

6/10/14

**EXHIBIT A: DISCOVERY CLEAN WATER ALLIANCE
INTERLOCAL FORMATION AGREEMENT**

6/10/14

FINAL FOR APPROVAL – 9/10/12

Discovery Clean Water Alliance Interlocal Formation Agreement

September 27, 2012

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Exhibit A

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Discovery Clean Water Alliance Interlocal Formation Agreement

- I. RECITALS: Purpose of Alliance. The purpose of the Discovery Clean Water Alliance is to provide cooperative municipal utility services to its Members in order to assist those Members with a cost-effective mechanism for supporting regional economic development in an environmentally-sound manner, to help manage Member service costs in a financially-transparent manner, to provide reliable and predictable service, and to provide a framework that encourages the participation of all Clark County municipal utilities that protects both regional and jurisdictional autonomy.
- II. DEFINITIONS
- II.A. "Additional Members" mean any municipal corporations, other than Original Members, that provide wastewater services and later join the Alliance pursuant to Section IV.G.
- II.B. "Administrative Lead" means any Member or other entity serving in that capacity, consistent with Sections V.A and V.B. If the Alliance determines to undertake administrative responsibilities itself, using its own staff, then as used in this Agreement the term "Administrative Lead" shall mean the chief executive officer of the Alliance.
- II.C. "Agreement" means this Discovery Clean Water Alliance Interlocal Formation Agreement.
- II.D. "Alliance" means the Discovery Clean Water Alliance.
- II.E. "Alliance Operations Date" means the date on which the Board has determined that (1) Regional Assets have been transferred to or for the benefit of the Alliance, (2) outstanding wastewater obligations have been retired, defeased, or transferred as necessary, (3) the Alliance is undertaking responsibility for providing service under this Agreement, and (4) the Members receiving service from the Alliance become responsible for paying Regional Service Charges. The Alliance Operations Date is expected to be January 1, 2015, unless the Board designates a different date.
- II.F. "Allocated Capacity" means the MMF of wastewater that a Member may discharge into the Regional Assets, as described in Exhibit B and as supplemented or adjusted in a Capital Plan.
- II.G. "Average Annual Flow" or "AAF" means the total flow of wastewater in millions of gallons during any 12 month consecutive period, or any shorter period approved by the Board, divided by the number of days in that period, expressed in MGD.
- II.H. "Battle Ground" means the City of Battle Ground, Washington.

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- II.I. "Board" means the Board of Directors of the Alliance.
- II.J. "Bonds" means bonds, notes or other evidences of indebtedness issued by the Alliance or by another entity (e.g., by a Member) on behalf of the Alliance.
- II.K. "Capital Plan" means one or more long-range capital improvement plans for the addition, replacement, or improvement of Regional Assets, and including an identification of Regional Assets and the allocation of transmission and treatment capacity, as they may be supplemented or adjusted from the initial Regional Assets and allocations described in Exhibit B.
- II.L. "Capital Budget" or "Capital Budget(s)" means one or more capital budgets adopted consistent with Section VI.A.
- II.M. "Clark County" means Clark County, Washington.
- II.N. "CRWWD" means Clark Regional Wastewater District.
- II.O. "Director" means an individual who serves on the Board of the Alliance.
- II.P. "Dual Majority Vote" means a Board vote requiring the affirmative vote of both (1) the Directors representing more than 50% of the Members, and (2) the Directors representing the Members comprising more than 50% of the Treatment Facilities Allocated Capacity for the year in which the vote is taken, as set forth in the then-current Capital Plan.
- II.Q. "Dual Super-Majority Vote" means, except as provided in Section IV.F.3, a Board vote requiring the affirmative vote of both (1) the Directors representing more than 60% of the Members, and (2) the Directors representing the Members comprising more than 60% of the Treatment Facilities Allocated Capacity for the year in which the vote is taken, as set forth in the then-current Capital Plan.
- II.R. "Financial Policies" mean the financial policies attached as Exhibit A and incorporated herein by reference, including such amended or replacement Financial Policies adopted consistent with this Agreement.
- II.S. "Member" (collectively, "Members") means one or more governmental members of the Alliance, and includes Original Members and Additional Members.
- II.T. "MGD" means million gallons per day, referring to a rate of flow.
- II.U. "Maximum Monthly Flow" or "MMF" means a measure of flow expressed in MGDs and representing the highest average monthly flow, taking into account the total flow of wastewater discharged into the Regional Assets, measured in millions of gallons for any calendar month divided by the total number of days in that month.

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- II.V. "Operating Budget" means the periodic operating budget prepared consistent with Section VI.A.
- II.W. "Operator(s)" means any Member or other entity serving in that capacity, consistent with Sections V.A and V.C. If the Alliance determines to undertake Operator responsibilities itself, using its own staff, then as used in this Agreement the term "Operator" shall mean the chief executive officer of the Alliance.
- II.X. "Original Members" means the governmental entities initially executing this Agreement and forming the Alliance, *i.e.*, Clark County, the Clark Regional Wastewater District, the City of Battle Ground and the City of Ridgefield.
- II.Y. "Pre-Alliance Agreements" means, collectively: (1) the Joint Contract Among Clark County, the City of Battle Ground and Hazel Dell Sewer District for Sewage Treatment, Disposal and Transport Services, dated March 28, 1995; (2) the Contract Between Hazel Dell Sewer District and the City of Battle Ground for Sewage Treatment Capacity and Payment, dated March 28, 1995; and (3) the Interlocal Agreement Concerning Phase IV Sewer Treatment Plant Improvements Between Clark County, the Hazel Dell Sewer District and the City of Battle Ground, dated August 9, 2005.
- II.Z. "Regional Assets" means the assets listed in Exhibit B, attached and incorporated herein by reference, and such additional assets as the Board may later determine to be Regional Assets under Section VII.B.
- II.AA. "Regional Service Charges" means charges for service imposed by the Alliance under Section VI.B.
- II.BB. "Ridgefield" means the City of Ridgefield, Washington.
- II.CC. "Significant Decisions" mean the decisions of the Board listed as such in Section IV.F.
- II.DD. "Transmission Infrastructure" means transmission lines, force mains, interceptors, pump stations and other facilities required to transfer wastewater from a Member's collection system to a Treatment Facility.
- II.EE. "Treasurer" means the person or entity appointed pursuant to RCW 39.106.050(13) and Section VI.E.
- II.FF. "Treatment Facility" or "Treatment Facilities" means treatment plants, outfalls and other facilities required to treat wastewater.

