

6/10/14

**EXHIBIT C: CLARK COUNTY AND DISCOVERY CLEAN WATER ALLIANCE
FRANCHISE AGREEMENT**

CLARK COUNTY AND DISCOVERY CLEAN WATER ALLIANCE FRANCHISE AGREEMENT

A RESOLUTION granting a nonexclusive Franchise to the Discovery Clean Water Alliance to engage in constructing, operating, and maintaining a regional wastewater transmission and treatment system in Clark County Public Rights-of-Way; setting forth terms and conditions accompanying the grant of the nonexclusive Franchise; and providing for County administration and regulation of the nonexclusive Franchise.

WHEREAS, Clark County, Clark Regional Wastewater District, the City of Battle Ground, and the City of Ridgefield entered into the "Discovery Clean Water Alliance Interlocal Formation Agreement" on September 27, 2012, and filed the Alliance Agreement with the Washington Secretary of State on January 4, 2013, thereby forming the Discovery Clean Water Alliance; and

WHEREAS, Section VII of the Alliance Agreement expresses an assumption that Clark County will transfer to the Alliance the Salmon Creek Wastewater Management System as an Initial Regional Asset listed in Exhibit B of the Alliance Agreement; and

WHEREAS, this transfer will create public benefit by supporting regional cooperation and economic development in an environmentally-sound manner by helping manage regional wastewater 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; and

WHEREAS, the County and the Alliance entered into the "Clark County and Discovery Clean Water Alliance Salmon Creek Wastewater Management System Transfer Agreement" (the "SCWMS Transfer Agreement"), dated the 21th day of June, 2014 to transfer the assets; and

WHEREAS, a condition of closing in the SCWMS Transfer Agreement requires the County and the Alliance to enter into a franchise agreement that grants the Alliance a franchise to construct, operate, and maintain wastewater facilities within the County's rights-of-way; and

WHEREAS, the County and the Alliance entered into the "Discovery Clean Water Alliance Operator Agreement," dated the 22nd day of August, 2013 to set forth the terms of the County's operation of the Salmon Creek Wastewater Management System and the Battle Ground Force Main and Odor Control System; and

WHEREAS, the Alliance has applied to the Board of County Commissioners of Clark County, pursuant to Chapter 36.55 RCW, for a nonexclusive Franchise to construct, operate, and maintain a regional wastewater transmission and treatment

system upon, under, along and/or across certain Public Rights-of-Way in Clark County; and

WHEREAS, pursuant to RCW 36.55.040, notice was posted in three public places in the County seat at least fifteen (15) days before the hearing date, and notice was published twice in the official County newspaper, the last publication being not less than five (5) days before the date fixed for the hearing; and

WHEREAS, pursuant to RCW 36.55.040, a hearing on the application for Franchise was held on the 24th day of June, 2014; and

WHEREAS, the County and the Alliance now desire to set forth the terms and conditions of this Franchise; and

WHEREAS, the Board of County Commissioners finds that it is in the public interest to grant the nonexclusive Franchise;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY as follows:

1. Definitions. Where used in this Franchise, these terms have the following meanings:

1.1 "Alliance" means the Discovery Clean Water Alliance, a Washington municipal corporation, and its respective successors and assigns.

1.2 "Alliance Agreement" means the agreement entered into by the County, Clark Regional Wastewater District, the City of Battle Ground, and the City of Ridgefield on September 27, 2012, forming the Alliance, pursuant to the Joint Municipal Utility Services Act, Chapter 39.106 RCW.

1.3 "Alliance Facilities" means the Alliance's then existing Facilities within the Franchise Area.

1.4 "CCC" means the Clark County Code, as amended or recodified.

1.5 "County" means Clark County, Washington, a political subdivision of the State of Washington, and all the unincorporated territory within its present and future boundaries and including any area over which the County exercises jurisdiction.

1.6 "Facilities" means all meters, pipes, mains, services, valves, vaults, risers, manholes, generators, electrical control panels, power meters, telephone connections, lines, pump stations, meter stations, lift stations, air release and vacuum relief valve assemblies, locate stations, pigging stations, chemical injection facilities, chemical storage tanks, chemical metering pumps, and all necessary or convenient facilities and appurtenances for the purpose of operating wastewater utility systems, including without

limitation the collection, transmission, and treatment of wastewater, whether the same be located over or under ground.

1.7 “Franchise Area” means every and all of the Public Rights-of-Way of the County as now or hereafter laid out, platted, dedicated, or improved, or annexed to the County.

1.8 “Party” or “Parties” means the County or the Alliance individually or collectively as addressed in this Franchise.

