Board of Directors Agenda

Business Meeting
Friday, November 15, 2013, 10:00 a.m.
District Board Meeting Room, 8000 NE 52nd Court, Vancouver, WA 98665

Business Meeting

No | Item | Action/Info | Presenter | Time (minutes)
---|---|---|---|---
1. | Call To Order | | | |
2. | Flag Salute | | | |
3. | Late Additions to the Agenda | | | |
4. | Public Comment | INFORMATION | | 5
   This item is to provide an opportunity for citizen comment.
5. | Consent Agenda | ACTION | | 5
   5a. Board of Directors Meeting Minutes of October 18, 2013
   5b. Audit of Accounts
   5c. Debt Policy
6. | Reports | INFORMATION | | Spitzer 15
   6a. Draft Asset Transfer Agreement – Ridgefield Treatment Plant and Outfall
   6b. Draft Battle Ground Franchise Agreement
   6c. Third Quarter 2013 Financial Report
   6d. Transition Work Program Update
7. | Board Reports | INFORMATION | | 5
8. | Adjourn Meeting | | | |

Next Meeting:   Friday, December 20, 2013, 10:00 a.m., Business Meeting
District Board Meeting Room, 8000 NE 52nd Court, Vancouver, WA 98665

The Board provides reasonable accommodations to persons with disabilities. Please contact a staff member (by noon Thursday) if we can be of assistance. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Board by raising your hand.
Board of Directors Meeting
MINUTES
Friday, October 18, 2013, 10:00 a.m.
District Board Meeting Room, 8000 NE 52nd Court, Vancouver, WA 98665

Present:

City of Battle Ground: Adrian Cortes (alternate for Lisa Walters)
Clark County: Neil Kimsey
Clark Regional Wastewater District: John Peterson, Ken Andrews and Ridgefield: Steve Wall. Alliance Legal Counsel: Hugh Spitzer (via videoconference)

Staff: Battle Ground: Scott Sawyer; Clark County: Pete Capell; Clark Regional Wastewater District: Kim Thur, John Peterson, Ken Andrews and Ridgefield: Steve Wall. Alliance Legal Counsel: Hugh Spitzer (via videoconference)

Audience: Clark County: Kelly Sills, Deby Woods, John Payne; Clark Regional Wastewater District: Denny Kiggins, Norm Harker; Battle Ground: John Williams; Ridgefield: Lee Wells and Gaylynn Brien.
General Public: Ron Lauser.

Business Meeting

Call to order: Vice Chair Onslow called the meeting to order at 10:00 a.m.

1. Late Additions to the Agenda
Discussion: None.

2. Public Comment
Discussion: No one present wished to speak.

3. Consent Agenda
Action: Adrian Cortes moved, seconded by Neil Kimsey, to approve the Consent Agenda, approving September 20, 2013 meeting minutes, claim warrants #10010-10011 in the amount of $15,459.55 and Resolution #2013-12, the Investment Policy. Motion carried unanimously.

4. Draft Debt Policy
Discussion: Ken Andrews reviewed the draft Debt Policy for the second time. The Board had no further comments and directed staff to present the Debt Policy for approval on the November 15 Consent Agenda.

5. Regional Asset Values – Historical Cost and Net Book Value
Discussion: Ken Andrews reviewed the historical cost information and projected net book values for the real property, interceptors, force mains, pump stations and treatment plants scheduled to
transfer to the Alliance at January 1, 2015. The transferred assets’ historical cost of $162 million, less accumulated depreciation of $36 million and resulting net book value of $126 million, will be reflected as additions in Alliance financial statements in 2015, as well as subtractions from the Members’ financial statements in 2015.

6. Draft Asset Transfer Agreement – Ridgefield Treatment Plant and Outfall

Discussion: Hugh Spitzer presented the draft Ridgefield Asset Transfer Agreement for the Board’s review. Following brief discussion, John Peterson noted that the item will be presented for a second review at the November 15 Board meeting. Steve Wall noted that the item is also scheduled for review with Ridgefield City Council on November 7.

7. Transition Work Program Update

Discussion: John Peterson reviewed his staff report. Current work activities include: 1) financial analysis regarding existing debt, 3) asset transfer agreement development, 4) franchise agreement development, 5) property research and permit assignment work and 6) planning document review with Ecology. Mr. Peterson noted that all of the planning documents have now been approved by Ecology. Mr. Peterson briefly reviewed information regarding Ecology’s proposed permit fee increases.

8. Board Reports

Discussion: No report.

Scott Sawyer complimented the District for its recent assistance in support of the City. District personnel addressed an operational issue with the Battle Ground force main along NE 72nd Avenue on Sunday, September 29, 2013. The District assisted in a very timely manner and it was greatly appreciated by the City.

The meeting was adjourned at 10:37 a.m.
We, the undersigned Board of Directors of Discovery Clean Water Alliance, Clark County, Washington, do hereby certify that the merchandise and/or services hereinafter specified have been received and approved for payment in the amount of $7,088.65 this 15th day of November, 2013.

Director

Director

Director

Director

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Page Total: $7,088.65
Staff Report
Board Meeting of November 15, 2013

5c. Debt Policy

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<th>STAFF CONTACTS</th>
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<tr>
<td>Ken Andrews, CPA, Treasurer</td>
<td>360-993-8824</td>
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**PURPOSE:** A draft Debt Policy for the Alliance, prepared by the Finance Advisory Committee, has been brought forward to the Board for two touches, on September 20 and October 18. At the latter Board meeting, staff was instructed to submit the final Debt Policy for Board adoption via consent agenda on November 15.

Based on direction to staff at the October 18 Board of Director’s meeting, the Debt Policy is now being presented for adoption.

**ACTION REQUESTED:** Action by the Discovery Clean Water Alliance Board to adopt Resolution # 2013-13 and the Debt Policy.
A RESOLUTION OF DISCOVERY CLEAN WATER ALLIANCE, APPROVING THE
DEBT POLICY FOR THE DISCOVERY CLEAN WATER ALLIANCE.

WHEREAS, the Board of Directors has determined after the Finance Advisory Committee
held various policy-development meetings, that it is in the best interest of the Alliance to
approve the Debt Policy; now, therefore

BE IT RESOLVED by the Board of Directors of Discovery Clean Water Alliance that the
Debt Policy attached to this resolution is approved and adopted.

ADOPTED by the Board of Directors of Discovery Clean Water Alliance at a regular
meeting held on November 15, 2013.

DISCOVERY CLEAN WATER ALLIANCE

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Chair, Board of Directors
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SECTION I. INTRODUCTION

Purpose and Overview

The Debt Policy for Discovery Clean Water Alliance (Alliance) is established to help ensure that all new debt is issued both prudently and cost effectively. The Debt Policy sets forth comprehensive guidelines for the issuance and management of all financings of the Board of Directors (Board). Adherence to the policy is essential to ensure that the Board maintains a sound debt position and protects the credit quality of its obligations.

SECTION II. LEGAL GOVERNING PRINCIPLES

In the issuance and management of debt, the Alliance shall comply with the state constitution and with all other legal requirements imposed by federal, state, and local rules and regulations, as applicable. The following section highlights the legal framework of the debt issuance and roles and responsibilities in debt issuance.

Governing Law

State Statutes - The Alliance may contract indebtedness as provided for by RCW 39.106. Indebtedness is subject to the limitations on indebtedness provided for in RCW 57.20.110 or RCW 39.36.020 and Article VIII of the Washington State Constitution. Bonds evidencing such indebtedness shall be issued and sold in accordance with RCW 39.46. Under RCW 39.106 and the Alliance’s Interlocal Formation Agreement, borrowings for the Alliance may also be carried out by any Alliance Member, or by any Alliance Member on behalf of another Alliance Member.

Federal Rules and Regulations - The Alliance shall issue and manage debt in accordance with the limitations and constraints imposed by federal rules and regulations, including Internal Revenue Code of 1986, as amended; the Treasury Department regulations thereunder; the Securities Acts of 1933 and 1934 and the Municipal Securities Rulemaking Board.

Local Rules and Regulations - The Alliance shall issue and manage debt in accordance with the limitations and constraints imposed by local rules and regulations.
Permitted Debt by Type

The Alliance may legally incur debt using any of the debt instruments described below:

Revenue Bonds - The Alliance is authorized to sell Revenue Bonds pursuant to RCW 57.20.110 or such other applicable statute as approved by the Board.

Grant and Loan Programs for Wastewater Projects - The Alliance may qualify for financing from federal or state grant and loan programs which support construction of public wastewater facilities.

Short Term Debt - The Alliance is authorized to sell short-term debt, including variable rate bonds under RCW 39.50, subject to the approval of the Board.

Purpose for Borrowing

The Alliance shall incur long-term debt solely for the purpose of financing the cost of design, planning and permitting, acquisition and/or construction of capital projects relating to regional assets, as defined in a Capital Plan.

Revenue Bonds - The Alliance shall use Revenue Bonds for the purpose of financing construction or betterments to Regional Assets.

Federal or State Grants and Loans - Federal or State grants and loans shall be used for the purpose of financing construction or betterments to Regional Assets.

Short Term Debt - The Alliance shall use Short Term Debt for the purpose of covering operating expenses due to cash flow variation.

Consistent with Section VI.D. of the Interlocal Formation Agreement, borrowing for costs of Regional Assets, or for operating costs of the Alliance may be carried out by issuance of Bonds by the Alliance itself, or by or through any Member.

Limitations on Debt Issuance

Debt Coverage Ratio - The Alliance’s bond covenants for Revenue Bonds, including debt coverage ratios, should be determined so that they are consistent with the Interlocal Formation Agreement, Exhibit A, and so that they encourage favorable ratings and interest rates while taking into account the impact on the Members and their ratepayers.
Short-Term Debt - The Alliance's short-term debt, as a guideline, should not exceed 25% of its total debt capacity.

Roles and Responsibilities

Finance Advisory Committee - The Committee shall review and advise the Board regarding:
- Manner of sale of debt;
- Structure and type of debt to issue;
- Refunding opportunities;
- Changes in disclosure requirements;
- Annual report on debt outstanding.

The Board of Directors - The Board shall:
- Approve indebtedness;
- Approve appointment of independent financial advisor and bond counsel;
- Approve the Debt Policy;
- Approve budgets sufficient to provide for the timely payment of principal and interest on all debt; and
- In consultation with the Alliance’s financial advisor, Treasurer and bond counsel shall approve the most appropriate financing structure for a proposed bond sale.

Treasurer - The primary responsibility for debt management rests with the Treasurer. The Treasurer shall:
- Provide for the issuance of debt at the lowest possible cost and risk;
- Determine the available debt capacity;
- Provide for the issuance of debt at appropriate intervals and in reasonable amounts as required to fund approved capital expenditures and make recommendations to the Board;
- Recommend to the Board the manner of sale and structure of debt;
- Monitor opportunities to refund debt and recommend such refunding as appropriate;
- Comply with all Internal Revenue Service (IRS), Securities and Exchange Commission (SEC), and Municipal Securities Rulemaking Board (MSRB) rules and regulations governing the issuance of debt;
- Develop a post-issuance compliance policy with respect to tax-exempt obligations;
- Provide for the timely payment of principal of and interest on all debt; ensure that the fiscal agent receives funds for payment of debt service on or before the payment date;
- Provide for and participate in the preparation and review of offering documents;
• Provide for and participate in the preparation and review of disclosure documents;
• Comply with all terms, conditions and disclosures required by the legal documents governing the debt issuance(s);
• Submit to the Board all recommendations to issue debt;
• Distribute to appropriate repositories information regarding financial condition and affairs at such times and in the form required by law, regulation and general practice, including Rule 15c2-12 regarding continuing disclosure;
• Provide for the distribution of pertinent information to rating agencies and participate in all rating calls and visits;
• Maintain a current database with all outstanding debt;
• Apply and promote prudent fiscal practices;
• Compute, or oversee a third party vendors computation of arbitrage rebate on each issuance; and
• Invest bond fund proceeds until needed, generally based upon a cash flow projection associated with expenditure needs of the project(s)

**Ethical Standards Governing Conduct**

The Members of the Alliance and the Board will adhere to standards of conduct as stipulated by the following:

• Public Disclosure Act, RCW 42.17; and
• Ethics in Public Service Act, RCW 42.52.

**SECTION III. PROFESSIONAL SERVICES**

**Professional Services**

The Alliance shall procure professional services as required to execute financing transactions and, if necessary, to advise on non-transaction related work. Professional services may include Consultants (Financial Advisor, Legal Counsel -- Bond, Disclosure and Tax Counsel) and Service Providers (Trustee, Verification Agent, Printer, Arbitrage Agent and Letter of Credit Provider).

**Selection Process** - The selection of financial and legal professionals to assist the Alliance in carrying out financing programs should be made through a competitive process.
Appointment of Financial Advisor - The Alliance will select a financial advisor (or advisors) to assist in the issuance and administration of all debt. The firm(s) selected as financial advisor will provide a full range of advisory services in connection with the Alliance’s financing programs.

The recommendation of financial advisor selection will be made by the Treasurer in consultation with the Finance Advisory Committee (FAC), or by a selection committee, which includes a representative of the FAC.

A financial advisor will provide the Alliance with objective advice and analysis, maintain the confidentiality of Alliance's financial plans, and be free from any conflict of interest as defined by:

- Ethics in Public Service Act, RCW 42.52; and,
- Any other appropriate federal statute or regulation governing financial advisors.