III. FORMATION

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III.A. Creation of Alliance. The Discovery Clean Water Alliance is formed under the Joint Municipal Utility Services Authority Act, Chapter 39.106 RCW.

III.B. Purpose and Powers. The purpose of the Alliance is to jointly provide regional wastewater transmission and treatment for Alliance's Members and other contracting municipal wastewater utilities. The Alliance may exercise all powers authorized by Chapter 39.106 RCW, subject to the terms of this Agreement. The Alliance will provide all necessary wastewater Treatment Facilities and services for its Members, together with all necessary Transmission Infrastructure facilities and services for its Members who opt for those services. The Alliance may provide additional utility services as the Members may determine appropriate.

III.C. Name of Entity. The name of the joint municipal utility authority formed under this Agreement is the Discovery Clean Water Alliance (the "Alliance").

III.D. Membership. The membership of the Alliance is comprised of Clark County, the Clark Regional Wastewater District, the City of Battle Ground and the City of Ridgefield (collectively, the "Original Members"), together with any other municipal corporations providing wastewater services that later join pursuant to Section IV.G ("Additional Members").

III.E. Termination of Existing Agreements. As of the Alliance Operations Date, the Pre-Alliance Agreements shall be terminated. All existing capacity rights of the Original Members under the terms of the Pre-Alliance Agreements are and will be transferred to each of the Original Members under this Agreement, subject to later adjustments under a future Capital Plan.

IV. ORGANIZATION STRUCTURE AND BOARD POWERS

IV.A. Board Composition. The Board of Directors of the Alliance consists of one Director and any alternate Directors appointed by each member. Directors and alternates must be elected officials of the appointing Member. More than one alternate may be appointed to serve on the Board when a Member's designated Director is unable to participate in a meeting, but only one Director from each Member may actively participate in a Board meeting at any time. The Members may appoint and remove their appointee Directors in such manner as they individually determine.

IV.B. Board Powers. The Board shall exercise all policy, oversight and governance powers of the Alliance, and carry out responsibilities specified in this Agreement. The Board shall adopt appropriate rules, including Board rules and operating procedures.

IV.C. Board Officers and Legal Counsel. Board officers will consist of a Chair, Vice-Chair and Secretary, and such other officers as the Board may deem appropriate. Legal counsel to the Alliance, if any, shall report directly to the Board.

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IV.D. Board Committees and Advisory Boards. The Board will create such committees and advisory boards as it deems appropriate, including committees to consider finance issues, maintenance and operations matters, and capital planning and infrastructure. Committees and advisory boards may include either Directors or non-Directors, or both.

IV.E. Board Meetings. Notice of Board meetings must conform to the requirements of the Open Public Meetings Act (Chapter 42.30 RCW). Additional requirements regarding notice, preparation and distribution of agendas, minutes and conduct of meetings may be established by resolution or in rules adopted by the Board.

IV.F. Board Voting. Significant Decisions of the Board require either a Dual Majority Vote or a Dual Super-Majority Vote (*i.e.*, a “House & Senate” system).

IV.F.1. “Significant Decisions” requiring a Dual Majority Vote are:

IV.F.1.a. The borrowing of money and the issuance of Bonds by the Alliance or by another entity (*e.g.*, by a Member) on behalf of the Alliance;

IV.F.1.b. A change in the identity of the Administrative Lead and/or Operator(s), whether a change to a different governmental entity or to the Alliance itself, except as otherwise provided in Section V.A;

IV.F.1.c. A change in the ownership of material Regional Assets, *i.e.*, the sale, lease, mortgage or other encumbrance, transfer, or disposal of any part of the Regional Assets that are used, useful or material in the operation of those Regional Assets and the provision of services, but excluding Regional Assets or portions thereof that have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Regional Assets, or are no longer necessary, material to or useful to the operation of the Regional Assets;

IV.F.1.d. The adoption of an Operating Budget;

IV.F.1.e. The adoption of a Capital Budget; and

IV.F.1.f. The exercise of eminent domain by the Alliance.

IV.F.2. “Significant Decisions” requiring a Dual Super-Majority Vote are:

IV.F.2.a. Amendments to this Agreement;

IV.F.2.b. Amendments to the Financial Policies;

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- IV.F.2.c.** The adoption of a Capital Plan and the allocation of costs pursuant to any such Capital Plan, except that upon the request of any Member, the Dual Super-Majority Vote with respect to the portion of the Capital Budget for any discrete Regional Asset will be taken with only the Members served or to be served by that Regional Asset voting based on Allocated Capacity in that Regional Asset, and only their votes being considered in calculating the required 60%-or-more of allocated flow under the Dual Super-Majority Vote;
 - IV.F.2.d.** The material allocation or reallocation of treatment or transmission capacity (except that any reallocation that reduces an Original Member's capacity to less than the Allocated Capacity shown in Exhibit B shall require the agreement of that Original Member unless that Original Member is in default as described in Section VI.B.2);
 - IV.F.2.e.** The determination of the appropriate payment obligations of a withdrawing Member under Section IV.H;
 - IV.F.2.f.** Admissions of new Members (except as provided in Section IV.G); and
 - IV.F.2.g.** Termination of this Agreement (see Section IX).
- IV.F.3.** If any Member is dissatisfied with a decision of the Board on a decision requiring a Dual Super-Majority vote, that Member may file with the Board Chair within 10 business days of the decision a request to refer the decision to mediation. The mediator shall be selected by the Board and approved by that Member. The mediator shall complete the mediation process within 30 days of the filing of the request, unless the Board and that Member agree to a longer period. If the Member is not satisfied with the outcome of the mediation process, that Member may file with the Board Chair within 10 business days of completion of the mediation process a request for mandatory final binding arbitration. The arbitrator shall be selected by the Board and approved by that Member. The arbitration hearing shall be completed within 45 days of the filing of the request for arbitration, unless the Board and that Member agree to a longer period. The arbitrator may reverse the Board's decision only if the arbitrator determines that Board's action was unlawful, arbitrary or capricious. Costs of mediation and arbitration will be divided equally between the Alliance and the Member requesting that mediation and/or arbitration.
- IV.F.4.** Except as provided in Sections IV.F.2.d and VII.C, decisions that are not listed as Significant Decisions are made by majority vote of the Directors present and voting.