1.9 “Public Rights-of-Way” means the surface of, and the space above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, or other public right-of-way, including any easement now or hereafter held by the County within the Franchise Area for the purposes of public travel, and over which the County has authority to grant permits, licenses, or franchises for use thereof, or has regulatory authority thereover, excluding private roads, railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, or similar facilities or property owned, maintained, or leased by the County in its governmental or proprietary capacity or as an operator of a utility.

1.10 “Resolution” means a motion passed by the Board of County Commissioners dated June 24, 2014, which approves the terms and conditions of this Franchise.

2. Franchise.

2.1 Grant of Franchise. Pursuant to the Laws of the State of Washington, including, but not limited to, RCW 36.55.010, RCW 39.106.040, and RCW 39.106.060, the County hereby grants to the Alliance a nonexclusive franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate, and use Facilities in, upon, over, under, along, through, and across the Franchise Area, but excluding those portions of the Franchise Area occupied with infrastructure of another entity, for purposes of the Alliance’s wastewater utility and treatment functions, as authorized by Chapter 39.106 RCW and as defined in the Alliance Agreement, beginning on the Effective Date of this Franchise; provided, that the County’s grant of the right to use the Franchise Area as provided herein shall not be construed to require the Alliance to provide such Facilities to the County. The following conditions shall apply to the Franchise granted herein:

2.1.1 The Franchise granted shall not convey any rights, title or interest in the Public Rights-of-Way but shall be deemed a Franchise only to use and occupy the Public Rights-of-Way for the limited purposes and term stated herein;

2.1.2 The Franchise granted shall not authorize or excuse the Alliance from securing such further easements, leases, permits, or other approvals as may be required to lawfully occupy and use the Public Rights-of-Way;

2.1.3 The Franchise granted shall not be construed as any warranty of title;

2.1.4 No act, event, occurrence, or thing shall give the Alliance any rights to occupy or use the Public Rights-of-Way permanently or operate as an estoppel against the County; and,

2.1.5 The Alliance shall comply with all applicable service quality and continuity requirements of State and Federal law.

2.1.6 The Franchise granted includes the covenant by and obligation of the Alliance to maintain, at its own expense, Alliance Facilities located within the Franchise Area.

2.2 Limit on Franchise. Nothing contained in this Franchise is to be construed as granting permission to the Alliance to go upon any other public place other than those types of public places designated as the Franchise Area in this Franchise. Permission to go upon any other property owned or controlled by the County must be sought on a case-by-case basis from the County.

2.3 Franchise Nonexclusive. This Franchise shall be nonexclusive. This Franchise shall not in any manner prohibit the County from granting other and further franchises over, upon, and along the Franchise Area. This Franchise shall not prohibit or prevent the County from using the Franchise Area or affect the jurisdiction of the County over the same or any part thereof.

2.4 Franchise Term – Termination. This Franchise shall have a term of twenty (20) years from its Effective Date, and shall automatically renew on the anniversary date of the Effective Date for two (2) consecutive terms of five (5) years unless one Party gives the other Party notice of intent to terminate the Franchise at least twenty-four (24) months in advance of the expiration of the initial thirty-year term or any five-year extension. Upon the expiration of the second five-year extension, this Franchise shall automatically renew on the anniversary date of the Effective Date each year unless one Party gives the other Party notice of intent to terminate the Franchise at least one (1) year in advance of the anniversary date.

2.5 Consideration for Franchise. In lieu of a franchise fee, the County grants this Franchise pursuant to Chapter 36.55 RCW, subject to the terms of this Franchise. The County reserves the right to impose a reasonable fee to reimburse the County's costs in connection with administering this franchise and processing any permit required of the Alliance to use and occupy the Public Rights-of-Way under this Franchise.

3. Compliance with Codes and Regulations.

3.1 Scope. This Franchise is granted subject to the applicable provisions of the Clark County Code, including, but not limited to, Chapter 12.20A CCC, "Accommodation of Utilities on County Rights-of-Way," as now codified or as later

amended, which shall apply in addition to the terms and conditions of this Franchise and Chapter 36.55 RCW.

3.2 Police Power Preserved. Nothing in this Franchise limits the County's lawful exercise of its police power to regulate the use of the Public Rights-of-Way.

3.3 Compliance with Laws. The Alliance shall perform all work in the Public Rights-of-Way in accordance with applicable federal, state, and county laws and regulations.

4. Performance of Work.

4.1 Permit Required. Except as agreed to by the County and the Alliance for projects constructed jointly or concurrently by the Parties, the Alliance shall apply for and obtain a utility permit prior to conducting any work which disturbs any soil, surface, facility, or structure of any Public Rights-of-Way pursuant to Chapter 12.20A CCC; provided, however, that in cases of emergency when an immediate excavation may be necessary for the protection of private or public property, the Alliance may conduct the necessary excavation upon the express condition that the Alliance apply for a utility permit pursuant to CCC 12.20A. 070. As between the Alliance and the County, the Alliance shall remain solely responsible for compliance with all applicable laws, regulations, codes, and standard plans and specifications in the design and construction of its Facilities. Except as agreed to by the Parties, the Alliance shall pay all fees, costs, and expenses incurred by the County in the administration, examination, inspection, and approval of such work on account of granting the permit.