A financial advisor under contract with the Alliance will not purchase or sell any Alliance debt until underwriting accounts are closed or debt is freed from underwriter pricing restrictions, whichever occurs first.

The fees paid to financial advisors shall be on an hourly or retainer basis. Unless otherwise justified, no fees shall be contingent on the sale of bonds or dependent upon the amounts of bonds sold.

The Treasurer shall submit to the Board a recommendation for the appointment of Financial Advisor(s). The recommendation shall be accompanied by an evaluation of options and a justification for the recommended course of action. The Treasurer shall monitor the services rendered by the Financial Advisor(s).

Appointment of Bond Counsel - All debt issued by the Alliance shall include a written opinion by legal counsel affirming that the Alliance is authorized to issue the proposed debt, that the Alliance has met all federal, state, and local legal requirements necessary for issuance and a determination of the proposed debt’s federal income tax status. This approving opinion and other documents relating to the issuance of debt shall be prepared by a nationally recognized legal firm with extensive experience in public finance and tax issues.

Unless otherwise justified, the appointment will be made from among nationally recognized law firms with significant operations in Washington State.

The firm selected as bond counsel will be expected to provide the full range of legal services required in connection with a) the successful issuance and delivery of the bond
issues ("Bonds") and b) on-going legal services for the Alliance ("Issuer") financing programs.

The recommendation of bond counsel selection will be made by the Treasurer in consultation with the FAC, or by a selection committee, which includes a representative of the FAC.

The General Counsel shall submit to the Board a recommendation for the appointment or when deemed reasonable, reappointment of Bond Counsel(s). The recommendation shall be accompanied by an evaluation of options and a justification for the recommended course of action.

A Bond Counsel under contract with the Alliance will not simultaneously represent any other party involving an Alliance's financing, unless a written dual representation conflict waiver is expressively obtained from the Alliance.

**Appointment of Verification Agent** - In conjunction with the sale of refunding bonds, the Treasurer shall procure the services of a verification agent. The purpose of the verification agent is to confirm that sufficient proceeds are escrowed to ensure the timely repayment of principal and interest on the bonds being refunded. The verification agent must be a nationally recognized provider of verification services. The selection of a verification agent shall be based upon a competitive process.

Selection criteria shall include, but not be limited to:

- Demonstrated ability to provide accurate verification of escrow funding accuracy;
- Demonstrated ability to provide timely reports; and
- Competitiveness of fees.

**Appointment of Underwriters** - If a negotiated sale is approved under Section IV below, the Treasurer shall select an underwriter(s). The selection of underwriters shall be based upon a competitive process. Criteria used in the appointment of qualified underwriters shall include, but not be limited to:

- Demonstrated ability serving on financial transactions with similar complexity to the transaction being planned;
- Demonstrated ability to structure a debt issue efficiently and effectively;
- Demonstrated ability to sell debt to institutional and retail investors;
- Demonstrated ability to put capital at risk;
- Experience and reputation of assigned personnel; and
- Fees and expenses.
Respondents shall present in their proposal a complete and detailed list of all proposed fees and expenses, including, but not limited to takedown, management fees, underwriting risk, and itemized not-to-exceed underwriting expenses to be paid by the issuer. The underwriting expense component must be finalized and approved by the Treasurer 48 hours prior to the day of pricing. The underwriting risk component will not be considered until after the order period closes.

The Treasurer with assistance from the independent financial advisor shall monitor the services rendered by the underwriter(s).

**Appointment of Escrow Agent** - The Treasurer shall, when deemed necessary or when required, e.g., in connection with bond refundings, procure the services of an escrow agent. The purpose of the escrow agent is to hold securities and/or funds that are to be delivered upon compliance with the conditions contained in an escrow agreement.

The selection of an escrow agent shall be based upon a competitive process.

**Appointment of Arbitrage Rebate Calculation Firm** - The Treasurer shall, when deemed necessary or when required, procure the services of an arbitrage rebate calculation firm. The purpose of the arbitrage rebate calculation firm is to provide arbitrage rebate compliance services in accordance with the Internal Revenue Code of 1986, as amended (“Code”).

The selection of an arbitrage rebate calculation firm shall be based upon a competitive process. The scope of services may include, but not be limited to, the following:

- Determine if the requirements of the spending exception applicable to a debt issue have been met;
- Prepare initial rebate calculations if the spending requirements are not met;
- Prepare annual computations to update the initial calculations as needed to determine the rebate amount as described in the Code;
- Prepare computations if proceeds remain following the temporary period as described in the Code to determine if any yield reduction payments are required; and
- Consult with the Treasurer as requested concerning arbitrage regulations and related issues including control procedures and industry practices.

Criteria used in the appointment of qualified arbitrage rebate calculation firm shall include, but not be limited to:

- Firm’s qualifications and experience in providing arbitrage rebate calculation services;
- Staff qualifications, tax expertise, and experience;
- Demonstrated ability to provide timely reports; and
- Cost of services.

SECTION IV. TRANSACTION-SPECIFIC POLICIES

Method of Sale

Presumption of Competitive Sale - When deemed appropriate by the Alliance to minimize the costs and risks of the Alliance’s debt issue, the issuance and sale of fixed rate Alliance debt shall be achieved by competitive bid.

Competitive Bid Method - Any competitive sale of Alliance debt will require approval of the Board. Alliance debt issued on a competitive bid basis will be sold to the bidder proposing the lowest true interest cost to the Alliance. Such bid may take the form of hand-delivered or electronically transmitted offers to purchase the bonds.

Negotiated Bid Method - When deemed appropriate to minimize the costs and risks of Alliance's debt issue, the Treasurer will submit to the Board a request to sell the debt issue on a negotiated basis.

If debt is sold on a negotiated basis, the negotiations of terms and conditions shall include, but not be limited to; prices, interest rates, underwriting, remarketing fees and commissions.

The Alliance, with the assistance of its Financial Advisor, shall evaluate the terms offered by the underwriting team. Evaluations of prices, interest rates, fees and commissions shall include prevailing terms and conditions in the marketplace for comparable issuers.

If more than one underwriter is included in the negotiated sale of debt, the Alliance shall establish appropriate levels of liability, participation and priority of orders.

The Treasurer shall, with the assistance of its Financial Advisor, oversee the bond allocation process. The bond allocation process shall be managed by the lead underwriter, with the following requirements:

- The bonds are allocated fairly among members of the underwriting team, consistent with the previously negotiated terms and conditions;
- The allocation process complies with all Municipal Securities Rulemaking Board regulations governing order priorities and allocations; and
- The lead underwriter shall submit to the Treasurer a complete and timely account of all orders, allocations and underwriting activities.
The Treasurer shall require a post-sale analysis and reporting for each negotiated bond sale. The independent Financial Advisor shall perform such analysis and provide a final pricing analysis by the day of the closing. A post-sale analysis will include, but not be limited to:

- Summary of the pricing, including copies of the actual pricing wires;
- Results of comparable bond sales in the market at the time of the Alliance’s pricing;
- Detailed information on a) orders and allocation of bonds, by underwriting firm, b) detailed information on final designations earned by each underwriter, and c) a summary of total compensation received by each underwriter; and
- Historic comparisons to Municipal Market Data indexes -- day of sale basis.

No debt issue will be sold on a negotiated basis without an independent financial advisor.

**Private Placement** - When deemed appropriate to minimize the costs and risks of Alliance's debt issue, the Treasurer will submit to the Board a request to sell the debt issue through private placement.

**Structural Elements**

**Maturity** - The Alliance shall issue debt with an average life less than or equal to the average life of the assets being financed. Unless otherwise stated in law, the final maturity of the debt shall be not longer than 40 years.

**Debt Service Structure** - Unless otherwise justified and deemed necessary, debt service should be structured on a level basis. Refunding bonds should be structured to produce equal savings by fiscal year. Unless otherwise justified and deemed necessary, debt shall not have capitalized interest. If appropriate, debt service reserve funds may be used for revenue bonds.

**Maturity Structure** - The Alliance’s long-term debt may include serial and term bonds. Unless otherwise justified, term bonds should be sold with mandatory sinking fund or annual redemption requirements.

**Price Structure** - The Alliance’s long-term debt may include par, discount, and premium bonds. Discount and premium bonds must be demonstrated to be advantageous relative to par bond structures, given applicable market conditions.

**Coupon Type** - Unless otherwise justified and deemed necessary, long-term debt will be sold using current interest coupons. If justified and deemed necessary, capital appreciation bonds (zero coupon bonds) may be issued.

**Redemption Features** - For each transaction, the Alliance shall evaluate the costs and benefits of call provisions.

**Bond Insurance** - For each transaction, the Alliance shall evaluate the costs and benefits of bond insurance or other credit enhancements. Any credit enhancement purchases by the Alliance shall be competitively procured.
**Tax-exemption** - Unless otherwise justified and deemed necessary, the Alliance shall issue its debt on a tax-exempt basis.

**Pledge of revenues** - The Alliance’s pledge of revenues shall be determined for each debt issue depending upon the debt instrument:

- **Revenue Bonds**: Revenue Bonds of the Alliance shall be repaid from specified revenues, as defined in the authorizing Agreement.

### SECTION V. COMMUNICATION POLICIES

**Rating Agencies**

The Treasurer shall manage relationships with the rating analysts assigned to the Alliance’s credit, using both informal and formal methods to disseminate information. Communication with the rating agencies shall include:

- Full disclosure, on an annual basis, of the financial condition of the Alliance;
- A formal presentation, on a regular basis, to the rating agencies, covering economic, financial, operational and other issues that impact the Alliance’s credit;
- Timely disclosure of any financial events that may impact the Alliance’s credit;
- Timely dissemination of the Annual Financial Report, following its adoption; and
- Complete and timely distribution of any documents pertaining to the sale of bonds.

**Credit Objective**

The Alliance shall seek to maintain an investment grade credit rating of AA for revenue bonds.

**Bond Insurers**

The Treasurer shall manage relationships with the analysts at the bond insurers assigned to the Alliance’s credit, using both informal and formal methods to disseminate information.

### SECTION VI. COMPLIANCE POLICIES

**Investment of Proceeds**

**General** - The Alliance shall comply with all applicable Federal, State, and contractual restrictions regarding the investment of bond proceeds, including the Alliance’s Investment
Policy. This includes compliance with restrictions on the types of investment securities allowed, restrictions on the allowable yield of some invested funds as well as restrictions on the time period over which some bond proceeds may be invested.

**Refunding Escrow** - Unless otherwise justified and deemed necessary the Alliance shall utilize State and Local Government Series (SLGS) for the refunding escrow. SLGS are special series of U.S. Treasury securities.

If open market securities are deemed appropriate the Alliance shall in consultation with bond counsel comply with each of the following:

a) Securities purchased in the open market shall contain at least three bona fide bids from sellers that have no involvement in the pricing of the issue; and
b) Utilize the verification agent to make certain that the escrow remains intact.

**Arbitrage Liability Management**

Because of the complexity of arbitrage rebate regulations and the severity of non-compliance penalties, the Alliance shall solicit the advice of bond counsel and other qualified experts about arbitrage rebate calculations. The Alliance shall, when deemed necessary or when required, contract with a qualified third-party for preparation of the arbitrage rebate calculation.

The Alliance shall maintain an internal system for tracking expenditure of bond proceeds and investment earnings. The expenditure of bond proceeds shall be tracked in the financial accounting system by issue. Investments may be pooled for financial accounting purposes and for investment purposes. When investment of bond proceeds are co-mingled with other investments, the Alliance shall adhere to IRS rules on accounting allocations.

The Treasurer shall develop a post-issuance compliance policy detailing the Alliance’s procedures for complying with applicable regulations relating to tax-exempt obligations.

**Continuing Disclosure**

The Alliance shall comply with SEC 15c2-12 regulations, which require municipal debt issuers to provide specified financial and operating information for fiscal years beginning on or after January 1, 1996. The Treasurer shall be the Compliance Officer for disclosure requirements.

**Bond Users Clearinghouse**

The Alliance shall ensure that the Bond Users Clearinghouse receives municipal bond information for all debt sold as provided by RCW 39.44.200 39.44.240 and WAC 365-130. The information requested by RCW 39.44.210.
**Legal Covenants**

The Alliance shall comply with all covenants and conditions contained in governing law and any legal documents entered into at the time of a bond offering.

**SECTION VII. OTHER POLICIES**

**Refunding**

Refundings will be conducted in accordance with the Refunding Bond Act, RCW 39.53. Unless otherwise justified, the Alliance will refinance debt to achieve true interest cost savings as market opportunities arise. Net present value savings should be 3% or greater. Refundings may also be conducted in order to better align debt service payments with future Alliance cash flow needs.

**Selection of maturities to be refunded** - unless otherwise justified, all callable maturities of an issue will be included in a refunding.

**Derivative Products**

No derivative products will be utilized unless permitted by law, and not without prior Board approval. No derivative products shall be utilized without an analysis by an independent financial advisor. No derivative products shall be used for the purpose of interest rate speculation.

**Alternative Financings Schemes**

The Alliance shall not utilize alternative financing schemes to avoid restrictions imposed by law or to utilize tax loop-holes. Specifically, the “On Behalf Of” or 63-20 financings alternative financing schemes shall not be utilized by the Alliance.