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IV.F.5. A Member may not exercise its voting rights so long as it is in default under Section VI.B.2.

IV.G. Additional Members. The inclusion of each Additional Member requires a Dual Super-Majority Vote. Each Additional Member will be expected to “buy in” to the Alliance by paying for its allocable share of Regional Assets and/or by contributing Regional Assets, in such amounts as will be determined by the Board. However, if a city other than an Original Member assumes service to a portion of a Member water-sewer district that is served by the Regional Assets, and the portion assumed represents (cumulatively) more than five percent of that water-sewer district’s then-current service as measured by Average Annual Flow, the assuming city automatically may become a Member upon its application to do so. A later reduction of Average Annual Flow to less than five percent will not affect that entity’s membership status.

IV.H. Withdrawal of a Member. In order to prevent remaining Members to be left with “stranded costs,” if any Member withdraws it is responsible for the full cost of its withdrawal to the Alliance, including without limitation the payment or provision for payment of its allocable share of capital costs incurred (and Bonds issued) in anticipation of its needs while a Member, consistent with then-current Capital Plans and Capital Budgets. The Board, acting in its reasonable judgment, has the sole power to determine the appropriate payment obligations of a withdrawing Member. The Director representing a Member proposing to leave the Alliance may not vote on the determination of that leaving Member’s payment obligations to the Alliance.

IV.I. Effects of Service Area Adjustments. Upon a service area adjustment, if customers are shifted from one Member to another, the Members’ respective capacities, voting rights (based on Allocated Capacity), and obligations shall automatically adjust accordingly.

IV.J. Public Records. The Alliance will comply with the requirements of the State Public Records Law, Chapter 42.56 RCW.

V. ADMINISTRATION AND OPERATIONS

V.A. Administration and Operations: Allocation of Responsibilities. Alliance staff (if any) and/or a service provider by contract with the Alliance, shall administer and manage the Alliance and the Regional Assets. (A service provider shall be referred to in this Agreement as “Administrative Lead”). Alliance staff (if any) and/or one or more service providers by contract with the Alliance shall operate the Regional Assets (the service providers shall be referred to individually or collectively in this Agreement as “Operator” or “Operators”). CRWWD shall serve as the initial Administrative Lead for at least five years after the Alliance Operations Date. Clark County shall serve as Operator of the Salmon Creek Wastewater Management System and the Battle Ground Force Main System and Ridgefield shall serve as Operator of the Ridgefield Treatment System (all as described in Exhibit B) for at least five years after the Alliance Operations Date. The initial designation of CRWWD as Administrative Lead and the initial designation of Clark

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County and Ridgefield as Operators may be adjusted upon the mutual agreement of the Board and the Member serving as Administrative Lead or as an Operator. The Board periodically, and at least every five years after the Alliance Operations Date shall review, and may adjust, Administrative Lead and Operator arrangements. Changes in Administrative Lead or Operator responsibilities shall take effect no sooner than the calendar year beginning at least 12 months after the decision to make the relevant change. In connection with the transfer of Administrative Lead or Operator responsibilities, the Alliance will use its best reasonable effort to provide that either the Alliance or the Member undertaking or contracting for the services provided by the Administrative Lead or Operator will hire each of the employees of the previous Administrative Lead or Operator who had previously performed the relevant services and who requests continued employment in that or a similar capacity.

- V.B. Administrative Lead's Responsibilities.** Under the Board's direction, and consistent with Board policies, the Administrative Lead will administer and manage the overall affairs of the Alliance, other than operation of the Regional Assets. The Administrative Lead shall have full power and authority to control the hiring and designating of staff and consultants to carry out its administrative and management functions. The Administrative Lead will prepare and oversee preparation of Operating Budgets, Capital Plans, Capital Budgets, and proposed Regional Service Charges (based on the Financial Policies) for the Board's review and approval. The Administrative Lead will administer and manage capital planning and capital improvements, including but not limited to expansion and/or upgrade of existing Regional Assets and acquisition, construction and/or upgrade of new Regional Assets, except that for improvements to existing Regional Assets where the cost of improvements is below a specified amount determined by the Board, an Operator may be charged with responsibility for managing those improvement projects. The Administrative Lead will report regularly to the Board on the administration and management of the Alliance. Neither the Board, nor an individual Board member or a governmental Member other than the Member serving as Administrative Lead, shall direct the Administrative Lead to appoint or remove its staff or consultants, nor shall the Board, an individual Board member or a governmental Member (other than the Administrative Lead) give orders to any employee or consultant working for the Administrative Lead. This restriction does not prohibit the Board, in open session, from fully and freely discussing, with representatives or staff of the Administrative lead, anything pertaining to appointments and removals of staff or consultants. The Administrative Lead will coordinate actively with the Operators.
- V.C. Operator's Responsibilities for Day-to-Day Operations.** Except as otherwise provided in this Agreement, and consistent with Board policies, the Operators will operate Regional Assets assigned to them. An Operator shall have full power and authority to control the operation of the Regional Assets for which it is responsible, including but not limited to hiring and designating of staff and consultants, making decisions on the use or application of processes, equipment and facilities and controlling other operating decisions. As part of its operational functions, an Operator will also manage capital

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improvements to existing Regional Assets it is operating where the cost of those improvements is below a specified amount determined by the Board. Neither the Board, nor an individual Board member or a governmental Member other than the Member serving as Operator, shall direct an Operator to appoint or remove its staff or consultants, nor shall the Board, an individual Board member or a governmental Member (other than the Operator) give orders to any employee or consultant working for the operator. This restriction does not prohibit the Board, in open session, from fully and freely discussing, with representatives or staff of the Operator, anything pertaining to appointments and removals of staff or consultants. The Operators will coordinate actively with the Administrative Lead and report regularly to the Board on the operations for which it is responsible.