4.2 Non-Interference. Facilities shall be located, relocated, and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of (i) pedestrian, vehicular traffic, and other transportation uses, and (ii) ingress or egress to or from the abutting property in accordance with the laws of the State of Washington. In addition, all construction or installation of Alliance Facilities, service, repair, or relocation of the same, performed along or under any Public Rights-of-Way shall be done in such a manner as not to unreasonably interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of such Public Rights-of-Way or other County property.

4.3 Road Closures. Nothing herein shall preclude the Alliance from effecting temporary road closures as reasonably necessary during construction or maintenance of Facilities; provided that the Alliance receives prior County approval, which shall not be unreasonably withheld; and provided further that the Alliance shall have the right to effect temporary road closures in the event of emergencies to maintain, repair, and replace Alliance Facilities without prior County approval, but the Alliance shall obtain County approval of each road closure as soon as reasonably possible after the Alliance becomes aware of the need to put that closure into effect.

4.4 Excavations; Monuments. Whenever it is necessary for the Alliance, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, the Alliance shall, upon completion of such excavation, restore the surface of the Franchise Area to County standards and at least to the same condition existing prior to any such excavation, installation, construction, relocation, maintenance, or repair. Survey monuments shall not be removed or destroyed without the Alliance first obtaining the required Department of Natural Resources (DNR) permit in accordance with RCW 58.09.130 and WAC 332-120-030, and as such statutes and regulations may be modified and amended. All survey monuments, which have been distributed or displaced by such work, shall be restored pursuant to all federal, state, and local standards and specifications. The Alliance agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole expense.

4.5 Restoration. If the County determines that the Alliance has failed to restore a right-of-way in accordance with **Subsection 4.4**, the County shall provide the Alliance with written notice, which shall include a description of actions the County believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the County's notice within fifteen (15) days of that notice, or such longer period as may be specified in the notice, the County, or its authorized agent, may restore the right-of-way and the Alliance shall be responsible for all reasonable costs and expenses incurred by the County in restoring the right-of-way in accordance with this **Subsection 4.5** and **Subsection 4.4**. The rights granted to the County under this **Subsection 4.5** shall be in addition to those otherwise provided by this Franchise.

5. Planning Coordination. The Alliance acknowledges that there are other utilities also occupying the Franchise Area and that it is the responsibility of all utilities to coordinate their alignment within the Franchise Area. The Parties also recognize that wastewater Facilities within the Franchise Area, such as the Alliance Facilities, usually are installed underground and significantly deeper than other utilities, and therefore are more expensive to relocate than other utilities. The Parties shall work together to reduce the need for relocation of Alliance Facilities within the Franchise Area; provided, such coordination does not require the County to incur an increase in design or construction costs. To accomplish this goal, the Parties shall each assign a representative whose responsibility shall be to coordinate planning for County projects as described in **Subsection 6.1** below, including those projects that involve undergrounding. At a minimum, such coordination shall include the following:

5.1 Capital Improvement Plans. For the purpose of planning, the Parties shall provide each other with a copy of their respective current adopted capital improvement plans annually and upon request by the other Party.

5.2 Alliance Schedule. By September 1st of each year, the Alliance shall provide the County, and all other known utilities, with a schedule of the Alliance's planned capital improvements which may affect the Franchise Area for the next year.

5.3 County Schedule. By September 1st of each year, the County shall provide the Alliance with a schedule of the County's planned projects as described in **Subsection 6.1** below which may affect the Franchise Area for the following year, including, but not limited to, street overlays and repairs, storm drainage improvements and construction, and all other right-of-way activities that could affect Alliance capital improvements and infrastructure.

5.4 Construction Coordination. The Alliance shall meet with the County, and other franchisees and users of the Public Rights -of-Way, as necessary, to schedule and coordinate construction activities.

5.5 Limited Impacts. All construction locations, activities, and schedules of the County and utility franchise holders within the Franchise Area shall be coordinated to minimize inconvenience, disruption, or damages to the public and to the Facilities of utility franchise holders. All construction locations, activities, and schedules of the Alliance within the Franchise Area shall be coordinated to minimize disruption or damage to the Public Rights-of-Way and to minimize inconvenience to the public.

5.6 Emergency Operations. The Parties agree to cooperate in the planning and implementation of emergency operations response procedures.

