existing, in-progress or proposed parts of the same. (The items described in clauses (i) through (viii) of this **Section 2.5** are collectively referred to as the "SCWMS Personal Property"). Upon expiration or termination of the Clark County Operator Agreement, the County shall also assign to the Alliance all SCWMS Contracts and Intangibles, as detailed below in **Section 2.6**, related to the SCWMS Personal Property, pursuant to an Assignment of Contracts and Intangibles substantially in the form attached as **Schedule 2.6** (the "Assignment of SCWMS Contracts and Intangibles"), or in a form or under a process then agreed to by the Parties.

**2.6 SCWMS Contracts and Intangibles.** To the extent transferable by the County, the County shall assign to the Alliance the following contracts and intangibles related to the SCWMS Infrastructure, the SCTPO Real Property, the 36<sup>th</sup> Avenue Pump Station Real Property, and the SCWMS Easements pursuant to an Assignment of Contracts and Intangibles substantially in the form attached as **Schedule 2.6** (the "Assignment of SCWMS Contracts and Intangibles"): (i) all warranties and guarantees; (ii) all ownership permits and operations permits; and, (iii) all rights and duties under any other existing contracts. (The items described in clauses (i) through (iii) of this **Section 2.6** are collectively referred to as the "SCWMS Contracts and Intangibles"). Consistent with **Section 12** of this Agreement and the Clark County Operator Agreement, the Alliance shall maintain, enforce, and exercise, or delegate to the County, all rights under the SCWMS Contracts and Intangibles for the County to operate the SCWMS.

**2.7 Cash Reserves.** The County shall convey to the Alliance all rights, title, and interest in all of the cash reserves attributable to the SCWMS Infrastructure, the SCTPO Real Property, the 36<sup>th</sup> Avenue Pump Station Real Property, the SCWMS Easements, the SCWMS Personal Property, and the SCWMS Contracts and Intangibles (the "Cash Reserves"). At Closing, the Alliance may require the County to transfer all Cash Reserves to the Alliance pursuant to wire instructions as provided by the Alliance on or about the Closing Date. Consistent with **Section 12** of this Agreement and the Clark County Operator Agreement, the Alliance shall designate sufficient Cash Reserves for the County to operate the SCWMS.

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3. Condition of Assets. The Alliance acknowledges that it has examined the SCWMS and accepts it in its present condition, "as is, where is" except as specifically set forth in this Agreement. The Alliance further acknowledges the following known conditions, including, but not limited to:

Parcel No.	Grantor	Recording No.	Notes
117893-754	Miller	G 663177	A 215' portion of the Salmon Creek Interceptor is not covered by the easement
187198-000	Kolke	G 652221	This easement has a distance blunder; it should have a portion that is 120' long, but it is written as 10'. This leaves a 110' section of Salmon Creek Interceptor without an easement
187134-000			There is no easement for the section of the Salmon Creek Interceptor that crosses this parcel.
187080-000			There is no easement for the section of the Salmon Creek Interceptor that crosses this parcel.
184840-000	Delanoy	G 647057	This easement has a distance blunder; it should have a portion that is 392' long, but it is written as 382'. This leaves a 10' section of 36 <sup>th</sup> Avenue Pump Station Force Main without an easement

4. Liabilities.

4.1 Assignment of SCWMS Liabilities. The Alliance shall assume all liabilities listed on the Assignment of SCWMS Contracts and Intangibles, except as specifically retained by the County.

4.2 Transfer Price. The Alliance shall not pay any monetary consideration for the SCWMS. The Alliance and the County shall each pay for their own costs and expenses to prepare this Agreement; provided, however, that the Alliance shall pay all costs to carry out the transfer of the SCWMS.

5. Effective Date. For purposes of this Agreement, Mutual Acceptance of this Agreement (the "Date of Mutual Acceptance") shall occur on the date that the last person of both Parties has executed this Agreement. The effective date of this Agreement shall be the Date of Mutual Acceptance.



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6. Closing and Possession.

6.1 Acceptance of Transfer Documents. The Chair of the Board of County Commissioners and the Chair of the Alliance Board of Directors shall execute this Agreement, the Bill of Sale for SCWMS Infrastructure, the Quitclaim Deeds for the SCTPO Real Property and the 36<sup>th</sup> Avenue Pump Station Real Property, the Omnibus Assignment, Assumption and Quitclaim of SCWMS Easements, the Bill of Sale for SCWMS Personal Property, and the Assignment of SCWMS Contracts and Intangibles on or before December 15, 2014.

6.2 Closing Date. The SCWMS transfer shall close on January 1, 2015 (the "Closing" or "Closing Date").

6.3 Possession. The Alliance shall be entitled to possession of the SCWMS on the Closing Date.

7. Real Property Transfer Conditions and Documents.

7.1 Title Report. If requested by the Alliance, the County shall deliver to the Alliance a preliminary commitment for title insurance, at a cost to be paid for by the Alliance at closing, together with copies of all exceptions and encumbrances for all or any portion of the SCWMS that is transferred to the Alliance.