- V.D. Applicable Personnel Laws.** An Operator and/or an Administrative Lead shall apply personnel laws to its own employees in carrying out its responsibilities under this Agreement. To the extent that the Alliance directly employs personnel, the personnel laws pertaining to code cities under Chapter 35A.41 shall apply, and if any Member is a code city with a population of more than 20,000, then the provisions of RCW 35A.41.010 shall apply.
- V.E. Public Works and Procurement Laws.** An Operator and/or an Administrative Lead other than the Alliance shall apply the public works and procurement laws applicable to that Operator's and/or Administrative Lead's form of government. If the Alliance is the Administrative Lead and/or the Operator of Regional Assets, in either or both of those capacities the Alliance shall apply the public works and procurement laws applicable to code cities under RCW 35A.40.210 and RCW 35.23.352. Consistent with RCW 35A.40.210, for purchases RCW 35.22.620 shall apply if any Member has a population of 20,000 or more, and otherwise the provisions of RCW 35.23.352 shall apply.
- V.F. Eminent Domain Laws.** The Alliance will apply and exercise the powers of eminent domain under the laws applicable to code cities pursuant to Chapter 8.12 RCW. Notwithstanding the foregoing, if a Member that is an Operator or an Administrative Lead exercises eminent domain with respect to a Regional Asset or proposed Regional Asset, that Operator shall apply the eminent domain laws applicable to that Operator's form of government.
- V.G. Surplus Property.** The Alliance will apply and exercise the powers respecting surplus property under the laws applicable to code cities pursuant to RCW 35A.11.010. Notwithstanding the foregoing, if a Member that is an Operator surpluses property with respect to a Regional Asset, that Operator shall apply the surplus property laws applicable to that Operator's form of government.
- V.H. Regulatory Compliance.** The Alliance must operate and maintain Regional Assets consistent with state and federal laws and regulations.

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V.J. Indemnification. The Alliance will indemnify the Members, their officers and employees for damages caused by the willful misconduct or negligence of the Alliance, its officers, employees and agents.

V.J. Ethics. The Alliance, its officers and employees (if any) shall be subject to the provisions of Chapter 42.23 RCW.

VI. FINANCE, BUDGET AND REGIONAL SERVICE RATES

VI.A. Operating Budgets, Capital Plans and Capital Budgets. An annual or biennial Operating Budget and periodic Capital Budgets will be prepared by Alliance staff or consultants (or, if there is a separate Administrative Lead, then by the staff of or consultants selected by that entity). Similarly, prior to Board action, comprehensive Capital Plans, including a renewal and replacement fund mechanism, will be periodically prepared by Alliance staff (or, if there is an Administrative Lead, by the staff of that entity in cooperation with staff of any Operator).

VI.B. Regional Service Charges for Regional Services.

VI.B.1. The determination of Regional Service Charges paid by Members shall be consistent with the Financial Policies attached as Exhibit A. Unless determined otherwise by the Board of Directors, a basic principle of the Financial Policies is that each Member's responsibility for Regional Asset operating costs will be based on actual use of regional services during the previous year or years, as measured by Average Annual Flow, and that each Member's responsibility for capital costs will be based on agreed-upon Allocated Capacity as set forth in Exhibit B, as it may be amended from time to time. (By way of illustration, if Clark County does not contribute any flow to the Regional Facilities and does not plan to do so, it will not be responsible for either operating costs or capital costs.) Administrative costs of the Alliance not related directly to the day-to-day operations or capital costs will be determined by Treatment Facilities Allocated Capacity. A Member shall not be responsible for paying Regional Service Charges with respect to Regional Assets that are not used for service to that Member or in which that Member has no Allocated Capacity. Annual or biennial adjustments to Regional Service Charges based on changes in capital and operating requirements, revenues, and other factors, will be proposed by consultants and staff of the Administrative Lead, provided to the appropriate committee or committees for review and comment, and then provided to the Board for its consideration and action.

VI.B.2. The Alliance shall provide each Member with periodic invoices showing the Regional Service Charges payable by that Member for the billing period and the due date. Invoices shall be provided monthly or on other such periodic schedule as determined by the Board, but no more frequently than monthly nor less frequently than once every six months. The Board will determine a due date for

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all invoices. Payment of any and all invoices shall be due and payable on or before the due date, and shall be made by electronic, ACH, wire transfer or such other means as are agreed to by the Alliance and the Member. If a treasurer, trustee, fiscal agent or escrow agent is appointed in connection with the issuance of Bonds, the Alliance may require, and specify on the invoice, that certain amounts be provided directly to that entity, and the Member shall pay those amounts in the manner and to the entity so specified. If full payment of any invoice is not received on or before the due date, such payment shall be considered past due and a late payment charge shall accrue for each day that the invoice remains unpaid. The late payment charge shall equal the product of the unpaid amount and an interest rate established by the Board, plus an additional penalty established by the Board. Late payment charges shall continue to accumulate until the unpaid amount of the invoice and all late payment charges are paid in full. Further, if an invoice or any portion thereof remains unpaid for more than 60 days after the due date, the relevant Member shall be deemed in default, and the Alliance may pursue any legally available remedy at law or equity for the unpaid amount, including without limitation specific performance and collection of the late payment charge. The Alliance's right to enforce payments in this regard may be assigned to a treasurer, trustee, credit enhancement provider or other entity. If a Member is in default as described in this subsection VI.B.2, that Member shall have no right to vote on any matter before the Board until the default is fully remedied and the other Members are fully reimbursed for payments made in lieu of the defaulting Member.