**Evaluating Capital Plan and Capital Budget Spending**

The Alliance shall integrate its debt issuance with its Capital Plan and Capital Budget spending. Annually the Finance Advisory Committee shall discuss the need for debt financing and the Treasurer shall, as needed, prepare a written report on the status of spending of the Capital Plan and Capital Budget and the need for debt. The report should include:

- Projected Capital Budget requirements, collected from the Capital Plan;
- Projected near term financing needs;
- Projected near term available resources, including cash, and bond proceeds; and
• An analysis showing the impact of the proposed financing on revenues.

**Modeling the Impact of Capital Plan Needs**

The Alliance shall develop and maintain an Operations Budget and Capital Budget financial model to evaluate the impact of Capital Plan spending, operations and maintenance costs, and debt service on its financial condition. To that end, the Treasurer shall oversee the ongoing maintenance of quantitative modeling that includes, but is not limited to, the following:

• Historic and projected cash flows for capital and operating expenditures;
• Historic and projected fund balances;
• Historic and projected debt service coverage; and
• Projected revenue requirements.

**Accounting for the Issuance of Debt**

The Alliance shall account for the issuance of debt using generally accepted accounting principles (“GAAP”) as established by the Governmental Accounting Standards Board (“GASB”), consistent with state law and procedures adopted by the State Auditor. Cost of issuance shall be reported as an expenditure rather than netted against proceeds.

**Debt Policy Review**

The Alliance shall review and update its debt policy every two to four years.
Staff Report

Board Meeting of November 15, 2013

6a. Draft Asset Transfer Agreement – Ridgefield Treatment Plant and Outfall

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<tr>
<td>Hugh Spitzer, Foster Pepper, Alliance Legal Counsel</td>
<td>206-447-8965</td>
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<tr>
<td>Steve Wall, Ridgefield Public Works Director</td>
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</tr>
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<td>John M. Peterson, P.E., District General Manager</td>
<td>360-993-8819</td>
<td><a href="mailto:jpeterson@crwwd.com">jpeterson@crwwd.com</a></td>
</tr>
</tbody>
</table>

PURPOSE: As the Board is aware, one of the most important tasks of the transition work program is to prepare agreements to effect the transfer of the various Regional Assets to the Alliance.

For the last several months, research and agreement development efforts have been ongoing for Regional Asset No. 8 - the Ridgefield Treatment Plant and Outfall. The primary architecture of the proposed asset transfer agreement is as follows:

- **Asset Transfer Agreement.** This document provides the framework for the initial transfer of treatment plant assets from Ridgefield to the Alliance, clarifying what will specifically be owned by the Alliance and what will remain in City ownership.

- **Schedule 2.1 – Ground and Capital Lease.** Because the City of Ridgefield will retain long-term ownership of the real property rights associated with the treatment plant parcels, the City will provide a “ground lease” to the Alliance to possess the property. A separate long-term “capital lease” is provided to meet accounting standards for transfer of the wastewater treatment facilities located on that property. This document also provides for several other ongoing arrangements that are important in the long-term contractual relationship between the Alliance and the City, including joint access to shared spaces, certain operational standards and proper allocation of utility and service costs.

- **Schedule 2.2 – Personal Property Bill of Sale.** This document provides a formal Bill of Sale for all personal property transferred by the City to the Alliance.

- **Schedule 2.3 - Contract and Intangibles Assignment.** This document formally assigns existing contract rights of the City to the Alliance.
A first draft of these documents was reviewed with the Board on October 18. Staff has been soliciting comments from interested stakeholders and the following minor changes have been made in these documents based on review by the Standing Committees, the Port of Ridgefield and the Administrative Lead:

- **Asset Transfer Agreement.** Sections 6.2, 6.3, 7.8 and 11 have been modified to clarify the effective transfer date of January 1, 2015 and to provide language that is fully compatible with the previously approved Operator Agreement.

- **Ground and Capital Lease.** Sections 14, 15.2, 15.7 and 21 have been modified to reflect more clearly the interaction with the Port of Ridgefield on future access road extensions, the hazardous waste cleanup project recently completed near the treatment plant and insurance requirements compatible with the operator agreement framework. Exhibit 2.1B was also updated to reflect updated information on property line location for the treatment plant site.

This staff report represents the second touch with the Alliance Board of Directors on this asset transfer agreement. In addition, the Ridgefield City Council will consider this document at a study session on November 7, 2013.

Foster Pepper staff will be available by video conference to address questions and comments from the Board. Pending the outcome of the discussion, staff anticipates a third touch at the December Board meeting prior to bringing the agreement forward for approval in January 2014.

**ACTION REQUESTED:** Review of and policy direction for the draft asset transfer agreement.
CITY OF RIDGEFIELD AND DISCOVERY CLEAN WATER ALLIANCE RIDGEFIELD TREATMENT PLANT AND OUTFALL TRANSFER AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF RIDGEFIELD, Clark County, Washington (the "City") and the DISCOVERY CLEAN WATER ALLIANCE, Clark County, Washington (the "Alliance"), each a Washington municipal corporation (collectively, the "Parties").

RECITALS

A. On September 27, 2012, Clark County, Clark Regional Wastewater District, the City of Ridgefield and the City of Battle Ground (collectively, the "Alliance Members") entered into the "Discovery Clean Water Alliance Interlocal Formation Agreement" (the "Alliance Agreement"). The Alliance Agreement provides for the formation of the Alliance, pursuant to the Joint Municipal Utility Services Act, Chapter 39.106 RCW. On January 4, 2013, the Alliance Agreement was filed with the Washington Secretary of State and the Alliance was formed.

B. The purpose of the Alliance is to jointly provide regional wastewater transmission and treatment services to Alliance Members and other contracting municipal wastewater utilities.

C. Section VII of the Alliance Agreement expresses an assumption that the City will transfer to the Alliance the City's wastewater treatment facility and outfall, originally constructed in 1959, with the most recent upgrade having been completed in 2006, as an Initial Regional Asset listed in Exhibit B of the Alliance Agreement.

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

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

F. RCW 39.106.060 authorizes the City to transfer real or personal property or property rights to the Alliance with or without receipt of payment or other consideration.

G. Pursuant to Section VII.D of the Alliance Agreement, the Alliance may assume liabilities in connection with the receipt of Regional Assets.
H. Consistent with the Alliance Agreement, and pursuant to RCW 39.106.040 and 39.106.060, the Alliance and the City desire to enter this Agreement to set forth the terms and conditions of the transfer of the City’s wastewater treatment facility and outfall from the City to the Alliance.

I. The City Council approved execution of this Agreement and the schedules attached hereto by Ordinance No.______ on the ___ day of ________, ____. The Alliance Board of Directors approved execution of this Agreement and the schedules attached hereto by Resolution No. ____ on the ___ day of ________, ____.

AGREEMENT

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

1. Definitions. Unless otherwise provided in this Agreement, capitalized terms shall have the same meanings as the terms that are defined in the “Definitions” section of the Alliance Agreement. For purposes of this Agreement, the portion of the City’s Limited Tax General Obligation and Refunding Bonds, 2006 (the “2006 Bonds”) and any bonds refunding the 2006 Bonds, that are equal to the original share of the 2006 Bond proceeds that were allocated to finance costs of the RTPO Improvements, are referred to herein as the “Alliance Assumed Obligations.”

2. Property Transfers. Subject to the terms and conditions of this Agreement, including all attached Schedules and Exhibits, and in consideration of the benefits described in the Recitals above, the City agrees to transfer, convey, assign, and deliver to the Alliance, and the Alliance agrees to accept from the City, the City’s wastewater treatment plant and outfall, and certain personal property, rights and intangibles, and cash reserves associated thereto (collectively referred to as the “Ridgefield Treatment Plant and Outfall System” or the “RTPO System”), as more specifically described as follows:

2.1 RTPO Improvements. The City agrees to ground lease the RTPO Premises and capital lease the City’s wastewater treatment plant and outfall to the Alliance, pursuant to a Ground and Capital Lease substantially in the form attached as Schedule 2.1 (the “RTPO Ground and Capital Lease”), which shall include the following improvements to real property: (i) a secondary treatment plant; (ii) an influent pumping station; (iii) headworks with screening, sampling and flow measurement equipment; (iv) a grit removal system; (v) an aeration system composed of a distribution structure, two aeration basins and related blower equipment; (vi) a secondary clarification system composed of two circular clarifiers and related return/waste activated sludge pumping stations; (vii) an ultraviolet disinfection system with effluent sampling and flow measurement; (viii) a river outfall composed of a 10-inch diameter concrete pipe flowing approximately 0.2 miles westerly and terminating in Lake River with a submerged diffuser assembly located at latitude 45.82150 and longitude -122.75402; (ix) a solids treatment
process consisting of two aerobic digesters and a sludge storage basin; (x) plant support systems consisting of a non-potable water system, a plant drain pump station, an auxiliary generator for backup power, an equipment building, laboratory and office buildings, and supporting site, instrumentation and control, and electrical and mechanical systems; and (xi) all improvements, upgrades, and appurtenances now existing or in the process of construction that comprise of or are used by the secondary treatment plant and the west routed 10-inch diameter outfall pipeline. (The items described in clauses (i) through (xi) of this Section 2.1 are collectively referred to as the “RTPO Improvements”).

2.2 RTPO Personal Property. Subject to Section 3.2 of this Agreement, the City shall convey to the Alliance those items that have been purchased solely through funds dedicated to the RTPO System and used exclusively for the RTPO System, including the following personal property pursuant to a Bill of Sale substantially in the form attached as Schedule 2.2 (the “Bill of Sale for RTPO Personal Property”): (i) all laboratory equipment and supplies purchased for and stored in the on-site laboratory; (ii) all tools and specialized equipment purchased for or required for operation and maintenance of the RTPO Improvements; (iii) all spare parts purchased for or furnished by equipment manufacturers for the treatment plant; (iv) all fixtures, furniture, furnishings, appliances and related items purchased for or routinely used in the operation of the treatment plant; and (v) all forms of documentation associated with the RTPO Improvements including, but not limited to, reports, plans, specifications, estimates, designs, drawings, maps, surveys, construction records, photos, documentation, operation and maintenance manuals and correspondence associated with the RTPO Improvements, any component thereof, and any existing, in-progress or proposed parts of the RTPO Improvements. (The items described in clauses (i) through (v) of this Section 2.2 are collectively referred to as the “RTPO Personal Property”).

2.3 RTPO Contracts and Intangibles. To the extent transferable by the City, the City shall assign to the Alliance the following contracts and intangibles pursuant to an Assignment of Contracts and Intangibles substantially in the form attached as Schedule 2.3 (the “Assignment of RTPO Contracts and Intangibles”): (i) all warranties or guarantees connected with the construction of all or part of the RTPO Improvements and connected with the construction or purchase of the RTPO Personal Property; (ii) all permits relating to the ownership or operation of the RTPO Improvements and the RTPO Personal Property; and (iii) all rights and duties under any other existing contracts relating to the RTPO Improvements and the RTPO Personal Property, including, but not limited to, the City’s State Revolving Fund Loans. (The items described in clauses (i) through (iii) of this Section 2.3 are collectively referred to as the “RTPO Contracts and Intangibles”).

2.4 Cash Reserves. The City shall convey to the Alliance all rights, title, and interest in all of the cash reserves attributable to the RTPO System (the “Cash Reserves”). At Closing, the Alliance may require the City to transfer all Cash Reserves to the Alliance pursuant to wire instructions as provided by the Alliance on or about the
Closing Date. Consistent with Section 11 of this Agreement, the Alliance shall designate sufficient cash reserves for the City to operate the RTPO System.

3. Property Retentions. Subject to the terms and conditions of this Agreement, including all attached Exhibits, the City shall retain a right, title, and interest in certain real property, personal property, and cash reserves, as more specifically described as follows:

   3.1 RTPO Premises. The City shall retain title to the underlying real property and the easements on which the RTPO Improvements are located, which consist of approximately 130,450 square feet (2.995 acres), more particularly described in Exhibit 2.1.A of Schedule 2.1 and graphically depicted for illustrative purposes on the diagram attached as Exhibit 2.1.B of Schedule 2.1, together with and subject to all appurtenances, easements, rights-of-way, and right-of-access licenses thereto, including, but not limited to, those attached to Exhibit 2.1.C of Schedule 2.1 (collectively, the “RTPO Premises”). In the event of a conflict between this Agreement and the RTPO Ground and Capital Lease relating to the RTPO Premises, the RTPO Ground and Capital Lease shall control.

   3.2 Operator Personal Property. Subject to Section 10.3 of this Agreement, the City shall retain all rights, title, and interest in those items that have been purchased in whole or in part with funds that are not solely dedicated to the RTPO System and are used for general or multiple City operations functions, including, but not limited to, (i) all vehicles and other rolling stock and (ii) all information technology systems including, but not limited to, hardware, software and related enterprise systems required for operation of the RTPO Improvements and the City’s Water Utility. (The items described in clauses (i) through (ii) of this Section 3.2 are collectively referred to as the “Operator Personal Property”).

4. Liabilities.

   4.1 Assignment of RTPO Liabilities. The Alliance shall assume only those liabilities listed on the Assignment of RTPO Contracts and Intangibles (Schedule 2.3 of this Agreement) and the Alliance Assumed Obligations under Section 7 of the RTPO Ground and Capital Lease (Schedule 2.1 of this Agreement). Any and all other liabilities and obligations of the City shall continue to be obligations of the City.