7.2 Conveyance and Condition of Title. The County shall convey the SCWMS to the Alliance free and clear of all County-caused liens, liabilities, and encumbrances. The Alliance may waive in writing any liens, liabilities, and encumbrances.

8. Contingencies. All obligations of the Alliance under this Agreement are subject to the fulfillment on or before Closing of each of the contingencies set forth below. If any of the contingencies are not met in full or fail to occur before Closing, for any reason whatsoever, the Alliance may, in its sole discretion, either waive such contingencies and proceed with Closing or terminate this Agreement without liability or further obligation.

8.1 Representations. The representations and warranties of the County contained in this Agreement shall be true and correct in all respects material to the validity and enforceability of this Agreement and the County's ability to transfer the SCWMS, on and as of Closing as though they were made on the Closing Date or, in the case of representations and warranties made as of a specified date earlier than the Closing Date, on and as of such earlier date.

8.2 Inspections. The Alliance shall have completed, to the Alliance's satisfaction, any and all inspections and reviews of the SCWMS, as the Alliance desires. Upon request by the Alliance, a representative of the County shall provide the Alliance a tour of the SCWMS and shall show the Alliance the physical location of each

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component of the SCWMS. The County shall make all of its records and documents relating to the SCWMS available at reasonable times for the Alliance to review and inspect.

8.3 County Records. The County shall have delivered to the Alliance all existing records and documents that are requested by the Alliance and that relate to the SCWMS, including, but not limited to, the records described in **Sections 2.5 and 2.6** of this Agreement.

8.4 Performance. The County shall have performed and complied with, in all material respects, all agreements and conditions required by this Agreement to be performed or complied with by the County before Closing.

8.5 No Adverse Change. On the Closing Date, there has been no substantial adverse change in the financial or physical condition of the SCWMS from the Date of Mutual Acceptance, except for ordinary wear and tear.

8.6 Consents for Transfer. The County shall have obtained any and all consents, assignments, and approvals required to convey the County's entire interest in the SCWMS.

8.7 Labor Contract. The County shall have undertaken its best reasonable efforts to satisfy any collective bargaining duties and obligations related to this Agreement and to County employees operating the SCWMS as of the Closing Date, including any required notices under applicable collective bargaining agreements. Upon the expiration or termination of the Clark County Operator Agreement, attached as **Exhibit B**, County employee hiring shall be subject to the "best reasonable efforts" provided in **Section 7** therein.

8.8 Right-of-Way Franchise. The Parties shall have undertaken their best reasonable efforts to concurrently approve by resolution a franchise for construction, installation, maintenance, operation, repair, removal, replacement, and enlargement of wastewater utility, treatment, and transmission facilities in County streets and rights-of-way, pursuant to a Franchise Agreement substantially in the form attached as **Exhibit C** (the "Clark County and Discovery Clean Water Alliance Franchise Agreement").

9. Representations and Warranties of the County. The County represents and warrants to the Alliance as follows:

9.1 Organization and Authority. The County has the right, power, and authority to enter into this Agreement, to execute all documents and instruments contemplated by this Agreement, to consummate this transaction, and to perform all other obligations to be performed by the County under this Agreement. The execution,

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delivery, and performance of this Agreement and all agreements, documents, and instruments contemplated by this Agreement have been duly authorized by all necessary action on the part of the County. Prior to Closing, the County shall provide to the Alliance certified copies of ordinances and resolutions authorizing this transfer and the execution, acknowledgment, delivery, and performance of this Agreement and all agreements, documents, and instruments contemplated by this Agreement.

9.2 Title to Assets. Except as otherwise disclosed to the Alliance in writing, as of the Date of Mutual Acceptance, the County has good and marketable title to all of the components of the SCWMS. None of the components of the SCWMS are subject to any mortgage, pledge, lien, conditional sale, title redemption agreement, lease, encumbrance, or other claim or charge that will not be discharged at Closing, except for covenants and pledges related to the assumed liabilities on **Schedule 2.6** of this Agreement.

9.3 No Litigation. There are no judgments against the County relating to its interest in or operation of the SCWMS. There are no pending actions, suits, claims, or proceedings against the County relating to its interest in or operation of the SCWMS, or challenging the transfer of the SCWMS to the Alliance or the validity of this Agreement, and to the County's Knowledge, there are no such threatened actions, suits, claims, or proceedings. Whenever used in this Agreement, "County's Knowledge" shall mean the knowledge of any County Commissioner, the County Administrator, the County Public Works Director, the County Operations Manager, or the Prosecuting Attorney.