5.7 Plans, Maps, and Records. As available, and without charge to either Party, both Parties agree to provide each other with plans, maps, and records that show the vertical and horizontal location of its improvements within Public Rights-of-Way, measured from the center line of the Public Rights-of-Way. Additionally, following any construction in the Public Rights-of-Way, the Alliance shall provide the County with record drawings (*i.e.*, drawings produced post-construction that reflect the best record of the constructed Facilities, including their vertical and horizontal locations measured from the center line of the Public Rights-of-Way) of Alliance Facilities. Maps shall be provided in the digital electronic format used by the County or the Alliance unless the Parties agree on another format.

6. Relocation of Facilities.

6.1 Relocation or Removal. If at any time the County constructs, improves, or changes the line, grade, or cross-section of any County road, Public Rights-of-Way, or other County property(ies) subject to this Franchise, together with construction of storm and sanitary sewers, surfacing, paving, and any other work, the Alliance, upon written notice from the County Engineer, shall, at its sole expense, with due diligence adjust Alliance Facilities so that the same shall not interfere with the County work and so that the Alliance Facilities shall conform to such new lines, grades, and cross-sections as may be established. All relocation work shall comply with Chapter 12.20A CCC. Except as described in **Subsection 6.4** below, the County Engineer will endeavor to provide as much reasonable advance notice as possible for the relocation or removal of Alliance Facilities, but in no event shall notice be less than one-hundred twenty (120) days from the removal/relocation of Alliance Facilities.

Relocation of Alliance Facilities shall be completed in a timely manner, defined as follows: Relocation of Alliance Facilities shall normally be accomplished in advance of County projects. In the event the relocation of Alliance Facilities is done concurrently with County projects, the Alliance shall notify the County. The County will establish a written schedule for relocation. The Alliance shall comply with such written schedule. In no event shall the relocation of Alliance Facilities interfere with County projects or delay County contractors.

6.2 Cost of Relocation – Alliance. Subject to **Subsections 6.3 and 6.4** below, the Alliance shall pay for the cost of relocation of Alliance Facilities pursuant to RCW 36.55.060. Both Parties shall meet to discuss the proposed project at a mutually agreeable time and place. Either Party may propose reasonable alternatives to the relocation of Alliance Facilities, each of which shall be given full and fair consideration without undue delay. The timing of this discussion and evaluation, and any relocation of Alliance Facilities, shall take into account the type, extent, scope, and purpose of the proposed project, the type and extent of the relocation, service, and safety requirements, the need for acquisition of additional right-of-way or easements for utility relocation, the construction sequence for the relocation within the construction sequence and constraints for the overall public improvement project, and the period of time for and complexity of obtaining necessary permits and approvals for the proposed project and relocation. The County shall make reasonable efforts to provide the Alliance with as much time as practicable to review the proposed project, consider alternatives, and accomplish any necessary relocation. The County and the Alliance shall work together cooperatively in the process of design, engineering, estimating, scheduling, sequencing work, conversion, cut-over, and construction to bring the proposed project and Alliance Facilities relocation work to completion in the most efficient and timely manner and to avoid delay and disruption. The Alliance shall make reasonable efforts to complete any necessary relocation within the timeframe requested by the County under the foregoing process and in accordance with state bid law requirements and applicable regulations, permits, and approvals. The decision to modify the design or schedule, or to undertake any alternative proposal, will be made by the County in the sole exercise of its discretion.

6.3 Cost of Relocation – County. The County shall pay for the cost of County required relocation of Alliance Facilities if reconstruction is required within five (5) years of the initial construction of the Alliance Facilities; provided, however, that the County shall not pay for such cost where the relocation is required due to emergent or serious life safety circumstances; or where the relocation cost is paid for or reimbursed from other sources. For the purposes of this **Subsection 6.3** “initial construction” shall mean acceptance of substantial completion by the Alliance. This **Subsection 6.3** shall not restrict the County from obtaining payment under separate agreements or applicable laws for the cost of relocation of Alliance Facilities.

6.4 Cost of Relocation – Other. Whenever any person or entity, other than the County, requires the relocation of Alliance Facilities to accommodate the work of that person or entity within the Franchise Area (including any conditions or requirements

imposed by the County upon the person or entity), or whenever the County requires the relocation of Alliance Facilities within the Franchise Area for the benefit of any person or entity other than the County, then the Alliance shall have the following Alliance rights to require that person or entity to:

6.4.1 Make payment to the Alliance at a time and upon terms acceptable to the Alliance for any and all costs and expenses incurred by the Alliance in the relocation of Alliance Facilities; and

6.4.2 Protect, defend, indemnify, and save the Alliance and the County harmless from any and all claims and demands made against the Alliance or the County on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Alliance Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of Alliance Facilities or other negligence or willful misconduct of the agents, servants, or employees of the person or entity requesting the relocation of Alliance Facilities.