   4.2 Transfer Price. Subject to Section 4.1 of this Agreement, the Alliance shall not pay any monetary consideration for the RTPO System. The Alliance and the City shall each pay for their own costs and expenses to prepare this Agreement and to carry out the transfer of the RTPO System.

5. Effective Date. For purposes of this Agreement, Mutual Acceptance of this Agreement (the “Date of Mutual Acceptance”) shall occur on the date that the last person of both Parties has executed this Agreement. The effective date of this Agreement shall be the Date of Mutual Acceptance.
6. **Closing and Possession.**

6.1 **Acceptance of Transfer Documents.** The City Manager and the Chair of the Alliance Board of Directors shall execute this Agreement, the RTPO Ground and Capital Lease (Schedule 2.1 of this Agreement), the Bill of Sale for RTPO Personal Property (Schedule 2.2 of this Agreement), and the Assignment of RTPO Contracts and Intangibles (Schedule 2.3 of this Agreement) on or before December 15, 2014.

6.2 **Closing Date.** The RTPO System transfer shall close on December 31, 2014January 1, 2015 (the “Closing” or “Closing Date”).

6.3 **Possession.** The Alliance shall be entitled to possession of the RTPO System at 11:59 p.m. on the Closing Date.

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

7.1 **Easements; Access Agreements.** The Alliance shall have an easement or easement rights through Port of Ridgefield Property for the purposes of installing, maintaining, and operating the river outfall pipeline in a form acceptable to the Alliance. The Alliance shall have an access license or access rights through Port of Ridgefield property for the purposes of installing, maintaining, and operating the RTPO System in a form acceptable to the Alliance.

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

7.3 **Inspections.** The Alliance shall have completed, to the Alliance’s satisfaction, any and all inspections and reviews of the RTPO System, as the Alliance desires. Upon request by the Alliance, a representative of the City shall provide the Alliance a tour of the RTPO System and shall show the Alliance the physical location of each component of the RTPO System. The City shall make all of its records and documents relating to the RTPO System available at reasonable times for the Alliance to review and inspect.

7.4 **City Records.** The City shall have delivered to the Alliance all records and documents that are requested by the Alliance and that relate to the RTPO System,
including but not limited to the records described in **Sections 2.2 and 2.3** of this Agreement.

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

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

7.7 **Consents for Transfer.** The City shall have obtained any and all consents, assignments, and approvals required to convey the City’s entire interest in the RTPO System.

7.8 **Labor Contract.** The City represents and warrants that it has satisfied any collective bargaining duties and obligations related to this Agreement and to City employees operating the RTPO System as of the Closing Date. The City shall defend, indemnify, and hold harmless the Alliance, its officers, officials, employees, and volunteers from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of, resulting from, or related to the bargaining relationship between the Alliance and the union, or its successor, which represents City employees operating the RTPO System. Unless agreed otherwise by the Parties, any agreement or understanding between the City and the union that represents City employees operating the RTPO System shall allow for but not require the Alliance to hire such City employees. Upon the expiration or termination of the “City of Ridgefield and Discovery Clean Water Alliance Operator Agreement” ("Ridgefield Operator Agreement"), attached as **Exhibit A**, City employee hiring shall be subject to the “best reasonable efforts” provided in **Section 7** therein.

8. **Representations and Warranties of the City.** The City represents and warrants to the Alliance as follows:

8.1 **Organization and Authority.** The City has the right, power, and authority to enter into this Agreement, to execute all documents and instruments contemplated by this Agreement, to consummate this transaction, and to perform all other obligations to be performed by the City under this Agreement. The execution, delivery, and performance of this Agreement and all agreements, documents, and instruments contemplated by this Agreement have been duly authorized by all necessary action on the part of the City. Prior to Closing, the City shall provide to the Alliance certified copies of ordinances and resolutions authorizing this transfer and the execution, acknowledgment, delivery, and performance of this Agreement and all agreements, documents, and instruments contemplated by this Agreement.
8.2 Title to Assets. Except as otherwise disclosed to the Alliance in writing, as of the Date of Mutual Acceptance, the City has good and marketable title to all of the components of the RTPO System. None of the components of the RTPO System are subject to any mortgage, pledge, lien, conditional sale, title redemption agreement, lease, encumbrance, or other claim or charge that will not be discharged at Closing, except for covenants and pledges related to the assumed liabilities on Schedule 2.3 of this Agreement and, without limitation, the Alliance Assumed Obligations on Schedule 2.1 of this Agreement.

8.3 No Litigation. There are no judgments against the City relating to its interest in or operation of the RTPO System. There are no pending actions, suits, claims, or proceedings against the City relating to its interest in or operation of the RTPO System, or challenging the transfer of the RTPO System to the Alliance or the validity of this Agreement, and to the City’s Knowledge, there are no such threatened actions, suits, claims, or proceedings. Whenever used in this Agreement, “City’s Knowledge” shall mean the knowledge of any City Councilmember, the City Manager, the City Public Works Director, or the City Attorney.

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


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

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

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

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

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

10.1 **Agreement Changes.** Except for agreements entered into between the City and the Alliance, prior to Closing the City shall not make or agree to any changes in the City’s agreements or leases relating to the RTPO system without the prior written approval of the Alliance.

10.2 **New Contracts.** Prior to Closing, the City shall not enter into any agreement or commitment relating to the RTPO System that is not terminable at will without prior written approval of the Alliance.

10.3 **Operation and Maintenance.** Prior to Closing, the City shall operate, maintain and repair the RTPO System at the City’s sole expense so that the RTPO System remains in the same condition as its condition on the Date of Mutual Acceptance, except for ordinary wear and tear. The City shall comply with the minimum levels of service and basic operating standards consistent with customary practices for wastewater facilities in Washington State of the type comprising the RTPO System. The City shall use Operator Personal Property to operate the RTPO System. Without the prior written consent of the Alliance, the City shall not make any improvements to the RTPO System or undertake construction on any part thereof, except for minor emergency repairs or maintenance conducted in the ordinary course of business and operation of the RTPO System. The Alliance shall have the right to inspect, and have a representative present during, any improvement or construction (including, if practicable, emergency repairs) performed on the RTPO System between the Date of Mutual Acceptance and the Closing Date.

10.4 **Damage to the RTPO System.** Prior to Closing, if any of the RTPO System identified in **Schedules 2.1, 2.2 and 2.3** of this Agreement is damaged between the Date of Mutual Acceptance and the Closing Date (other than normal wear and tear), the City shall repair or replace the same at the City’s sole cost and expense or upon terms agreed to by the Alliance.

10.5 **Condition of the RTPO Premises.** Prior to Closing, the terms of the RTPO Ground and Capital Lease shall govern new contracts or agreements, changes in existing
contracts, agreements, leases, franchises, licenses, or other rights or obligations, and any damage between the Date of Mutual Acceptance and the Closing Date (other than normal wear and tear) to the RTPO Premises.

10.6 Use of Cash Reserves. Prior to closing, the City shall deposit the Cash Reserves into a separate City fund or account consistent with Alliance financial policies. The City shall use the Cash Reserves, plus any applicable interest, only for the operation of the RTPO System and the management and implementation of repairs or upgrades to the RTPO System for individual projects or contracts of up to $50,000 or as otherwise limited by the Alliance Board (such value to be indexed to the Engineering News Record construction index for Seattle). Upon request of the Alliance, the City shall provide to the Alliance a statement of expenditures from the Cash Reserves.

11. Operation and Maintenance of the RTPO System. After Closing, it is expected that the City will operate and maintain the RTPO System under the terms of the “City of Ridgefield and Discovery Clean Water Alliance Operator Agreement” (“Ridgefield Operator Agreement”), attached as Exhibit A.

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

13. Challenges to RTPO System Transfer or System Compensation. If after Closing an action or lawsuit is filed against the City, the Alliance, or both, challenging the transfer, ownership, operation, or maintenance of the RTPO System pursuant to this Agreement, or the Alliance’s payment of compensation for the RTPO System or the RTPO Ground and Capital Lease, the Parties shall defend such action or lawsuit, sharing equally all costs and expenses of such defense. If the action or lawsuit is filed against only one Party, the Party to the action or lawsuit shall support and concur in the other Party’s request to join in the action or lawsuit. If any court of competent jurisdiction determines that the transfer, ownership, operation, or maintenance of the RTPO System pursuant to this Agreement is invalid, either Party may terminate this Agreement. Upon that termination, the Alliance shall return the RTPO System to the City by appropriate documents in forms substantially similar to the forms used to effect this Agreement; provided, that if the Alliance has constructed or installed improvements or acquired additional rights with respect to the RTPO System, the City shall pay the Alliance for the original cost, less depreciation, of such improvements or additional rights by a method or plan agreed to by the Parties.
14. **Records review.** Upon three (3) business days notice, or upon notice agreed upon by the Parties, a Party shall have the right to inspect and copy, with charges limited to reasonable copying costs, all records of the other Party relating to this Agreement or its subjects.

15. **Indemnification.**

15.1 **Defend, Indemnify, and Hold Harmless.** To the maximum extent permitted by law, each Party shall defend, indemnify, and hold harmless the other Party, and all of its officials, employees, principals, and agents, from any and all claims, demands, suits, actions, fines, penalties, and liability of any kind, including injuries to persons or damages to property, which arise out of or are related to any negligent acts, errors, and omissions of the indemnifying Party and its contractors, employees, agents, and representatives in performing obligations under this Agreement. However, if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the Alliance or its contractors, employees, agents, or representatives, and the City or its contractors or employees, agents, or representatives, each Party’s obligation hereunder applies only to the extent of the negligence of such Party or its contractors, employees, agents, or representatives.

15.2 **Industrial Insurance.** This Section 15 is specifically and expressly intended to constitute a waiver of each Party’s immunity under industrial insurance, Title 51 RCW, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor’s employees. This waiver has been mutually negotiated.

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

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

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

with a copy to:

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

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

18. **Severability.** If any section or part of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such action shall not affect the validity or enforceability of any other section or part of this Agreement.

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

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

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

22. **No Joint Venture.** No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or
subcontractors shall be deemed, or represent themselves to be, employees of the other Party.

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

24. **Enforcement; Prevailing Party Costs.** In addition to the remedies provided by law, this Agreement shall be specifically enforceable by either Party. If either Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs, and expenses shall be recoverable by the prevailing Party.

25. **Counterparts.** This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated agreement.
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives.

CITY OF RIDGEFIELD

Phil Messina, City Manager
Date: _____________________

Attest:

Lee Knottnerus, City Clerk

DISCOVERY CLEAN WATER ALLIANCE

Lisa Walters, Chair, Board of Directors
Date: _____________________

Attest:

Neil Kimsey, Secretary, Board of Directors

Approved as to form:

Janean Parker, City Attorney

Approved as to form:

Hugh D. Spitzer, Alliance Attorney
Schedule 2.1: Ridgefield Treatment Plant and Outfall Ground and Capital Lease
RIDGEFIELD TREATMENT PLANT AND OUTFALL
GROUND AND CAPITAL LEASE

GRANTOR: City of Ridgefield,
a Washington municipal corporation

GRANTEE: Discovery Clean Water Alliance,
a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTION: #85, #94, #104, #119 and #120, James Carty DLC, situated in Clark County, Washington.

ASSESSOR’S TAX PARCEL ID NOs.: 986028-601, 68373-000, 68363-000, 68354-000 and 68389-000

Complete legal description on Exhibit A.
SCHEDULE 2.1: RIDGEFIELD TREATMENT PLANT AND OUTFALL GROUND AND CAPITAL LEASE

THIS LEASE AGREEMENT ("Lease") is made and entered into as of the ____ day of __________, ____ by and between the CITY OF RIDGEFIELD, Clark County, Washington (the "City" or the "Lessor") and the DISCOVERY CLEAN WATER ALLIANCE, Clark County, Washington (the "Alliance" or the "Lessee"), each a Washington municipal corporation (collectively, the “Parties”).

RECITALS

A. On September 27, 2012, Clark County, Clark Regional Wastewater District, the City of Ridgefield and the City of Battle Ground (collectively, the “Alliance Members”) entered into the “Discovery Clean Water Alliance Interlocal Formation Agreement” (the “Alliance Agreement”). The Alliance Agreement provides for the formation of the Alliance, pursuant to the Joint Municipal Utility Services Act, Chapter 39.106 RCW. On January 4, 2013, the Alliance Agreement was filed with the Washington Secretary of State and the Alliance was formed.

B. The purpose of the Alliance is to jointly provide regional wastewater transmission and treatment services to Alliance Members and other contracting municipal wastewater utilities.

C. Section VII of the Alliance Agreement expresses an assumption that the City will transfer to the Alliance the City’s wastewater treatment facility and outfall, originally constructed in 1959, with the most recent upgrade having been completed in 2006, as an Initial Regional Asset listed in Exhibit B of the Alliance Agreement.

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

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

F. RCW 39.106.060 authorizes the City to transfer real or personal property or property rights to the Alliance with or without receipt of payment or other consideration.
G. Pursuant to Section VII.D of the Alliance Agreement, the Alliance may assume liabilities in connection with the receipt of Regional Assets.