VI.B.3. If any Member disputes all or any portion of an invoice, it shall notify the Alliance immediately upon receipt. If the Alliance does not concur, the Member shall remit payment of the invoice in full, accompanied by written notice to the Alliance indicating the portions of the invoice that the Member disputes and the reasons for the dispute. The Member and the Alliance shall make a good faith effort to resolve such dispute. If the Member fails to remit payment of the invoice in full pending resolution of the dispute, the Alliance may reduce or suspend the relevant services until the invoice and any late payment charges are paid. Further, the prevailing party in an action relating to the collection of that invoice shall be entitled to reasonable attorney fees and costs. If a Member substantially prevails in challenging Regional Service Charges that have been imposed, it will be repaid any overpayment together with interest computed at the interest rates earned by the State's local government investment pool. Whether a Member "substantially prevails" must be determined through the dispute resolution process, including a determination by a court or arbitrator.

VI.B.4. Upon an event of default as described in subsection VI.B.2 (*i.e.*, if a Member fails to pay an invoice within 60 days after the due date), the other Members that are also served by the Regional Assets providing the service for which Regional Service Charges are unpaid, shall promptly pay the Alliance (in addition to

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Regional Service Charges otherwise due) the defaulting Member's Regional Service Charges in proportion to those other Members' Allocated Capacity (amongst themselves) of Regional Service Charges for service provided by those relevant Regional Assets. A Member shall not be responsible for paying a share of a defaulting Member's Regional Service Charges if and to the extent that the non-defaulting Member is not served by a Regional Asset that is used for service to the defaulting Member. The payment of a proportionate share of the existing defaulted Regional Service Charges by Members shall not relieve the defaulting Member of its liability for those payments. The Alliance shall have a right of recovery from the defaulting Member on behalf of the Members assuming the defaulting Member's obligations. The Alliance may commence such suits, actions or proceedings at law or in equity, including but not limited to suits for specific performance, as may be necessary or appropriate to enforce the obligations of this Agreement against any defaulting Member. The Alliance's right to enforce payments in this regard may be assigned to a treasurer, trustee, credit enhancement provider or other entity. Amounts recovered by the Alliance as payment of amounts due may be passed through to the Members assuming obligations in proportion to the share that each assumed, either in cash or in credit against future Regional Service Charges, as the Board shall determine. The prevailing party in any such suit, action or proceeding shall be entitled to recover its reasonable attorney fees and costs. To the extent that a Member is in default and its Regional Service Charges are paid by other Members, until the default is fully remedied and the other Members are fully reimbursed for payments made in lieu of the defaulting Member, those other Members shall have a right to the allocated capacity of the defaulting member in proportion to the payments they have made. Nothing in this Section VI.B.4 shall prevent a Member from entering into additional arrangements under which it agrees to provide assistance to another Member with respect to payment obligation under this Agreement.

VI.C. Contract Rates and "Spot Rates." Rates paid by non-Members under a contract with the Alliance will be determined in accordance with the relevant contract. Rates paid by non-Members without a contract will be determined by the Board.

VI.D. Finance and Borrowing. Borrowing for costs of Regional Assets, or for operating costs of the Alliance may be carried out either by the issuance of Bonds by the Alliance itself, or by or through any Member (on behalf of the Alliance or on behalf of that or another Member). The specific approach for any Alliance financing will be determined by the Board, based on the Board's determination of the best approach for producing the lowest interest rates, and other factors the Board deems relevant. The terms of Bonds, including such amounts, maturity dates, interest rates, covenants, debt service reserve requirements, rate stabilization mechanisms, and other terms and conditions, shall be approved by the Board. Any Member may determine to provide for the payment of its share of capital costs with available cash or by financing those costs independently of the Alliance. For the purpose of assisting the Alliance in financing and providing service

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through Regional Assets, any Member may, with or without payment or other consideration, loan or transfer funds, or provide credit support, to the Alliance or to another Member.

VI.D.1. For as long as any Bonds are outstanding that are payable from net Alliance revenue (or any portion thereof) are outstanding, the Alliance irrevocably pledges to establish, maintain and collect all Regional Service Charges in amounts sufficient to pay when due the principal of and interest on the Bonds (and, if the Bonds are issued by a Member or entity other than the Alliance, in addition to the foregoing pledge, to pledge to make timely payments to that issuer for the payment of principal of and interest on the Bonds), together with amounts sufficient to satisfy all debt service reserve requirements, debt service coverage requirements, and other covenants with respect to the Bonds.

VI.D.2. Each Member hereby irrevocably covenants that, consistent with the Financial Policies, it shall establish, maintain and collect rates, fees or other charges for wastewater and other services, facilities and commodities related to the services it receives from the Alliance and its own wastewater utility, and maintain reserves it deems appropriate, at levels adequate to provide revenues sufficient to enable the Member to: (a) make the payments required to be made under this Agreement; and (b) pay or provide for payment of all other charges and obligations payable from or constituting a charge or lien upon such revenues. Each Member hereby acknowledges that this covenant may be relied upon by Bond owners, consistent with this Agreement. Each Member shall pay the Regional Service Charges imposed on it whether or not the Regional Assets to be financed through the issuance of Bonds are completed, operable or operating, and notwithstanding the suspension, interruption, interference, reduction or curtailment in the operation of any Regional Assets for any reason whatsoever, in whole or in part. Regional Service Charges shall not be subject to any reduction, whether by offset or otherwise (except consistent with Section VI.B), and shall not be conditioned upon the performance or nonperformance of any Member, or of any entity under this or any other agreement or instrument. If, in connection with the issuance of obligations, any Member establishes a new lien position on revenues relating to its wastewater utility, that Member shall (x) covenant in its bond authorizing document(s) that the amounts to be paid to Alliance as Regional Service Charges shall be treated as part of that Member's internal operation and maintenance costs payable prior to debt service on those obligations; and (y) provide in its bond authorizing document(s) that the Member may, without being required to deposit money into its own bond fund, lease, convey, transfer, assign assets to the Alliance, or otherwise make assets available to the Alliance, where those assets will serve as Regional Assets to provide service to the Members. If any Member has existing outstanding revenue obligations relating to its wastewater utility, it shall include substantially

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similar “springing covenants” in the documents relating to any new parity obligations.

VI.D.3. To meet the requirements of United States Securities and Exchange Commission (“SEC”) Rule 15c2-12(b)(5) (the “Rule”) as applicable to participating underwriter for any Bonds and any obligation of each Member as an “Obligated Person” under the Rule, the Alliance and each Member agree to make an appropriate written undertaking, respectively, for the benefit of holders of the Bonds consistent with the requirements of the Rule.