6.5 Scope – Limited to Franchise Area. This **Section 6** shall govern all relocations of Alliance Facilities within the Franchise Area and all locations at which the County has granted an easement without monetary payment but shall not apply to the location or relocation of any Alliance Facilities outside of the Franchise Area.

7. Location of Facilities. With the exception of components that are traditionally installed above ground, such as wastewater treatment plants and associated improvements, fixtures and equipment, and vault lids, risers, manhole covers, pump stations, lift stations, generators, electrical control panels, power meters, telephone connections, and utility markers, all Facilities to be installed within the Franchise Area shall be installed underground; provided that Facilities may be installed above ground if so authorized by the County, and, consistent with the provisions of the Clark County Code and applicable development agreements, that authorization shall not be unreasonably withheld, conditioned, or delayed.

8. Aesthetic and Scenic Considerations.

8.1 Design and Construction. In addition to the requirements of CCC 12.20A.060, the Alliance shall design and construct its Facilities in a manner that minimizes adverse effects on existing roadside manmade or natural amenities.

8.2 Refuse and Debris. The Alliance shall promptly remove and properly dispose of refuse and debris resulting from the installation or maintenance of its Facilities once the work is completed.

9. Record of Installations and Service.

9.1 One-Number Locator. With respect to excavations by the Parties within the Franchise Area, each Party shall comply with its respective obligations pursuant to

Chapter 19.122 RCW, and as such statute may be modified and amended, and any other applicable state law.

9.2 Draft Plan Disclosure. Upon written request of the County, the Alliance shall provide the County with the most recent update available of any plan of potential improvements to the Alliance Facilities within the Franchise Area; provided that any such plan so submitted shall only be for informational purposes within the Franchise Area, and such plan shall be construed as a proposal to undertake any specific improvements within the Franchise Area.

9.3 Plan Disclosure. Upon written request of the Alliance, the County shall provide the Alliance with the most recent updates available of any plan of potential improvements to its improvements located within the Franchise Area and any plan of potential improvements to the improvements of other franchisees or permittees of the County located within the Franchise Area; provided that any such plan so submitted shall only be for informational purposes within the Franchise Area, and such plan shall be construed as a proposal to undertake any specific improvements within the Franchise Area.

9.4 Record Drawings. The Alliance shall make record drawings (*i.e.*, drawings produced post-construction that reflect the best record of the constructed Facilities, including their vertical and horizontal locations measured from the center line of the Public Rights-of-Way) of past projects and of any future Alliance Facilities in the Franchise Area available to the County within ten (10) working days of the County's request.

10. Excavations and Trenching.

10.1 Reasonable Efforts. The Parties shall exercise reasonable efforts to coordinate construction work within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Area informed of its intent to undertake such construction work. The Parties shall further exercise reasonable efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

10.2 All construction or installation of Alliance Facilities, service, repair, or relocation of the same, performed along or under any Public Rights-of-Way shall be done in such a manner as not to materially interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of such Public Rights-of-Way or other County property. The Alliance shall coordinate the location and relocation of its Facilities with other utilities to maximize the orderly alignment of all utilities. The County agrees to use reasonable efforts to notify franchise

holders of right-of-way work and require reasonable cooperation among franchise holders, but in no event shall the County be liable for failure to coordinate.

10.3 Shared Use of Excavations. If at any time, or from time to time, either the Alliance or the County excavates within the Franchise Area, the excavating Party shall afford the other Party, upon receipt of a written request to do so, an opportunity to jointly use the excavation, provided that:

10.3.1 No statutes, laws, regulations, or ordinances prohibit or restrict the proximity of other utilities or facilities to Alliance Facilities installed or to be installed within the area to be excavated;

10.3.2 The Parties' joint use of the excavations shall not unreasonably delay the work of the excavating Party; and

10.3.3 The Parties' joint use of the excavations shall be arranged and accomplished on terms and conditions satisfactory to both Parties. The Parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction. To the extent, the Party requesting joint use of the excavation causes additional cost or delay, that Party shall be responsible for the additional costs.

10.4 Trenching Limited. The County prohibits open trenching for five (5) years following a street overlay or improvement project, except that the County's prohibition shall not be unreasonably imposed nor will the prohibition apply to emergency street trenching. The County shall give the Alliance written notice at least one hundred eighty (180) days prior to the commencement of the project. Untrenched construction methods, such as pushing, boring or bore-pulling, must be explored and exhausted before filing a request for an exception.