H. Consistent with the Alliance Agreement, and pursuant to RCW 39.106.040 and 39.106.060, the City desires to ground lease certain premises and capital lease certain improvements to the Alliance and the Alliance desires to lease from the City these certain premises and improvements, all upon the terms, conditions and provisions set forth below.

**LEASE**

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

1. Definitions. Unless otherwise provided in this Lease, capitalized terms shall have the same meanings as the terms that are defined in the “Definitions” Section of the Alliance Agreement. For purposes of this Lease, the portion of the City’s Limited Tax General Obligation and Refunding Bonds, 2006 (the “2006 Bonds”) and any bonds refunding the 2006 Bonds, that are equal to the original share of the 2006 Bond proceeds that were allocated to finance costs of the RTPO Improvements, are referred to herein as the “Alliance Assumed Obligations.”

2. Assets.

2.1 RTPO Premises. The “RTPO Premises” consist of approximately 130,450 square feet (2.995 acres), more particularly described in Exhibit 2.1.A and graphically depicted for illustrative purposes on the diagram attached as Exhibit 2.1.B, together with and subject to all appurtenances, easements, rights-of-way, and right-of-access licenses thereto, including, but not limited to, those attached to Exhibit 2.1.C.

2.2 RTPO Improvements. The “RTPO Improvements” consist of the improvements to the RTPO Premises for wastewater treatment and transmission purposes, and include the following improvements to real property: (i) a secondary treatment plant originally constructed in 1959, with the most recent upgrade having been completed in 2006; (ii) an influent pumping station; (iii) headworks with screening, sampling and flow measurement equipment; (iv) a grit removal system; (v) an aeration system composed of a distribution structure, two aeration basins and related blower equipment; (vi) a secondary clarification system composed of two circular clarifiers and related return/waste activated sludge pumping stations; (vii) an ultraviolet disinfection system with effluent sampling and flow measurement; (viii) a river outfall composed of a 10-inch diameter concrete pipe flowing approximately 0.2 miles westerly and terminating in Lake River with a submerged diffuser assembly located at latitude 45.82150 and longitude -122.75402; (ix) a solids treatment process consisting of two aerobic digesters and a sludge storage basin; (x) plant support systems consisting of a non-potable water system, a plant drain pump station, an auxiliary generator for backup
power, and supporting site, instrumentation and control, and electrical and mechanical systems; and (xi) all improvements, upgrades, and appurtenances now existing or in the process of construction that comprise of or are used by the secondary treatment plant and the west routed 10-inch diameter pipeline.

2.3 City Improvements. The “City Improvements” consist of the improvements to the RTPO Premises for City public works maintenance and operation purposes, and include the following improvements to real property: (i) the Meter Shop and (ii) the Sign Storage Building.

2.4 Joint-Use Improvements. The “Joint-Use Improvements” consist of the improvements to the RTPO Premises for both wastewater treatment and transmission purposes and the City’s public works maintenance and operation purposes, and include the following improvements to real property: (i) the Laboratory; (ii) the Motor Control Center Building; (iii) the Office Trailer; and, (iv) the Operations and Equipment Building.

2.5 Condition of Assets. The Alliance acknowledges that it has examined the RTPO Premises and the RTPO Improvements and accepts them in their present condition, “as is.” The Alliance further acknowledges the known hazardous materials specifically identified in Section 15 of this Lease.

3. Term. The City ground leases the RTPO Premises and capital leases the RTPO Improvements to the Alliance and the Alliance ground leases the RTPO Premises and capital leases the RTPO Improvements from the City commencing on the 1st day of January, 2015 (the “Commencement Date”). Subject to Section 3.3 below, the Term of this Lease is 99 years (the “Term”).

3.1 Possession. The Alliance is entitled to possession of the RTPO Premises and the RTPO Improvements as of the Commencement Date.

3.2 Ownership; Capital Lease. For the avoidance of doubt, the Alliance shall be deemed the beneficial owner of the RTPO Improvements during the Term of this Lease, and the RTPO Improvements will be deemed conveyed to the Alliance upon the Termination Date of this Lease. The Parties intend that this Lease shall be considered a capital lease for Government Accounting Standards Board accounting purposes. The Alliance shall be deemed to have acquired the RTPO Improvements and shall be entitled to all of the tax attributes of ownership thereof, including, without limitation, the right to claim depreciation or cost recovery deductions with respect to the RTPO Improvements and the equipment therein, and the Alliance shall have the right to amortize capital costs and to claim any other federal tax benefits attributable to the RTPO Improvements and the equipment therein.

3.3 Termination upon Demolition and Remediation. The Parties mutually agree and acknowledge that this Lease shall terminate on the date that the Alliance ceases to operate the RTPO Improvements, decommissions the RTPO Improvements,
demolishes the RTPO Improvements, remediates any ground contamination caused by the Alliance to then-current federal and state environmental standards, and restores the RTPO Premises to cleared street level surface (pursuant to applicable governmental regulations, if any) (the "Termination Date"). The Alliance shall provide the City with one hundred eighty (180) days' advance prior notice of the Termination Date. Following the Termination Date, all right, title, and interest to the RTPO Premises shall revert back to the City, and this Lease shall be of no further force or effect except with respect to those provisions that specifically survive termination.

3.4 Optional Re-transfer of RTPO Improvements.

3.4.1 Notice. If, prior to the Termination Date, the Alliance determines to permanently discontinue operation and use of the RTPO Improvements, or discontinues operation and use for more than five (5) years, the City may at its option regain full ownership of the RTPO Improvements, as improved, or require the Alliance to terminate this Lease under the terms of Section 3.3 of this Lease. The City shall notify the Alliance at least one year in advance of the proposed date for re-transfer, which date shall be the first of a month.

3.4.2 Re-transfer Agreement. The Parties shall negotiate in good faith and enter into a re-transfer agreement at least ninety (90) days prior to the re-transfer date.

3.4.3 Conditions of Re-transfer. The re-transfer shall provide for the City to resume its obligation to provide for debt service on the Alliance Assumed Obligations. If the Alliance has issued bonds, notes or other evidences of indebtedness to pay for capital improvements to the RTPO Improvements, the re-transfer must provide for City payment of such indebtedness or the assumption of or other retirement of such indebtedness prior to closing of the re-transfer. The re-transfer shall be subject to any contractual obligations of the Alliance that the Alliance cannot unilaterally terminate, such as a collective bargaining agreement, if any.

4. No Rent. There shall be no rent or fees due under this Lease.

5. Default.

5.1 Conditions of Default. Prior to the Termination Date, this Lease shall terminate at the option of the City in the event of any one or more of the following occurrences:

5.1.1 Failure to Provide for Alliance Assumed Obligations. The Alliance fails to provide for the principal of or interest on the Alliance Assumed Obligations on or prior to the date due.
5.1.2 Failure to Perform. The Alliance materially defaults in the performance of any of the terms, covenants, or conditions of this Lease and fails to remedy, or undertake to remedy, such default for the period of one hundred eighty (180) days after receipt of written notice from the City (or such additional time as may reasonably be necessary to remedy the default if the Alliance commences such remedy within the initial 180-day period and diligently completes the same).

5.1.3 Assignment. The Alliance assigns this Lease without the City’s prior written consent, not to be unreasonably withheld.

5.2 Leasehold Improvements at Default. Except as may otherwise be provided in this Lease, the RTPO Improvements shall remain the property of the Alliance during the term hereof, and shall become the property of the City at the City’s discretion upon default following applicable cure periods of this Lease. Upon default following applicable cure periods by the Alliance, the City shall have the option to take and have title to the RTPO Improvements and all subsequent improvements then located upon the RTPO Premises, and title to those improvements shall vest in the City free and clear of any lien or claims of the Alliance or its successors, or the City shall have the option to exercise its rights under this Lease and require the Alliance to remove the RTPO Improvements and any subsequent improvements. Upon request of the City, the Alliance shall deliver any and all keys to the RTPO Improvements and all subsequent improvements upon expiration or termination of this Lease.

6. Use of the RTPO Premises.

6.1 Alliance. The Alliance shall use the RTPO Premises, the RTPO Improvements, and the Joint-Use Improvements, and make additional improvements to the RTPO Premises, only for the purposes of operating of a municipal wastewater utility system. Additional use includes administrative offices. The Alliance shall not use the RTPO Premises, the RTPO Improvements, the Joint-Use Improvements or any additional improvements for any other purposes without the prior written consent of the City, not to be unreasonably withheld. The Alliance shall observe, abide, and comply with any and all applicable federal, state, or local laws, rules, or regulations that affect the RTPO Premises, the RTPO Improvements, and the Joint-Use Improvements. The Alliance shall not allow any illegal or unlawful activities on the RTPO Premises. Nothing herein shall be deemed or construed to grant the Alliance any exclusive right or interest to conduct the type of business or activity permitted hereunder.

6.2 City. The City shall retain the right to use the RTPO Premises, the City Improvements, and the Joint-Use Improvements, and to make additional improvements to the RTPO Premises, for the purposes of operating the City’s public works maintenance and operations facilities or conducting other general municipal functions consistent with the Alliance’s use of the RTPO Premises. Additional use includes administrative offices. The City shall not use the RTPO Premises, the City Improvements, the Joint-Use Improvements or any additional improvements for any
other purposes without the prior written consent of the Alliance, not to be unreasonably withheld. The City shall observe, abide, and comply with any and all applicable federal, state, or local laws, rules, or regulations that affect the RTPO Premises, the City Improvements, and the Joint-Use Improvements. The City shall not allow any illegal or unlawful activities on the RTPO Premises. Nothing herein shall be deemed or construed to grant the City any exclusive right or interest to conduct the type of business or activity permitted hereunder.

6.3 Joint Use.

6.3.1 Schedule. The Parties shall maintain a schedule to coordinate each Party’s use of the Joint-Use Improvements. The Parties shall confer on a regular basis, or from time to time as needed, to discuss and coordinate the schedule. The parties shall use their best efforts to accommodate the needs of each party against the availability of the Joint-Use Improvements.

6.3.2 Costs. The Parties shall establish a methodology to allocate the City’s share and the Alliance’s share of costs and expenses associated with the RTPO Premises, including costs incurred pursuant to Sections 11, 12, 13, and 14 of this Agreement. The allocations may be based upon usage, square footage, or other reasonable methodology agreed to by the Parties. The Parties shall confer on a regular basis, or from time to time as needed, to evaluate the methodology and the respective allocated costs. Such methodology and allocations may be amended by mutual agreement in the event of changed circumstances.

6.3.3 Dispute Resolution. Any dispute between the parties arising under this Section 6.3 shall be resolved under Section VIII (“Dispute Resolution”) of the Alliance Agreement.

6.4 Maintenance of the RTPO Premises. Either the Alliance or the City, or both Parties together, shall keep and maintain the RTPO Premises in reasonably neat, clean, sanitary, and safe condition and repair. The City shall reimburse the Alliance for the Alliance’s costs incurred under this Section 6.4 for all maintenance costs associated with the RTPO Premises serving the City Improvements and for the City’s share of maintenance costs associated with the RTPO Premises serving the Joint-Use Improvements under the terms of Section 6.3.2 above. The Alliance shall reimburse the City for the City’s costs incurred under this Section 6.4 for maintenance costs associated with the portion of the RTPO Premises serving the RTPO Improvements and for the Alliance’s share of maintenance costs associated with the RTPO Premises serving the Joint-Use Improvements under the terms of Section 6.3.2 above.

6.5 Mutual Right of Ingress/Egress. The Parties shall have the reasonable right to ingress and egress to and from the RTPO Premises in the carrying on their activities as herein provided for, which right shall extend to the Parties’ guests and
invitees. This right shall be exercised so as not to impede or interfere with the business conducted by either Party.

7. **RTPO Debt Obligations.**

7.1 **Alliance to Provide.** For so long as the 2006 Bonds or any bonds refunding those bonds are outstanding, and subject to Section 3.4.3 of this Lease, the Alliance shall provide for the principal of and interest on the Alliance Assumed Obligations when due.

7.2 **Refunding Restrictions.** The City may issue bonds or other obligations refunding the 2006 Bonds for debt service savings in its sole discretion. Any City refunding of the “Limited Tax General Obligation and Refunding Bonds, 2006” that does not reduce debt service must be approved by the Alliance.

7.3 **Survival.** Subject to Section 3.4.3 of this Lease, the Alliance’s obligation to provide for the share of the City’s debt service obligation constituting the Alliance Assumed Obligations under Section 7.1 above shall survive the termination of this Lease unless the RTPO Improvements cease to be Regional Assets under the terms of the Alliance Agreement.

7.4 **Reopener.** The Alliance’s obligation to provide for the debt service on the Alliance Assumed Obligations when due under Section 7.1 above may be amended by mutual agreement.

8. **Obligations of the Alliance.** During the Term of this Lease, the Alliance shall:

8.1 **Levels of Service and Operating Standards.** Comply with the minimum levels of service and basic operating standards adopted by the Alliance Board in the Alliance Administrative Code. The minimum levels of service and standards adopted by the Alliance shall be consistent with customary practices for wastewater facilities in Washington State of the type comprising the Assigned Regional Assets.