9.4 No Violation. Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby, nor the performance by the County of, and compliance by the County with, this Agreement will violate federal, state, or local laws, regulations, approvals, or permits, or County funding agreements relating to the SCWMS.

9.5 Hazardous Materials. To the County's Knowledge: there are no Hazardous Materials on, under, or about the SCWMS; no Hazardous Materials have at any time been generated, manufactured, released, or disposed of on, under, or about the SCWMS; the SCWMS is not in violation of any Hazardous Materials Laws; there are no past, current, or threatened Hazardous Materials Claims; no underground storage tank is now located on the SCWMS Real Property and Infrastructure. The County indemnifies and holds the Alliance harmless from any claim, cost, damage, or expense, including attorney's fees, monitoring costs, response costs, and penalties, with respect to any breach of any of this warranty. For the purposes of this paragraph, "Hazardous Materials" includes, but is not limited to, any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic, or radioactive substance, or other similar term, by any federal, state, or local environmental statute, regulation, or ordinance presently in effect (collectively,



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"Hazardous Material Laws"); provided, however, for the purposes of this paragraph, "Hazardous Materials" does not include asbestos/concrete pipe and appurtenances, liquid chlorine, paint, or solvents, whether or not such materials are so defined or designated. The Alliance acknowledges that it is aware of such materials and hereby assumes all responsibility therefor. For the purposes of this paragraph, Hazardous Materials Claims means any enforcement, cleanup, removal, remedial, or other governmental or regulatory notices, actions, agreements, or orders threatened, instituted, or completed pursuant to any Hazardous Materials Laws, together with any and all claims made or threatened by any third party against the County or the property relating to damage, contribution, cost recovery compensation, loss, or injury resulting from the presence, release, or discharge of any Hazardous Materials.

9.6 Representations and Warranties True at Closing. The representations and warranties made by the County in this Agreement shall be correct as of the Date of Closing with the same force and effect as though such representations and warranties had been made as of the Date of Closing.

10. Representations and Warranties of Alliance.

10.1 Organization and Authority. The Alliance has the right, power, and authority to enter into this Agreement, to execute all documents and instruments contemplated by this Agreement, to consummate this transaction and to perform all other obligations to be performed by the Alliance under this Agreement. The execution, delivery, and performance of this Agreement and all agreements, documents, and instruments contemplated hereby have been duly authorized by all necessary action on the part of the Alliance. Prior to Closing, the Alliance shall provide to the County certified copies of resolutions authorizing this transfer and the execution, acknowledgment, delivery, and performance of this Agreement and all agreements, documents, and instruments contemplated by this Agreement.

10.2 No Violation. Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby, nor the performance by the Alliance of, and compliance by the Alliance with, this Agreement will violate federal, state or local laws, regulations, approvals or permits.

10.3 No Litigation. There are no pending actions, suits, claims, or proceedings against the Alliance relating to its operation of the SCWMS, or challenging the transfer of the SCWMS to the Alliance or this Agreement, and to the Alliance's knowledge, there are no such threatened actions, suits, claims, or proceedings. Whenever used in this Agreement, the "Alliance's Knowledge" shall mean the knowledge of any Alliance Director, the chief administrative officer of the Alliance, if applicable, the chief administrative officer of the Administrative Lead, if applicable, or the Alliance Attorney.

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10.4 Representations and Warranties True at Closing. The representations and warranties made by the Alliance in this Agreement shall be correct as of the Date of Closing with the same force and effect as though such representations and warranties had been made as of the Date of Closing.

11. Conduct of Business Prior to Closing. Prior to Closing of the transfer contemplated by this Agreement, the County covenants as follows and the Parties agree as follows:

11.1 Agreement Changes. Prior to Closing, the County shall not make or agree to any changes in the County's agreements or leases relating to the SCWMS without delivering prior written notice to the Alliance.

11.2 New Contracts. Prior to Closing, the County shall not enter into any agreement or commitment relating to the SCWMS that is not terminable at will without delivering prior written notice to the Alliance.

11.3 Operation and Maintenance. Prior to Closing, the County shall operate, maintain, and repair the SCWMS so that the SCWMS remains in the same condition as its condition on the Date of Mutual Acceptance, except for ordinary wear and tear. The County shall comply with the minimum levels of service and basic operating standards consistent with customary practices for wastewater facilities in Washington State of the type comprising the SCWMS. The County shall use SCWMS Personal Property to operate the SCWMS. The County shall not make any improvements to the SCWMS or undertake construction on any part thereof that is not provided in the County's 2013-14 biennial budget as adopted on the Date of Mutual Acceptance without delivering prior written notice to the Alliance, except for minor emergency repairs or maintenance conducted in the ordinary course of business and operation of the SCWMS. Between the Date of Mutual Acceptance and the Closing Date, the Alliance shall have the right to inspect any improvement or construction performed on the SCWMS that requires notice under this **Section 11.3**.