11. Vacation of Franchise Area. Whenever any portion of the Franchise Area is vacated upon a finding that it is not useful and the public will be benefited by the vacation, the County may retain an easement in respect to the vacated land for the construction, repair and maintenance of public utilities and services which at the time of the vacation are specifically authorized under this Franchise or physically located on a portion of the land being vacated, but only in accordance with the provisions of RCW 36.87.140. The County shall not be liable for any damages or loss to the Alliance by reason of any such vacation. The Alliance is obligated to notify the County if the Alliance wishes the County to retain an easement. Upon receipt of notice from the Alliance that it wishes the County to retain an easement, the County shall use its best reasonable efforts to retain the easement.

12. Rights and Powers Reserved to the County.

12.1 Eminent Domain. This Franchise is subject to the power of eminent domain and the rights of the Board to repeal, amend, or modify this Franchise. To the extent of an exercise of eminent domain by the County, this Franchise itself shall have no value.

12.2 Police Power. In granting this Franchise, the County does not waive any of its police powers to regulate the use of the Public Rights-of-Way.

12.3 Compensation. The Franchise granted hereunder is subject to the County's right, which is expressly reserved, to annually fix a fair and reasonable fee to reimburse the County's costs in connection with administration and oversight of this Franchise, and in connection with reviewing, inspecting, monitoring and supervising the use and occupancy of the Public Rights-of-Way. Nothing herein shall prohibit the County and Grantee from agreeing upon the compensation to be paid.

12.4 Nonwaiver of Rights. The County and the Alliance agree that the excuse or forgiveness of performance or waiver of any provision of this Franchise does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Franchise at a subsequent time.

13. Transfers or Assignment.

13.1 Consent. All of the provisions, conditions, and requirements herein contained shall be binding upon the Alliance, and no right, privilege, license, or authorization granted to the Alliance hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the County, which the County may not unreasonably withhold, condition, or delay. A merger, consolidation, or membership expansion of the Alliance with or into another municipal corporation shall not be considered an assignment for the purposes of this **Section 13**.

13.2 Binding on Successors. All provisions, conditions, regulations, obligations, liabilities of the Alliance, and requirements herein contained shall be binding upon the successors and assigns of the Alliance. Upon approval by the County of Assignment or Novation, all privileges and responsibilities, of the Alliance, as applicable, shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Alliance is mentioned.

14. Default.

14.1 Default by the Alliance. If the Alliance materially defaults in the performance of the terms and conditions of this Franchise, the County may terminate this Franchise as provided in **Subsection 14.2** below. Upon termination of this Franchise, all rights of the Alliance hereunder shall cease.

14.2 Notice and Opportunity to Cure. If the Alliance fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the County may serve upon the Alliance a written order to so comply within thirty (30) days from the date such order is received by the Alliance. If the Alliance is not in compliance with this Franchise after expiration of said thirty (30) day period, the County may act to remedy the violation and may charge the costs and expenses of such action to the Alliance. The County may act without the thirty (30) day notice in case of an emergency. The

County may, in addition, by resolution adopted no sooner than ten (10) days after notice of the County Commission hearing (at which the Alliance will have an opportunity to be heard) on the impending resolution, declare an immediate forfeiture of this Franchise; provided, that if any material failure to comply with this Franchise by the Alliance cannot be corrected with due diligence within the thirty (30) day period, and if the Alliance's obligation to comply and to proceed with due diligence is subject to unavoidable delays and events beyond its control, then the time within which the Alliance may so comply shall be extended for such time as may be reasonably necessary and so long as the Alliance commences promptly and diligently to effect such compliance, provided that a good faith dispute does not exist concerning such compliance.

14.3 Force Majeure. The Alliance shall not be deemed in default of any provisions of this Franchise, or subject to any penalty hereunder, where performance or compliance is prevented by Acts of God, including, without limitation, civil emergencies or natural disasters.

14.4 Termination by the Alliance. Upon ninety (90) days' notice to the County, the Alliance may terminate this Franchise.

14.5 Default by the County. The Alliance shall have the right to seek equitable relief if the County materially defaults in the performance of the terms and conditions of this Franchise for a period of thirty (30) days after receipt of written notice thereof to cure.

15. Hazardous Substances and Conditions.

15.1 Hazardous Substances. If the Alliance or Alliance Facilities cause the release of any Hazardous Substance into or upon any Public Rights-of-Way contrary to any State or Federal law, the Alliance shall promptly notify the County Engineer in writing of such release. The Alliance shall indemnify and hold the County harmless from any and all liability resulting from such release. The County shall be entitled to full contribution for all costs incurred by the County as the result of such release of Hazardous Materials caused by the Alliance.