VI.E. Treasurer. The Treasurer shall be appointed from time to time by resolution of the Board, consistent with the provisions of RCW 39.106.050(13).

VI.F. Applicable Lien Laws. If the Alliance provides direct retail services (*i.e.*, not through or on behalf of a Member), the Alliance will apply and exercise the powers of a water-sewer district under RCW 57.08.081 or other applicable water-sewer district law.

VII. ASSETS AND LIABILITIES

VII.A. Ownership of Regional Assets. Initial Regional Assets are listed in Exhibit B. The initial assumption, subject to adjustment or exception in a Capital Plan, is that Member assets that materially serve more than one Member will become Regional Assets. Regional Assets will be transferred to and owned by the Alliance on behalf of and for the benefit of its Members. In order to provide regional services, the Alliance also may, by contract, operate assets owned by any Member or other entity, in conjunction with Regional Assets. In the event that Regional Assets are no longer necessary, material to or useful to the Alliance, those assets will be sold, retired and/or distributed as the Board deems appropriate.

VII.B. Acquisition of Regional Assets. The Alliance will receive Regional Assets from its Members. Other Regional Assets may be contributed by Members or new Members who will receive, in exchange, a credit against the capital component of rates. Regional Assets may also be constructed or otherwise acquired by the Alliance. The Board may determine that facilities or other assets constitute Regional Assets, may add them to the list on Exhibit B, and the addition of assets to that list shall not constitute an amendment of this Agreement.

VII.C. Distribution of Assets Upon Dissolution. Regional Assets not subject to disposition pursuant to a contract among Members or a contract with another person or entity, shall, unless the Members unanimously determine otherwise, be distributed based on the original ownership of the Asset by a Member prior to transfer to the Alliance, and then, if the asset was not previously owned by a Member, based on the physical location of an asset within a Member jurisdiction other than Clark County. Notwithstanding the foregoing, upon dissolution the Salmon Creek Wastewater Management System (*i.e.*, the Regional Assets owned by Clark County at the time of

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formation) shall not be transferred to Clark County unless Clark County chooses to receive that asset. Instead, the Salmon Creek Wastewater Management System shall become jointly owned by Members on the basis of tenants-in-common, with ownership percentages based on allocated capacity shares as of date of dissolution.

- VII.D. Liabilities.** The Board may cause the Alliance assume certain liabilities in connection with the receipt of Regional Assets, and may also create or assume liabilities consistent with Section VI.D.

VIII. DISPUTE RESOLUTION

- VIII.A.** Except as provided in Sections IV.F.3 and VI.B.3, whenever any dispute arises between the Members or between the Members and the Alliance (referred to collectively in this Article as the “parties”) under this Agreement which is not resolved by routine meetings or communications, the parties agree to seek resolution of such dispute by the process described in this Article. This provision shall not prevent the parties from engaging in any alternative dispute resolution process of their choosing upon mutual agreement.

- VIII.B.** The parties shall seek in good faith to resolve any such dispute or concern by meeting, as feasible. The meeting shall include the Chair of the Board and the representative(s) of the Member(s) involved in the disputed matter, such representative(s) to be designated by the Member(s) involved. If the Chair is a Director from a Member involved in the disputed matter, an alternate Director from a Member determined by the Board to be the most neutral Member with respect to the disputed matter, shall participate in the meeting in lieu of the Chair.

- VIII.C.** If the parties do not come to an agreement on the dispute or concern, any party may demand mediation through a process to be mutually agreed to in good faith between the parties within 30 days, which may include binding or nonbinding decisions or recommendations. The mediator(s) shall be individuals skilled in the legal and business aspects of the subject matter of this Agreement. The parties shall share equally the costs of mediation and assume their own costs.

- VIII.D.** If the parties are unable to reach a mutually agreeable solution as a result of mediation under change to Section VIII.C, the conflict resolution procedures in this Article will be exhausted and the parties may pursue any and all available remedies under applicable law. Nothing in this section shall prevent the parties from agreeing to arbitration, including binding arbitration, if they choose to do so.

- IX. TERM AND TERMINATION.** Term of agreement is perpetual, and may be terminated by Dual Super-Majority Vote. Termination of the Alliance is subject to rights of owners or holders of outstanding Bonds and other obligations made or issued by or on behalf of the Alliance.

X. MISCELLANEOUS

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- X.A. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue shall be in the Superior Court for the State of Washington in Clark County.
- X.B. **No Third Party Beneficiaries.** There are no third-party beneficiaries to this Agreement except for the rights of owners of Bonds as provided in Section VI.D. No person or entity other than a party to this Agreement shall have any rights hereunder or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement.
- X.C. **Severability.** The invalidity of any clause, sentence, paragraph, subdivision, section, or portion thereof, shall not affect the validity of the remaining provisions of this Agreement.
- X.D. **Entire Agreement.** This Agreement constitutes the entire and exclusive agreement between the parties relating to the specific matters covered in this Agreement. All prior or contemporaneous verbal or written agreements, understandings, representations or practices relative to the foregoing are superseded, revoked and rendered ineffective for any purpose. This Agreement may be altered, amended or revoked only in writing and only subject to Section IV.F. No verbal agreement or implied covenant may be held to vary the terms of this Agreement, any statute, law or custom to the contrary notwithstanding.
- X.E. **Filing.** As provided by RCW 39.106.030, this Agreement shall be filed prior to its entry in force with the Secretary of State.
- X.F. **Execution.** This Agreement may be executed in one or more counterparts.