11.4 Damage to the SCWMS. Prior to Closing, if any of the SCWMS identified in **Schedules 2.1-2.6** of this Agreement is damaged through the grossly negligent or willful actions or omissions of the County between the Date of Mutual Acceptance and the Closing Date (other than normal wear and tear), the County shall repair or replace the same.

11.5 Use of Cash Reserves. Prior to Closing, the County shall maintain the Cash Reserves in a separate County fund or account consistent with Alliance financial policies provided to the County. The County shall use the Cash Reserves, plus any applicable interest, only for purposes consistent with this Agreement. Upon request of

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the Alliance, the County shall provide to the Alliance a statement of expenditures from the Cash Reserves.

12. Operation and Maintenance of the SCWMS. After Closing, it is expected that the County will operate and maintain the SCWMS under the terms of the Clark County Operator Agreement, attached as **Exhibit B**.

13. Dispute resolution. The Parties shall first attempt to resolve a dispute arising from this Agreement by discussions among a County representative or representatives selected by the County Administrator and an Alliance representative or representatives selected by the Alliance, or by the Administrative Lead, if appropriate. If the discussions are not successful, the Parties shall engage in mediation within forty-five (45) days of termination of discussions, according to a process and before a mediator agreed upon by the Parties. The Parties shall not resolve a dispute by mandatory arbitration. The Parties reserve their rights to pursue any available Court remedies at any time after the conclusion of the mediation.

14. Challenges to the SCWMS Transfer or System Compensation. If after Closing an action or lawsuit is filed against the County, the Alliance, or both, challenging the transfer, ownership, operation, or maintenance of the SCWMS pursuant to this Agreement, or the Alliance's payment of compensation for the SCWMS, the Parties shall defend such action or lawsuit, and both shall share in the defense of the validity of the transfer. If the action or lawsuit is filed against only one Party, the Party to the action or lawsuit shall support and concur in the other Party's request to join in the action or lawsuit. If any court of competent jurisdiction determines that the transfer, ownership, operation, or maintenance of the SCWMS pursuant to this Agreement is invalid, either Party may terminate this Agreement. Upon that termination, the Alliance shall return the SCWMS to the County by appropriate documents in forms substantially similar to the forms used to effect this Agreement; provided, that if the Alliance has constructed or installed improvements or acquired additional rights with respect to the SCWMS, the County shall pay the Alliance for the original cost, less depreciation, of such improvements or additional rights by a method or plan agreed to by the Parties.

15. Records review. Upon three (3) business days' notice, or upon notice agreed upon by the Parties, a Party shall have the right to inspect and copy, with charges limited to reasonable copying costs, all records of the other Party relating to this Agreement or its subjects.

16. Insurance. The Alliance shall cause the SCWMS Infrastructure, the SCTPO, and the 36<sup>th</sup> Avenue Pump Station to be insured at replacement cost value.

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

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

Clark County Public Works  
Attn: Public Works Director  
PO Box 9810  
Vancouver, WA 98666-9810

with a copy to:

Clark County Prosecuting Attorney's Office  
Attn: Chief Civil Deputy  
1013 Franklin Street  
PO Box 5000  
Vancouver, WA 98666-5000

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

Discovery Clean Water Alliance  
c/o Clark Regional Wastewater District  
Attn: General Manager  
8000 NE 52nd Court  
PO Box 8979  
Vancouver, WA 98668-8979

with a copy to:

Foster Pepper PLLC  
Attn: Hugh D. Spitzer  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101-3299

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.

18. Waiver. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement, unless stated to be such through written approval of the non-breaching Party and attachment of such written approval to this Agreement.

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19. 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.

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

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

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

23. 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.

24. Jurisdiction and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Washington. As against the other Party, the County and the Alliance shall file suit to enforce this Agreement only in the Superior Court of Clark County, Washington.

25. Enforcement; 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.

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



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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives.

BOARD OF COUNTY COMMISSIONERS  
CLARK COUNTY, WASHINGTON

DISCOVERY CLEAN WATER ALLIANCE  
a Washington municipal corporation

Date: June 24, 2014

Date: June 27, 2014

Tom Mielke  
Tom Mielke, Chair

By: Ron Onslow  
Ron Onslow, Chair, Board of Directors

David Madore  
David Madore, Commissioner

Attest: Neil Kimsey  
Neil Kimsey, Secretary, Board of Directors

Edward L. Barnes  
Edward L. Barnes, Commissioner

Approved as to form only  
Anthony F. Golik  
Prosecuting Attorney

Approved: Hugh D. Spitzer  
Hugh D. Spitzer, Alliance Attorney

BY: Christy D. Ford