8.2 **Maintenance.** Keep and maintain the RTPO Improvements in reasonably neat, clean, sanitary, and safe condition and repair for the purposes of operating a municipal wastewater utility system. If the maintenance and repair is not undertaken within thirty (30) days after receipt of written notice from the City (or such additional time as may reasonably be necessary to complete the maintenance or repair if the Alliance commences the maintenance or repair within the initial 30-day period and diligently completes the same), the City shall have the right to enter upon the RTPO Improvements and perform such maintenance and repair, the cost of which shall be charged to and borne by the Alliance.

8.3 **Rubbish.** Properly dispose of the Alliance’s share of all rubbish, garbage, and waste in a clean and sanitary manner at reasonable and regular intervals and
assume all costs of extermination and fumigation for any infestation caused by the Alliance.

8.4 Use of Utilities. Subject to Section 13 of this Lease, properly use and operate all electrical, gas, heating, plumbing, and other fixtures and appliances that are or may be available for use by the Alliance.

8.5 Damage. Not intentionally or negligently destroy, deface, damage, impair, or remove a part of the RTPO Improvements or the Joint-Use Improvements, or their appurtenances, facilities, equipment, furniture, furnishings, appliances, or fixtures, nor permit any person, whether employee, invitee, licensee, or otherwise acting under control of the Alliance to do so.

8.6 Nuisance. Not permit any nuisance or common waste on the RTPO Premises.

9. Obligations of the City. During the Term of this Lease, the City shall:

9.1 Maintenance. Keep and maintain the City Improvements and the Joint-Use Improvements in reasonably neat, clean, sanitary, and safe condition and repair for the purposes of operating the City’s public works maintenance and operations facilities or conducting other general municipal functions consistent with the Alliance’s use of the RTPO Premises. If the maintenance and repair of the City Improvements or the Joint-Use Improvements is not undertaken within thirty (30) days after receipt of written notice from the Alliance (or such additional time as may reasonably be necessary to complete the maintenance or repair if the City commences the maintenance or repair within the initial 30-day period and diligently completes the same), the Alliance shall have the right to enter upon the City Improvements or the Joint-Use Improvements and perform such maintenance and repair, the cost of which shall be charged to and borne by the City.

9.2 Rubbish. Properly dispose of the City’s share of all rubbish, garbage, and waste in a clean and sanitary manner at reasonable and regular intervals and assume all costs of extermination and fumigation for any infestation caused by the City.

9.3 Use of Utilities. Subject to Section 13 of this Lease, properly use and operate all electrical, gas, heating, plumbing, and other fixtures and appliances that are or may be available for use by the City.

9.4 Damage. Not intentionally or negligently destroy, deface, damage, impair, or remove a part of the City Improvements or the Joint-Use Improvements, or their appurtenances, facilities, equipment, furniture, furnishings, appliances, or fixtures, nor permit any person, whether employee, invitee, licensee, or otherwise acting under control of the City to do so.
9.5 **Nuisance.** Not permit any nuisance or common waste on the RTPO Premises.

10. **Additional Improvements and Alterations.**

10.1 **Permits.** The Parties agree that each Party shall secure all permits required in connection with any construction and improvements and pay the required fees therefor. The Parties agree that all construction, improvements, and maintenance shall be made in conformance with the provisions of all applicable laws, rules, codes, and regulations.

10.2 **Fixtures.** Both Parties shall have the right to install, at each Party’s own expense, fixtures and equipment normal for its activities and the right (subject to any other provisions of this Lease) to remove the same at the expiration of this Lease.

10.3 **Signs.** Both Parties shall have the right, at each Party’s own expense, to place in or on the RTPO Premises a sign or signs identifying themselves. The sign or signs shall be of a size, shape, and design, and at a location or locations reasonably approved by the Parties and in conformance with any overall directional graphics or sign program, codes, rules, or regulations established by the City or any other governmental entity having jurisdiction over the RTPO Premises. The sign or signs shall be kept presentable and in good repair. Notwithstanding any other provision of this Lease, the sign or signs shall remain the property of the installing Party.

11. **Assessments and Fees.** The Alliance agrees that it shall pay all costs and expenses associated and in connection with the use of the RTPO Premises, including, but not limited to, permit fees, license fees, and special assessments, or fees in lieu thereof, lawfully levied or assessed upon the RTPO Premises. The Alliance may, however, at its sole expense and cost, contest any fee or assessment. The City shall reimburse the Alliance for the Alliance’s costs and expenses incurred under this Section 11 for those costs and expenses associated with the City Improvements and the City’s share of the Joint-Use Improvements and other common areas of the RTPO Premises under the terms of Section 6.3.2 above.

12. **Storm Water Requirements.** The Alliance agrees that it shall direct and contain storm water discharge from the RTPO Premises so as to comply, if applicable, with the Federal National Pollutant Discharge Elimination (NPDES) program, State Department of Ecology requirements as implemented on behalf of the federal Environmental Protection Agency or any successor agency(s) or department(s), and City requirements during the Term of this Lease. The Alliance shall pay before delinquency any and all federal, state, or local storm water drainage taxes, fees, or assessments attributable to the RTPO Premises during the Term of this Lease. The City shall reimburse the Alliance for the Alliance’s costs and expenses incurred under this Section 11 for storm water discharge associated with the City Improvements and the City’s share of the
Joint-Use Improvements and other common areas of the RTPO Premises under the terms of Section 6.3.2 above.

13. **Utilities.**

13.1 **Alliance.** The Alliance, at its own expense, shall provide for and make connections to all utilities that it requires to serve the RTPO Improvements. Any on-site utility improvements for the RTPO Improvements shall be the sole responsibility of the Alliance, including, but not limited to, all design and construction costs.

13.2 **City.** The City, at its own expense, shall provide for and make connections to all utilities that it requires to serve the City Improvements and the Joint-Use Improvements during the Term of this Lease. Any on-site utility improvements for the City Improvements or the Joint-Use Improvements shall be the sole responsibility of the City, including, but not limited to, all design and construction costs.

13.3 **Charges and Reimbursement.** Either the Alliance or the City shall pay all charges for utilities and services provided to the RTPO Premises prior to delinquency. If the Alliance pays all charges for utilities and services provided to the RTPO Premises, then the City shall reimburse the Alliance for the Alliance’s costs incurred under this Section 13.3 for all utility and service charges associated with the City Improvements and for the City’s share of all utility and service charges associated with the Joint-Use Improvements under the terms of Section 6.3.2 above. If the City pays all charges for utilities and services provided to the RTPO Premises, then the Alliance shall reimburse the City for the City’s costs incurred under this Section 13.3 for all utility and service charges associated with the RTPO Improvements and for the Alliance’s share of all utility and service charges associated with the Joint-Use Improvements under the terms of Section 6.3.2 above.

14. **Future Access Road Extension – North Pole Yard.** Pursuant to Section 5 (“Construction of Road”) of the “Real Property Exchange Agreement,” entered into between the City and the Port of Ridgefield on June 14, 2000, it is expected that the City will work with the Port of Ridgefield to construct a portion of a public road that will also provide access to the RTPO Premises. The Alliance shall reimburse the City for the City’s costs incurred under this Section 14 for the Alliance’s share of the access road to the RTPO Premises under the terms of Section 6.3.2 above.

15. **Hazardous Materials.**

15.1 **Definitions.** For the purposes of this Section 15:

15.1.1 “Hazardous Materials” includes, but is not limited to, any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic, or radioactive substance, or other similar term, by any
federal, state, or local environmental statute, regulation, or ordinance presently in effect (collectively, “Hazardous Material Laws”); provided, however, for the purposes of this Section 15, “Hazardous Materials” does not include asbestos/concrete pipe and appurtenances, liquid chlorine, paint, or solvents, whether or not such materials are so defined or designated; and,

15.1.2 “Hazardous Materials Claims” means any enforcement, cleanup, removal, remedial, or other governmental or regulatory notices, actions, agreements, or orders threatened, instituted, or completed pursuant to any Hazardous Materials Laws, together with any and all claims made or threatened by any third party against the City or the property relating to damage, contribution, cost recovery compensation, loss, or injury resulting from the presence, release, or discharge of any Hazardous Materials.

15.2 Known Conditions. The City discloses that certain portions the RTPO Premises may contain Hazardous Materials related to the Port of Ridgefield former Pacific Wood Treating Corporation remediation project. The Alliance acknowledges that it is aware of the potential for such Port of Ridgefield related Hazardous Materials and hereby assumes all responsibility therefor.

15.3 Representation and Warranty. Excluding all Hazardous Materials identified in Section 15.2, the City represents and warrants that to the City’s Knowledge:

15.3.1 There are no Hazardous Materials on, under or about the RTPO Premises;

15.3.2 No Hazardous Materials have at any time been generated, manufactured, released, or disposed of on, under, or about the RTPO Premises;

15.3.3 The RTPO System is not in violation of any Hazardous Materials Laws;

15.3.4 There are no past, current, or threatened Hazardous Materials Claims; and,

15.3.5 No underground storage tank is now located on or has ever been located on or under the RTPO Premises.

15.4 Storage, Use, Etc. The Parties shall not use, store, treat, generate, sell, or dispose of any Hazardous Materials on or in any manner that affects the RTPO Premises or any areas adjacent thereto without the prior written consent of the other Party.

15.5 Compliance. The Parties shall, at their sole cost and expense, comply with all Hazardous Materials Laws regarding the proper and lawful generation, use,
sale, transportation, storage, treatment, and disposal of Hazardous Materials on the RTPO Premises or in any manner that affects the RTPO Premises.

15.6 Notification. Each Party shall notify the other Party within forty-eight (48) hours of any release of Hazardous Materials that may affect the RTPO Premises or any adjacent property and shall promptly provide the other Party with a copy of any notifications given to any governmental entity regarding any such release. Each Party shall promptly provide the other Party with copies of any inspection report, order, fine, request, notice or other correspondence from any governmental entity regarding the release of Hazardous Materials that may affect the RTPO Premises or any adjacent property. Each Party shall provide the other Party with a copy of all reports, manifests, material safety data sheets (MSDS), and identification numbers regarding Hazardous Materials at the same time they are submitted to the appropriate governmental authorities.

15.7 Ecology Consent Decree. The Parties shall comply with the terms of the Consent Decree entered into between the State of Washington, Department of Ecology, and the Port of Ridgefield and the City of Ridgefield governing the remedial action at a portion of the Pacific Wood Treating Corporation Site (Ecology Facility Site Identification No. 1019) with respect to the RTPO Premises, effective [EFFECTIVE DATE (DATE ENTERED BY COURT)].

15.8 Environmental Assessment. The Alliance shall, upon written request from the City, based on a sufficient reason to believe there has been a release of Hazardous Materials due to the Alliance’s activities, within one hundred eighty (180) days following expiration or other termination of this Lease, provide the City with an environmental assessment prepared by a qualified professional approved in advance by the City. The environmental assessment shall, at a minimum, certify that a diligent investigation of the RTPO Premises has been conducted, including a specific description of the work performed, and either (1) certify that diligent investigation of the RTPO Premises has revealed no evidence of a release of Hazardous Materials or violation of Hazardous Materials Laws, or (2) if a release or violation of Hazardous Materials Laws is detected, identify, and describe: (i) the types and levels of Hazardous Materials detected; (ii) the physical boundaries of the release, including property other than the RTPO Premises; (iii) the actual and potential risks to the environment from such release or violation; and (iv) the procedures and actions necessary to remedy the release or violation in compliance with applicable Hazardous Materials Laws. The Alliance shall pay the expense of obtaining the environmental assessment and of performing all remediation of Hazardous Materials released at the RTPO Premises due to the Alliance’s activities.

15.9 Indemnification and Hold Harmless. The City indemnifies and holds the Alliance harmless from any claim, cost, damage, or expense, including attorneys fees, monitoring costs, response costs, and penalties, with respect to any breach of any of
the warranty in Section 15.3 above. Each Party shall defend, indemnify and hold the other Party harmless from any loss, claim, fine, or penalty arising from the release of Hazardous Materials in violation of Hazardous Materials Laws affecting the RTPO Premises to the extent caused by the indemnifying Party. This obligation shall include, but shall not be limited to, environmental response and remedial costs, other cleanup costs, environmental consultant’s fees, attorney’s fees, fines and penalties, laboratory testing fees, claims by third parties and governmental authorities for death, personal injuries, property damage, business disruption, lost profits, natural resource damages, and any other costs, and the indemnified Party’s expenses incurred under the foregoing provisions.

16. Rights Reserved for the City. During the Term of this Lease, the City shall:

16.1 Rights-of-Access; Operation. Retain rights-of-access across, over, along, in, and upon the RTPO Premises for all necessary and reasonable purposes related to the City’s operation and maintenance of the City Improvements.

16.2 Use. Have the perpetual right and privilege to construct and maintain for the use of itself and its agents or tenants underground pipe, cable, ducts, and other necessary facilities to serve other users and tenants, together with the right to enter upon the RTPO Premises at any time upon at least 48 hours prior notice, except in emergencies as determined by the City, with all necessary persons, materials, and appliances for the purposes of constructing, inspecting, operating, repairing, and maintaining the same, provided that at no time shall the Alliance’s use and enjoyment of the RTPO Premises, the RTPO Improvements, and the Joint-Use Improvements be thereby materially interfered with.

16.3 Entry. Have the right to enter upon the RTPO Premises at any reasonable time upon 48 hours prior notice, except in emergencies as determined by the City, for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this Lease.