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CITY OF BATTLE GROUND By: <u>[Signature]</u> City Manager Date: <u>9/26/12</u> Attest: By: <u>[Signature]</u> City Clerk Approved as to Form: By: <u>[Signature]</u> Battle Ground City Attorney	CLARK REGIONAL WASTEWATER DISTRICT By: <u>[Signature]</u> General Manager Date: <u>9-25-12</u> Attest: By: <u>[Signature]</u> Clerk to the Board Approved as to Form: By: <u>[Signature]</u> CRWWD Legal Counsel
CLARK COUNTY By: <u>[Signature]</u> County Administrator Date: <u>10/3/12</u> Attest: By: <u>[Signature]</u> Deputy County Clerk of Board Approved as to Form: By: <u>[Signature]</u> Clark County Attorney	CITY OF RIDGEFIELD By: <u>[Signature]</u> City Manager Date: <u>9-27-12</u> Attest: By: <u>[Signature]</u> City Clerk Approved as to Form: By: <u>[Signature]</u> Ridgefield City Attorney

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EXHIBIT A

FINANCIAL POLICIES

RESERVES: Reserve balances are funds that are set aside for a specific project, task, covenant requirement, and/or emergency. These balances are maintained in order to meet short-term cash flow requirements, while at the same time minimizing the risk associated with meeting financial obligations and continued operational needs under adverse conditions.

Policy	Overview	Policy Metric	Cost Allocation Basis
Operating Reserve	The purpose of the Operating Reserve is to maintain financial viability of the utility despite short-term variability in revenues and expenses.	Maintain minimum reserve of 90 days operating costs.	Proportional to share of use of capital assets as measured by Average Annual Flow.
Regional Service Charge Stabilization Reserve	Used to mitigate major year-to-year fluctuations in revenues and expenses. Use of the Regional Service Charge Stabilization Reserve should only occur by direct Alliance Board action based upon unplanned revenue shortfalls or expenditures. Funding of the Regional Service Charge Stabilization Reserve will be budgeted as an expenditure and when used by the Board, will be considered an expenditure for the purpose of debt coverage. Use of the Regional Service Charge Stabilization Reserve funds will, when allowed by the Board, be considered a revenue for purposes of debt coverage.	Maintain minimum reserve of 90 days operating costs.	Proportional to share of use of capital assets as measured by Average Annual Flow.
Debt Service Reserve	Reserves provide protection from financial shortfalls in future debt service requirements that may occur due to changes in market conditions (i.e. lower than anticipated investment returns or slower connection growth), and meet funding and reserve requirements to necessary to acquire low-cost financing in the bond markets, and reserve funds for future capital construction costs.	Maintain one year's debt service on all outstanding debt and loans issued/borrowed by the Alliance for regional capital program and projects.	<p><i>Debt Service Reserve on new capital assets:</i> proportional to Allocated Capacity in those new capital assets.</p> <p><i>Debt Service Reserve on existing capital assets:</i> proportional to Allocated Capacity in those assets being restored and/or replaced.</p>
Restoration and Replacement (R&R) Reserve	The investment level in existing assets to maintain system performance.	Maintain minimum reserve of 2% of original asset value at the time asset(s) placed in service. Additional funding from Regional Service Rates, if necessary, may be collected to meet R&R capital needs for 20 years.	Proportional to Allocated Capacity of the assets being restored and/or replaced.

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DEBT: Market debt, non-market debt and loans are all potential funding sources to buy, build or rebuild/replace capital assets by the Alliance. All debt issuances require that debt service coverage ratios be met and compliance with continuing disclosure requirements.			
Policy	Overview	Policy Metric	Cost Allocation Basis
Debt Service	Principal and interest repayment on new debt or loans assumed by the Alliance for purchase, construction or restoration/replacement of a capital asset is an obligation to the Members. This repayment is passed on to Members as a component of their Regional Service Charges billed by and paid to the Alliance.	When the Alliance assumes new debt or loans for purchase, construction or restoration/replacement of a capital asset, each Member who elects to: (1) purchase a share of capacity in that new capital asset, or (2) owns capacity in that restored/replaced capital asset, is responsible for their relative share of that debt service or loan repayment, respectively.	<i>Debt on new capital assets:</i> proportional to Allocated Capacity in those new capital assets. <i>Debt on restored/replaced capital assets:</i> proportional to Allocated Capacity in those assets being restored and/or replaced.
Debt Service Coverage Ratio	Describes how much of the annual debt payment is covered by projected Regional Service Charge revenues.	Regional Service Charges shall be maintained at a level necessary to provide annual revenues that satisfy: (1) a debt service coverage ratio of no less than 1.25 times annual debt service on Alliance-issued market debt, and (2) a debt service coverage ratio of no less than 1.00 times debt service and loan payments on all other Alliance non-market debt and loans (e.g. USDA, CERB, PWTF, etc.). Annual net revenues divided by annual debt service.	Debt service coverage ratio tests will be funded by the component of Regional Service Charges to Members who benefit from the corresponding debt issuances for which the tests must meet.
Continuing Disclosure	Provide for the benefit of bondholders annual financial information and notice of material events.	<i>Arbitrage:</i> Alliance should engage an arbitrage consultant to assist the Alliance in meeting IRS arbitrage compliance and reporting requirements when applicable. <i>IRS Bond Post-Issuance Compliance:</i> Alliance should maintain and comply with the IRS checklist of bond post-issuance compliance requirements. <i>Annual Reporting NRMSIR:</i> Alliance will comply with bond covenants regarding the annual undertaking of reporting to the Nationally Recognized Municipal Securities Information Repository (NRMSIR) by electronically filing with the Electronic Municipal Market Access system (EMMA) or its successor.	NA
Debt Policy	Alliance has a debt policy, which is adopted and will be updated periodically.	Compliance with provisions outlined per debt policy.	NA

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REVENUE SUFFICIENCY: The Alliance has ongoing revenue requirements from its Members to pay operating expenses, buy or build capital assets, service debt and maintain reserves. Revenue sufficiency insures that charges will be set at a level to remain a self-sufficient utility.