15.2 Hazardous Conditions. Whenever the County Engineer determines that any conditions or operations caused by any activity covered by this Franchise have become a hazard to life and limb, endanger property or public resources, or adversely affect the safety, use, or stability of Public Rights-of-Way, the County Engineer may notify the Alliance in writing of the property upon which the condition or operation is located for the purpose of eliminating the condition or operation within the period specified therein. Should the County Engineer have reasonable cause to believe that the severity of the situation makes written notice unreasonable, the County Engineer may take measures necessary to eliminate the hazardous situation; provided, that the Engineer shall first make a reasonable effort to notify the Alliance before acting. If costs are incurred and the hazardous situation has been created in conjunction with or as a result of an operation for which a bond has been posted, the County Engineer shall

have the authority to forfeit the bond or other security to recover costs incurred if the Alliance fails to pay such costs.

15.3 Preexisting Conditions. The Alliance shall not be liable for any hazardous substances or hazardous conditions existing in the Public Rights-of-Way prior to its right-of-way work. The County shall hold the Alliance and its officers, employees, and agents harmless for claims relating to pre-existing hazardous substances or hazardous conditions. To the extent the Alliance becomes aware of hazardous substances or hazardous conditions in the Public Rights-of-Way, the Alliance shall immediately discontinue work and notify the County.

16. Indemnification.

16.1 County Indemnified. In addition to and distinct from the insurance requirements of this Franchise, the Alliance shall indemnify and hold the County, its agents, officers, employees, volunteers, and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever, including all costs and attorney fees, made against them on account of injury, sickness, death, or damage to persons or property to the extent caused by or arising out of the willful, tortious, or negligent acts, failures, or omissions of the Alliance or its agents, servants, employees, contractors, subcontractors, or assigns in the construction, operation, or maintenance of Alliance Facilities or in exercising the rights granted the Alliance in this Franchise; provided that such indemnification shall not extend to injury or damage to the extent caused by the reckless or willful misconduct of the County, its agents, officers, employees, volunteers, or assigns.

16.2 Alliance Indemnified. The County shall indemnify and hold the Alliance, its agents, officers, employees, volunteers, and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever, including all costs and attorney fees, made against them on account of injury, sickness, death, or damage to persons or property to the extent caused by or arising out of the willful acts, failures, or omissions of the County or its agents, servants, employees, contractors, subcontractors, or assigns in the County's performance, administration, and operation of this Franchise or in exercising the rights granted the County in this Franchise; provided that such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the Alliance, its agents, officers, employees, volunteers, or assigns.

16.3 Notice. In the event any such claim or demand be presented to or filed with the Alliance or the County arising out of or relating to the acts or omissions in whole or in part of the other Party, the Alliance or the County shall promptly notify the other Party thereof, and the notified Party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand.

16.4 Limits. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising

out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the County and the Alliance, their officers; employees, and agents, the County's and the Alliance's liability hereunder shall be only to the extent of the County's or the Alliance's respective negligence.

16.5 Waiver of Immunity. It is further specifically and expressly understood that the indemnification provided herein constitutes the Parties' respective waivers of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This **Subsection 16.5** has been specifically negotiated by the Parties.

17. Insurance.

17.1 Minimum Insurance. The Alliance shall maintain in full force and effect throughout the term of this Franchise, a minimum of Ten Million Dollars (\$10,000,000.00) liability insurance for property damage and bodily injury, including business automobile liability insurance for owned, non-owned and hired vehicles with limits of not less than One Million Dollars (\$1,000,000) per person, Two Million Dollars (\$2,000,000) per accident, and employers liability coverage with a limit of not less than One Million Dollars (\$1,000,000) per occurrence.

17.2 Self and Pooled Insurance. In satisfying the insurance requirement set forth in this **Section 17**, the Alliance may self-insure or insure under a state-approved risk pool against such risks in such amounts as are consistent with good utility practice. The Alliance shall provide the County with sufficient written evidence, the sufficiency of which shall be determined at the reasonable discretion of the County, upon request, that such insurance (or self insurance) is being so maintained by the Alliance. Such written evidence shall include, to the extent available from the Alliance's insurance carrier, a written certificate of insurance with respect to any insurance maintained by the Alliance in compliance with this **Section 17**.

17.3 Workers Compensation. The Alliance shall maintain Workers' Compensation insurance to the extent required by Title 51, RCW.

17.4 Maintenance of Coverage. The insurance policies required by this section shall be maintained at all times by the Alliance. Each liability policy shall be endorsed to require the insurer to notify the County at least forty-five (45) days before the policy can be canceled by either the insurer or the Alliance, and to require notice of cancellation due to non-payment of premium to be mailed to the County Public Works Director as well as the named insured. The Alliance will be obligated to replace or renew the canceled or expiring policy and show proof in the form of a certificate of insurance, at least twenty (20) days before the expiration or cancellation of the existing policy(s).