16.4 Perform Agreements. Have the right to make any changes to and perform any construction on the RTPO Premises required by any agreement or obligation to which it is subject with any other governmental agency or agencies having jurisdiction thereon upon prior written notice served upon the Alliance at least ninety (90) days in advance of such proposed work.

16.5 Condemnation. If the RTPO Premises or the RTPO Improvements leased herein, or any portion thereof, shall be condemned or otherwise conveyed for public or quasi-public purposes by any person or entity other than the City in a manner as to directly affect or limit the Alliance’s use of the RTPO Premises or the RTPO Improvements, the City shall have no obligation hereunder. The Alliance, at its option, shall have the right to terminate this Lease in its entirety in the event of condemnation by written notice of thirty (30) days within sixty (60) days of the receipt of “Notice of
Condemnation.” In the event of any condemnation or taking, the Parties shall share in any “just compensation” awarded as their interests appear.

16.6 Miscellaneous. Exception for Section 16.5 above, if any exercise by the City of any right or remedy to which it may be entitled in this Section 16 results in the loss of all or substantially all of the Alliance’s rights to use the improvements constructed by it pursuant to this Lease, the Alliance shall have the right to terminate this Lease and the City shall reimburse the Alliance the then-fair market value of the Alliance’s improvements.

17. Property Rights for Unknown System Components. Within three (3) years after commencement of this Lease, if the Alliance or the City discover a portion of the RTPO Improvements, and the City’s and the Alliance’s right to own, maintain, and use that portion of the RTPO Improvements is not evidenced by a legally sufficient instrument, the City shall acquire the legal right to own, maintain, and use that portion by negotiation, quiet title or declaratory action, or condemnation, with the Parties sharing equally in the cost and expense. After the acquisition, the City shall transfer the legal right to that portion of the RTPO Improvements to the Alliance free and clear of all liens, liabilities, and encumbrances, in a form of document approved by the Alliance, which approval shall not be unreasonably withheld or delayed.

18. Destruction of Improvements. In the event any of the RTPO Improvements or improvements subsequently constructed by the Alliance on the RTPO Premises are destroyed in whole or in part by fire, earthquake, wind, storm, flood, explosion, aircraft collision, vehicle collision, train collision, smoke, vandalism, or malicious mischief, the Alliance Board shall determine whether to reconstruct the destroyed improvements or demolish the above ground structures then existing and restore the RTPO Premises to cleared street level surface (pursuant to applicable governmental regulations, if any). The Alliance Board shall determine the distribution of any remaining insurance proceeds. This Lease shall terminate as to the day on which demolition and debris removal shall have been completed to the City's reasonable satisfaction.

19. Assignment. This Lease may not be assigned in whole or in part or sublet without the prior written consent of the City. Such consent shall not be unreasonably withheld, conditioned or delayed upon assignment or sublet to a Washington municipal wastewater utility.

20. Indemnification.

20.1 Defend, Indemnify, and Hold Harmless. To the maximum extent permitted by law, each Party shall defend, indemnify, and hold harmless the other Party, and all of its officials, employees, principals, and agents, from any and all claims, demands, suits, actions, fines, penalties, and liability of any kind, including injuries to persons or damages to property, which arise out of or are related to any negligent acts, errors, and omissions of the indemnifying Party and its contractors, employees, agents, and
representatives in performing obligations under this Lease. However, if any such
damages and injuries to persons or property are caused by or result from the concurrent
negligence of the Alliance or its contractors, employees, agents, or representatives, and
the City or its contractors or employees, agents, or representatives, each Party’s
obligation hereunder applies only to the extent of the negligence of such Party or its
contractors, employees, agents, or representatives.

20.2 Industrial Insurance. This Section 20 is specifically and expressly
intended to constitute a waiver of each Party’s immunity under industrial insurance, Title
51 RCW, as respects the other Party only, and only to the extent necessary to provide
the indemnified Party with a full and complete indemnity of claims made by the
indemnitor’s employees. This waiver has been mutually negotiated.

21. Insurance.

21.1 The Alliance shall maintain in full
force and effect throughout the term of
this Lease, a minimum of Ten Million Dollars ($10,000,000.00) liability insurance for
property damage and bodily injury. The Alliance shall also cause the RTPQ
Improvements to be insured at replacement cost value throughout the term of this
Lease.

21.2 In satisfying the insurance requirement set forth in this
Section 21, the Alliance may self-insure against such risks in such amounts as
are consistent with good utility practice. The Alliance shall provide the City with
sufficient written evidence, the sufficiency of which shall be determined at the
reasonable discretion of the City, 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 21.

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

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

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

with a copy to:

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

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.

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

24. Severability. If any section or part of this Lease is held by a court of competent jurisdiction to be invalid or unenforceable, such action shall not affect the validity or enforceability of any other section or part of this Lease.

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

26. Successors and Assigns. All of the provisions, conditions, regulations and requirements of this Lease shall be binding upon the successors and assigns of the Parties.
27. **No Third Party Rights.** This Lease is solely for the benefit of the Parties and gives no right to any other party or person.

28. **No Joint Venture.** No joint venture or partnership is formed as a result of this Lease. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other Party.

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

30. **Enforcement; Prevailing Party Costs.** In addition to the remedies provided by law, this Lease shall be specifically enforceable by either Party. If either Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this Lease against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

31. **Tax Exemption of 2006 Bonds.** The Parties mutually covenant that, so long as the 2006 Bonds or bonds refunding the 2006 Bonds are outstanding, neither the City nor the Alliance will permit the RTPO Premises, the RTPO Improvements or any other assets financed with proceeds of the 2006 Bonds or refunding bonds to be used in any manner that could adversely affect the tax exemption of those bonds.

32. **Counterparts.** This Lease may be signed in counterparts and, if so signed, shall be deemed one integrated agreement.

[Signatures Follow.]
IN WITNESS WHEREOF the Parties hereto have caused this Lease to be executed by their authorized representatives.

CITY OF RIDGEFIELD

Phil Messina, City Manager
Date: ______________________
Attest: ____________________
Lee Knottnerus, City Clerk

DISCOVERY CLEAN WATER ALLIANCE

Lisa Walters, Chair, Board of Directors
Date: ______________________
Attest: ____________________
Neil Kimsey, Secretary, Board of Directors

Approved as to form: ________________
Janean Parker, City Attorney

Approved as to form: ________________
Hugh D. Spitzer, Alliance Attorney
STATE OF WASHINGTON       )
COUNTY OF CLARK          ) ss.

On this _____ day of ______________, 2013, before me personally appeared
_____________________, to me known to be the _______________________ of the Discovery Clean Water Alliance that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and that they are authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington, residing at _____________
My commission expires: _______________

STATE OF WASHINGTON       )
COUNTY OF CLARK          ) ss.

On this _____ day of ______________, 2013, before me personally appeared
_____________________, to me known to be the _______________________ of the City of Ridgefield that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and that they are authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington, residing at _____________
My commission expires: _______________
Exhibit 2.1.A

Legal Description of the RTPO Premises
LEGAL DESCRIPTION
CITY OF RIDGEFIELD
TREATMENT PLANT
CLARK COUNTY, WASHINGTON

Real property situated in the City of Ridgefield, Clark County, Washington, being a portion of the James Carty Donation Land Claim and lying in the Southeast quarter of Section 13 and the Northeast quarter of Section 24, Township 4 North, Range 1 West of the Willamette Meridian described as follows:

Beginning at the intersection of the South line of the North half of the James Carty Donation Land Claim and the West right of way line of the Burlington Northern Sante Fe Railroad as shown in Book 48 of surveys, at Page 72, records of said county, said intersection being the Southeast corner of that tract of land conveyed to the Town of Ridgefield by deed recorded under Auditor’s File No. G 458184; thence along said West right of way line, the East line of said Auditor’s File No. G 458184, the East line of that tract of land conveyed to the Port of Ridgefield by deed recorded under Auditor’s File No. G 734063 and the East line of Parcel 2 of that tract of land conveyed to the City of Ridgefield by deed recorded under Auditor’s File No. 4506341 North 00° 34’ 57” West 411.75 feet to the Northeast corner of said Parcel 2; thence along the North and West lines of said Parcel 2 the following courses:

South 89° 34’ 10” West 198.18 feet to the Northwest corner thereof, said corner being on the arc of a 324.00 foot radius curve; thence from a tangent bearing of South 24° 45’ 17” West, along said curve to the right, through a central angle of 05° 33’ 58”, an arc distance of 31.47 feet to a point of reverse curvature with a 270.00 foot radius curve; thence along said curve to the left, through a central angle of 28° 03’ 33”, an arc distance of 132.23 feet to a point of tangency; thence South 02° 15’ 42” West 95.00 feet to a point of curvature with a 270.00 foot radius curve; thence along said curve to the left, through a central angle of 26° 08’ 48”, an arc distance of 123.21 feet to a point of reverse curvature with a 324.00 foot radius curve; thence along said curve to the right, through a central angle of 23° 18’ 09”, an arc distance of 131.77 feet to a point of tangency; thence South 00° 34’ 57” East 70.46 feet
to the Southwest corner of said Parcel 2, said corner being on a Northerly line of that tract of land conveyed to the Port of Ridgefield by Bankruptcy Trustee's Deed recorded under Auditor's File No. 9403100278; thence along the South line of said Parcel 2 and a Northerly line of said Bankruptcy Trustee's Deed South 88° 30' 12" East 114.73 feet; thence North 00° 34' 57" West 23.83 feet to the Southwest corner of Parcel 1 of said deed recorded under Auditor's File No. 4506341; thence along the South line of said Parcel 1 South 87° 28' 34" East 93.08 feet to the Southeast corner of said Parcel 1, said corner being on the West right of way line of said Burlington Northern Sante Fe Railroad; thence along the East line of said Parcel 1 and said West right of way line North 00° 34' 57" West 139.84 feet to the Point of Beginning.

Containing approximately 2.995 acres.

Subject to easements and restrictions of record.
Exhibit 2.1.B

Diagram of the RTPO Premises
Exhibit 2.1.C

Appurtenances, Easements, Rights-of-Way and Right-of-Access Licenses
Memorandum

To: Discovery Clean Water Alliance
    Management and Infrastructure Committee

From: Foster Pepper PLLC

Date: September 12, 2013

Subject: City of Ridgefield’s existing easement rights for the outfall pipeline

1. INTRODUCTION

As part of the asset transfer agreement development process, the City of Ridgefield and the Discovery Clean Water Alliance requested this review of certain rights for transport of treated wastewater. Upon reviewing the research provided by MacKay Sposito, Inc. (summarized below), we conclude that the City of Ridgefield has an existing easement and necessary rights for outfall pipeline purposes through Port of Ridgefield property. Because the Alliance will assume these easement rights through the RTPO Ground and Capital Lease, the Alliance is not required to negotiate a new easement for use of the outfall pipeline.

This analysis includes review of several historic documents and certain legal analysis not expressed in any one deed or document. As a practical matter, the Alliance may want to consider seeking an updated easement agreement with the Port because it will be easier to point to a single document that memorializes the necessary easement rights rather than to explain the legal analysis embedded in multiple prior deeds.

2. ANALYSIS

In a 1959 deed, the Port conveyed an approximately 1.38 acre parcel to the City. The City used that property, in part, for its wastewater treatment plant. Within that deed, the Port granted the City an easement right benefitting that parcel. The easement right is stated as follows: “Together with necessary easements over Port of Ridgefield property for interceptor sewer and outfall sewer lines.” (Emphasis added). The City constructed the outfall pipeline through Port property that same year.

Seven years later, in 1966, the City conveyed a portion of the 1.38 acre parcel to the Pacific Wood Treating Corp. (PWTC). Unlike the 1959 deed, the 1966 conveyance did not expressly grant (in this case, reserve) an easement right for the benefit of the City’s remaining part of the 1.38 acre parcel. The PWTC bankruptcy estate subsequently conveyed the PWTC parcel to the Port in 1994. Although a subsequent conveyance by the Port gave a portion of the
PWTC property back to the City, the Port still retains an approximately 50-foot portion of the 1966 conveyance. A portion of the City’s outfall pipeline runs through this 50-foot portion. The City has at all times retained a portion of the original 1.38 acre parcel that is benefitted by the easement through Port property for sewer outfall line. Attached is a sequential depiction of the described conveyances prepared by MacKay Sposito. This history leads us to two observations.

Initially we observe that the City’s interest in the underlying property (which the City still holds, in part, for wastewater purposes) retains the right to “necessary easements” over Port property. These easement rights extend across Port property, including the 50-foot portion at issue. Stated otherwise, the City’s easement rights to the Port property west of the 50-foot portion are indistinguishable from that 50-foot portion adjacent to the City’s treatment plant property. The plain language of the easement broadly grants “necessary easements over Port of Ridgefield property” without geographic limitation. The 1959 deed does not express terms to the contrary.

Further, the City also has a claim to an implied easement from prior use. Washington courts will recognize an implied easement from prior use if the following elements are met: (1) a landowner conveys part of his or her land but retains a separate part; (2) prior to conveyance, there is an apparent and continuous use of one part by the other; and (3) that use is necessary to the proper or reasonable enjoyment of the benefitted part. White v. Berg, 19 Wn.2d 284, 288, 142 P.2d 260 (1943).