Policy	Overview	Policy Metric	Cost Allocation Basis
Charge Adoptions	Alliance will establish charges to Members sufficient on an annual basis to meet all utility cash requirements including operating expenses, debt service, charge-funded capital costs and additions to reserves.	Charge modeling will be updated every 2-4 years, with multi-year charge adoptions. Changes in charge levels should be gradual and uniform to the extent costs can be forecast.	Charges will be assessed to Members proportional to Average Annual Flow (operating expenses, operating reserves, regional service charge stabilization reserves), Allocated Capacity (debt service, debt service reserves, R&R reserves on restored/ replaced capital assets), or by some other proportion / method as directed by the Board.
Revenue Pledge (Members)	Provide surety to all Members that each Member will fulfill financial obligations to the Alliance.	Each retail agency pledges to maintain a combination of retail rates and charges sufficient to meet all policy tests and retail and wholesale obligations for collection system, transmission system, treatment system and reserves (operating, capital and debt service costs).	NA

FINANCIAL PLANNING, REGULATORY COMPLIANCE AND INVESTMENTS: Policies which support financial planning, regulatory compliance and investing help promote the financial integrity and stability of the Alliance, and help provide guidance and consistency in decision-making for the Alliances' management and Board.

Policy	Overview	Policy Metric	Cost Allocation Basis
Financial Planning	Adoption of an annual/biennial Alliance budget provides Member agencies assurance of conveyance and treatment costs key to their annual/biennial Member budget, for Regional Service Charges due to the Alliance.	Alliance will prepare an annual/biennial budget that provides a basic understanding of the planned spending for the coming year/biennium. A long-term financial plan for a 10-20 year horizon will be updated every 2-4 years. Single enterprise fund.	NA
Regulatory Compliance	Alliance is to maintain a uniform system of accounts, and maintain accounting practices that follow Generally Accepted Accounting Principles (GAAP). Alliance will comply with the State Auditor's Office (SAO) Budgeting Accounting Reporting Systems (BARS).	Alliance will prepare an annual CAFR (modified accrual basis of accounting) and will be audited by the SAO.	NA
Investment Policy	Alliance has an investment policy which is adopted and will be updated periodically.	Compliance with provisions outlined per investment policy.	NA

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SUSTAINABILITY OF INFRASTRUCTURE: In conjunction with establishing or planning its capital program, Alliance will develop a corresponding capital financing plan that supports execution of that program, and is capable of sustaining long-term capital requirements. The capital program will incorporate system expansion, upgrades and improvements, and system repair and replacement. The intention is to establish an integrated funding strategy.

Policy	Overview	Policy Metric	Cost Allocation Basis
Capital Facilities Planning	Alliance will maintain a capital projects schedule of at least six years in duration, and consistent with the comprehensive long-range plans, using a 20-year planning horizon.	The six-year capital project schedule will be adopted by the Alliance Board, including project description, scheduled year of construction, total estimated costs (including additional operating) and funding source.	NA
Capital Facilities Funding	Capital funding from Members is included in Regional Service Charges, to preserve the Alliance's existing infrastructure. Contributions should fund current construction and engineering costs. Funding level should target replacement cost depreciation expense. Debt funding will be used when it is judged to be appropriate based on the long-term capital needs and the Alliance's ability to repay the indebtedness in light of all sources and uses of cash. The term of the debt should not exceed the reasonable useful life of the asset being acquired or constructed.	A six-year capital funding plan, adopted by the Alliance Board, will be in place that anticipates capital cost requirements and determines the appropriate funding mechanism for those capital needs, either cash funding or debt/loan issuance.	NA

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EXHIBIT B**LIST OF INITIAL REGIONAL ASSETS AND INITIAL ALLOCATED CAPACITIES**

System Name	No.	Regional Asset Name	Regional Asset Description	Initial Allocated Capacities(values expressed in MGD of MMF)			
				Existing Allocated Capacity			
				BG	CRWWD	RF	Total
Salmon Creek Wastewater Management System (SCWMS)	1	Interceptor System Salmon Creek Interceptor	4.6 mile long gravity pipeline located on the south side of the Salmon Creek drainage. The interceptor collects and conveys wastewater from partner agencies to regional pump stations. Pipeline was constructed in segments from the mid to late 1970's (21-42-inch diameter pipe routed from Belts Bridge to 36 Ave).	10.10	28.08	0.00	38.18
	2	Klineine Interceptor	1.8 mile long gravity pipeline located parallel to the Salmon Creek Interceptor. Pipeline was constructed in segments from 2002 to 2006 (48-inch diameter pipe routed from Salmon Creek Ave & NE 127 St to 117 St PS).				
	3	Pump Station (PS) System 36 Avenue PS	Raw sewage PS located at 14014 NW 36 Ave in Vancouver, WA. The station pumps wastewater from the Salmon Creek interceptor to SCTP. Pump station was constructed in mid 1970's and remodeled in 1994 and 2005.	4.47	13.57	0.00	18.04
	4	117 Street PS (aka Klineine PS)	Raw sewage PS located at 1110 NE 117 St in Vancouver, WA. The station pumps wastewater from Salmon Creek and Klineine interceptors to SCTP. Pump station was constructed in 2008.				
	5	Force Mains (FM) System 36 Ave PS FM	24-inch diameter FM routed from 36 Ave PS to SCTP. The FM runs approximately 1.4 miles along the south side of the Salmon Creek and discharges to SCTP. Pipeline was constructed in mid 1970's.	6.30	20.06	0.00	26.36
	6	117 Street PS FM	30-inch diameter FM routed from 117 St PS to SCTP. The FM runs approximately 4.9 miles along public rights-of-way to the SCTP. Pipeline was constructed in segments from 2004 to 2008.				
	7	Salmon Creek Treatment Plant (SCTP) & Outfall	Secondary treatment plant originally constructed in the mid 1970's, with four major expansion phases. The plant is located at 15100 NW McCann Rd, in Vancouver, WA. The plant outfall is a 30-inch diameter pipeline routed west of the plant 1.3 miles, terminating in the Columbia River between mile 95 and 96. The discharge location is latitude 45° 43' 58" N, longitude 122° 45' 23" W.	3.47	11.48	0.00	14.95
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 an 8-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.	0.00	0.00	0.70	0.70
Battle Ground Force Main System	9	Battle Ground FM (Including odor control system for FM)	9 mile long 16-inch diameter FM with biocide chemical injection facility routed southwesterly from McClure PS to Klineine interceptor at Salmon Creek Ave. Pipeline was constructed in 1993.	3.44	0.96	0.00	4.40

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Exhibit A