17.5 No Limitation. The insurance limits mandated for any insurance coverage required by this Franchise are not intended to be an indication of limits of exposure nor are they limitations on liability or indemnification.

18. Incorporation/Annexation.

18.1 City or Town. If any Public Rights-of-Way covered by this Franchise are incorporated into the limits of any city or town, this Franchise shall terminate as to such Public Rights-of-Way within the corporate limits of such city or town.

18.2 New County. If, pursuant to Article XI, §3, of the Washington Constitution, territory is stricken or taken from the County and a new county is established from the territory taken from the County, this Franchise shall terminate as to any Public Rights-of-Way within the territory so taken to establish the new county.

19. Notices. All notices and other communications under this Franchise 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.

20. Dispute Resolution.

20.1 Mediation. The Parties shall first attempt to resolve a dispute arising from this Franchise by discussions among a County representative or representatives selected by the Public Works Director and an Alliance representative or representatives selected by the Alliance, or by the Alliance 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. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties. The Parties reserve their rights to pursue any available equitable remedies at any time after the conclusion of the mediation.

20.2 Governing Law; Jurisdiction and Venue. This Franchise 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 Franchise only in the Superior Court of Clark County, Washington.

21. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the Parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the Parties upon execution and acceptance hereof.

22. Amendment.

22.1 Written Instrument. This Franchise may be amended only by written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington; provided, however, that this franchise will always be subject to and superseded where inconsistent with the County Code as such provision is enacted to protect the health or safety of County residents.

23. General.

23.1 Survival of Terms. The Parties' mutual obligations in **Section 16** ("Indemnification") of this Franchise shall survive the termination, expiration, revocation, or forfeiture of this Franchise.

23.2 Severability. If any term, provision, condition, or portion of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, such action shall not affect the validity or enforceability of the remaining portions of this Franchise.

23.3 Waiver. Waiver of any default shall not be deemed to be a waiver of any subsequent default. The failure of either Party to enforce any breach or violation by the other Party or any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching Party of any subsequent breach or violation of the same or any other provision of this Franchise, unless stated to be such through

written approval of the non-breaching Party and attachment of such written approval to this Franchise.

23.4 No Third Party Beneficiaries. The rights and obligations created by this Franchise are for the sole benefit of the Parties, their successors or assigns, and no person not a Party shall be a beneficiary, intended or otherwise, of any such rights or be entitled to enforce any of the obligations created by this Franchise.

23.5 Headings. Any headings to articles, sections, or paragraphs appearing herein are not part of the terms of this Franchise and shall not be interpreted as such.

24. Directions to the Clerk of the Board. Upon passage of the Resolution that grants this Franchise, the Clerk of the Board of Clark County Commissioners is authorized and requested to forward a certified copy of the Resolution to the Alliance. The Alliance shall have sixty (60) days from the receipt of the certified copy of the Resolution to accept in writing the terms of the Resolution and this Franchise.

25. Alliance Acceptance of Franchise. The Alliance shall have no rights under this Franchise nor shall the Alliance be bound by the terms and conditions of this Franchise unless the Alliance shall, within sixty (60) days after the effective date of the Resolution that grants this Franchise, file with the County its written acceptance of the Resolution and this Franchise.

26. Effective Date of Franchise. The terms and conditions of this Franchise shall not be binding on the County and the Alliance unless the Alliance Board of Directors adopts a resolution accepting this Franchise within sixty (60) days of the effective date of the Resolution, and the date of the adoption of such resolution by the Alliance Board of Directors shall be the effective date ("Effective Date") of this Franchise.

ADOPTED this 24 day of June, 2014.

Attest:

BOARD OF COUNTY COMMISSIONERS
Clark County, Washington

By: Anna Redlin
Deputy Clerk to the Board

By: Tom Mielke
Tom Mielke, Chair

APPROVED AS TO FORM ONLY:
Anthony F. Golik, Prosecuting Attorney

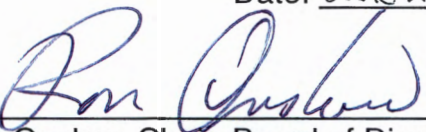
By: _____
David Madore, Commissioner

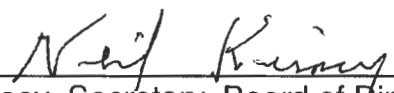
By: Christy Anne

By: _____
Edward L. Barnes, Commissioner

ACCEPTANCE:
DISCOVERY CLEAN WATER ALLIANCE,
a Washington municipal corporation

Date: June 27, 2014

By: 
Ron Onslow, Chair, Board of Directors

Attest: 
Neil Kimsey, Secretary, Board of Directors

Approved: 
Hugh D. Spitzer, Alliance Attorney