Here, all three elements are met. First, the City held the 50-foot portion in unified title with the original 1.38 acre parcel. The City then conveyed part of that 1.38 acre parcel, including the 50-foot area at issue, while also retaining the balance. Second, prior to conveyance, the City constructed the outfall pipeline through the conveyed parcel, including the 50-foot portion. The City has continuously used the outfall pipeline since construction. Third, the easement is necessary to reasonably use the City’s retained (benefited) part for wastewater treatment purposes. Again, we are aware of no contrary intent expressed in the 1959 deed or other documents.
CITY OF RIDGEFIELD TREATMENT PLANT

G 264451
WARRANTY DEED
PORT OF RIDGEFIELD TO
TOWN OF RIDGEFIELD
JUNE 11, 1950

TOGETHER WITH NECESSARY EASEMENTS
OVER PORT OF RIDGEFIELD PROPERTY FOR
INTERCEPTOR SEWER AND OUTFALL SEWER
LINES.

G 458185
TOWN OF RIDGEFIELD TO
PACIFIC WOOD TREATING CORP. (PWTC)
JULY 14, 1966
DOES NOT MENTION ANY SEWER EASEMENTS

9403100278
BANKRUPTCY TRUSTEE’S DEED
PACIFIC WOOD TREATING CORP. (PWTC)
TO PORT OF RIDGEFIELD
MARCH 1, 1994
DOES NOT MENTION ANY SEWER EASEMENTS

9403100279
BANKRUPTCY TRUSTEE’S QUIET CLAIM OF LEASE
AND QUIET CLAIM OF FIXTURES ON LEASEHOLD
PWTC TO
PORT OF RIDGEFIELD
MARCH 1, 1994

SUBJECT TO:
EASEMENTS FOR SEWERRecorded UNDER
AUDITOR’S FILE NO. G 264451 AND FOR
RAILROAD SPUR TRACTSRecorded UNDER
AUDITOR’S FILE NO. G 374561.

3232243 AND 4506341
STATUTORY WARRANTY DEEDS
PORT OF RIDGEFIELD TO
CITY OF RIDGEFIELD
JUNE 28, 2000 AND SEPTEMBER 19, 2008
DOES NOT MENTION ANY SEWER EASEMENTS

G 4558259
STATUTORY WARRANTY DEED
CITY OF RIDGEFIELD TO
PORT OF RIDGEFIELD
APRIL 13, 2010
DOES NOT MENTION ANY SEWER EASEMENTS
ACCESS AGREEMENT

Port/City

AN AGREEMENT made this 14th day of June, 2000 between the Port of Ridgefield, a Washington municipal corporation, hereinafter the “Port,” and the City of Ridgefield, a non-charter Washington Code City, hereinafter the “City”, granting the City an access route to City property across designated Port property.

License

1. Grant of License. The Port grants to the City a nonexclusive perpetual license across, over, along, in and upon designated Port property (a) for the purpose of accessing City property, to-wit: the City of Ridgefield’s Wastewater Treatment Facility and (b) for those purposes necessarily and reasonably related to the operation and construction of City public works. This license is subject to the terms and conditions set forth in this agreement.

2. Authorized Parties. This license is granted to the City and to its elected officials, appointed officials, employees, contractors and sub-contractors and invitees when acting on official City business either on behalf of or at the direction of the City. The City shall be responsible for its acts and its omissions and the acts and omissions of its elected officials, appointed officials, employees, contractors and sub-contractors and invitees.

3. Designated Route. For purposes of the grant of this license, the “designated route” or “access route” over which the City may traverse is set forth on the map attached hereto as Exhibit “A.” For the purpose of facilitating maximum efficient use of Port property, both for the Port and for its tenants and of responding to emergencies, the Port reserves the right to change the access route. The Port shall provide to the City a map detailing any such change except in the case of emergency.

4. Suspension For Cause/Termination for Abandonment. This license terminates in the event the City has obtained permanent alternate access to the waste water treatment facility. This license is also subject to suspension by the Port for cause. “Cause” shall include (a) the City’s failure to abide by the terms and conditions herein and/or cumulative violations of this license by the City or the City’s elected officials, appointed officials, employees, contractors and sub-contractors and invitees; and (b) the City’s failure to cure such violations within fourteen [14] days of notice.

5. Compliance with Laws and Regulations. The City shall at all times exercise this license consistent with the requirements of an applicable statutes, orders, rules and regulations.

ACCESS AGREEMENT
City of Ridgefield/Port of Ridgefield
Page 1 of 3
6. **Minimization of Interference.** The City shall exercise this license so as to minimize [and avoid if reasonably possible] interference with use of the access route and adjacent Port property by others. The City shall at all times conduct its activities so as not to interfere with, obstruct or endanger the Port's operations or facilities or the operations and facilities of its tenants.

7. **Repairs to Property.** The City shall promptly pay to the Port the cost of any restoration or repairs to the Port's facilities resulting from damages arising from the City's use of this license and the use of this license by the City's agents, employees, contractors, subcontractors and invitees.

8. **Third-Party Rights.** The Port reserves all rights with respect to its property, including, without limitation, the right to grant licenses and permits to others, subject to the rights granted in this Agreement.

9. **Release and Indemnity.** The City does hereby release, indemnify and promise to defend and save harmless the Port from and against any and all liability, loss, damage, expense, actions and claims, including costs and reasonable attorneys' fees incurred by the Port in defense thereof to the extent caused by the acts or omissions of the City and the City's servants, agents, employees and contractors in the exercise of the rights granted herein; PROVIDED HOWEVER, this section does not purport to indemnify the Port against liability for damages arising out of bodily injury to persons or damage to property to the extent caused by the acts or omissions of the Port or the Port's agents or employees or contractors, nor does it provide to either party any new indemnification for pre-existing contamination of soil and ground water.

10. **Assignment.** The City shall not assign this license. No assignment of the privileges and benefits accruing to the City herein and no assignment of the obligations or liabilities of the City herein, whether by operation of law or otherwise, shall be valid without the prior written consent of the Port.

DATED this 14th day of June, 2000.

PORT OF RIDGEFIELD

By: [Signature]

Title: Executive Director

ACCESS AGREEMENT
City of Ridgefield/Port of Ridgefield
Page 2 of 3
Terms Accepted this 14th day of June, 2000.

CITY OF RIDGEFIELD

By: [Signature]

Title: CITY MANAGER
Schedule 2.2: Bill of Sale for Ridgefield Treatment Plant and Outfall Personal Property
SCHEDULE 2.2: BILL OF SALE FOR RIDGEFIELD TREATMENT PLANT AND OUTFALL PERSONAL PROPERTY

THIS BILL OF SALE is executed as of the ___ day of __________, ____, by the CITY OF RIDGEFIELD, Washington, a Washington municipal corporation ("Assignor”):

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, Assignor does hereby grant, bargain, sell, convey, assign, transfer, and set over to the DISCOVERY CLEAN WATER ALLIANCE, a Washington municipal corporation ("Assignee") (i) all laboratory equipment and supplies purchased for and stored in the on-site laboratory; (ii) all tools and specialized equipment purchased for or required for operation and maintenance of the RTPO Improvements; (iii) all spare parts purchased for or furnished by equipment manufacturers for the treatment plant; (iv) all fixtures, furniture, furnishings, appliances and related items purchased for or routinely used in the operation of the treatment plant; and (v) all forms of documentation associated with the RTPO Improvements including, but not limited to, reports, plans, specifications, estimates, designs, drawings, maps, surveys, construction records, photos, documentation, operation and maintenance manuals and correspondence associated with the RTPO Improvements, any component thereof, and any existing, in-progress or proposed parts of the RTPO Improvements owned by Assignor (collectively referred to as the “RTPO Personal Property”) located in, on, and around the RTPO Improvements, as defined in Section 2.1 of the RTPO Transfer Agreement, and the RTPO Premises, which is legally described on Exhibit A attached hereto.

For the avoidance of doubt, the RTPO Personal Property conveyed hereunder shall not include any of the following, which shall remain with Assignor: (i) all vehicles and other rolling stock and (ii) all information technology systems including, but not limited to, hardware, software and related enterprise systems required for operation of the RTPO Improvements and the City’s Water Utility.

Assignor does hereby covenant that it will forever warrant and defend the Personal Property against all persons whomsoever claiming by, through or under Assignor or its predecessors in interest, but not otherwise. In all other respects, the Personal Property is being transferred in its “as is, where is” condition, and without representation or warranty.

[Remainder of Page Intentionally Left Blank.]
IN WITNESS WHEREOF, Assignor has executed and delivered this Bill of Sale as of the day and year first above written.

ASSIGNOR: City of Ridgefield, Washington, a Washington municipal corporation

By: ___________________________ Date: ________________
    Phil Messina, City Manager

Attest: __________________________
        Lee Knottnerus, City Clerk

Approved: _______________________
          Janean Parker, City Attorney

ASSIGNEE: Discovery Clean Water Alliance, a Washington municipal corporation

By: ___________________________ Date: ________________
    Lisa Walters, Chair, Board of Directors

Attest: __________________________
        Neil Kimsey, Secretary,
        Board of Directors

Approved: _______________________
          Hugh D. Spitzer, Alliance Attorney
Exhibit 2.2.A

Legal Description
LEGAL DESCRIPTION
CITY OF RIDGEFIELD
TREATMENT PLANT
CLARK COUNTY, WASHINGTON

Real property situated in the City of Ridgefield, Clark County, Washington, being a portion of the James Carty Donation Land Claim and lying in the Southeast quarter of Section 13 and the Northeast quarter of Section 24, Township 4 North, Range 1 West of the Willamette Meridian described as follows:

Beginning at the intersection of the South line of the North half of the James Carty Donation Land Claim and the West right of way line of the Burlington Northern Sante Fe Railroad as shown in Book 48 of surveys, at Page 72, records of said county, said intersection being the Southeast corner of that tract of land conveyed to the Town of Ridgefield by deed recorded under Auditor’s File No. G 458184; thence along said West right of way line, the East line of said Auditor’s File No. G 458184, the East line of that tract of land conveyed to the Port of Ridgefield by deed recorded under Auditor’s File No. G 734063 and the East line of Parcel 2 of that tract of land conveyed to the City of Ridgefield by deed recorded under Auditor’s File No. G 4506341 North 00° 34’ 57” West 411.75 feet to the Northeast corner of said Parcel 2; thence along the North and West lines of said Parcel 2 the following courses:

South 89° 34’ 10” West 198.18 feet to the Northwest corner thereof, said corner being on the arc of a 324.00 foot radius curve; thence from a tangent bearing of South 24° 45’ 17” West, along said curve to the right, through a central angle of 05° 33’ 58”, an arc distance of 31.47 feet to a point of reverse curvature with a 270.00 foot radius curve; thence along said curve to the left, through a central angle of 28° 03’ 33”, an arc distance of 132.23 feet to a point of tangency; thence South 02° 15’ 42” West 95.00 feet to a point of curvature with a 270.00 foot radius curve; thence along said curve to the left, through a central angle of 26° 08’ 48”, an arc distance of 123.21 feet to a point of reverse curvature with a 324.00 foot radius curve; thence along said curve to the right, through a central angle of 23° 18’ 09”, an arc distance of 131.77 feet to a point of tangency; thence South 00° 34’ 57” East 70.46 feet
to the Southwest corner of said Parcel 2, said corner being on a Northerly line of that tract of land conveyed to the Port of Ridgefield by Bankruptcy Trustee’s Deed recorded under Auditor’s File No. 9403100278; thence along the South line of said Parcel 2 and a Northerly line of said Bankruptcy Trustee’s Deed South 88° 30’ 12” East 114.73 feet; thence North 00° 34’ 57” West 23.83 feet to the Southwest corner of Parcel 1 of said deed recorded under Auditor’s File No. 4506341; thence along the South line of said Parcel 1 South 87° 28’ 34” East 93.08 feet to the Southeast corner of said Parcel 1, said corner being on the West right of way line of said Burlington Northern Sante Fe Railroad; thence along the East line of said Parcel 1 and said West right of way line North 00° 34’ 57” West 139.84 feet to the Point of Beginning.

Containing approximately 2.995 acres.

Subject to easements and restrictions of record.
Schedule 2.3: Assignment of Ridgefield Treatment Plant and Outfall Contracts and Intangibles
SCHEDULE 2.3: ASSIGNMENT OF RIDGEFIELD TREATMENT PLANT AND OUTFALL CONTRACTS AND INTANGIBLES

THIS ASSIGNMENT OF CONTRACTS AND INTANGIBLES ("Assignment") is entered into as of the ___ day of ____________, ____, by and between the CITY OF RIDGEFIELD ("Assignor") and the DISCOVERY CLEAN WATER ALLIANCE ("Assignee"), each a Washington municipal corporation (collectively, the "Parties"), who agree as follows:

1. **RTPO Improvements.** The “RTPO Improvements” means the improvements to the real property located in Ridgefield, Washington, commonly known as the RTPO Premises (legally described on Exhibit A attached hereto), as defined in Section 2.1 of the RTPO Transfer Agreement, and including: (i) a secondary treatment plant; (ii) an influent pumping station; (iii) headworks with screening, sampling and flow measurement equipment; (iv) a grit removal system; (v) an aeration system composed of a distribution structure, two aeration basins and related blower equipment; (vi) a secondary clarification system composed of two circular clarifiers and related return/waste activated sludge pumping stations; (vii) an ultraviolet disinfection system with effluent sampling and flow measurement; (viii) a river outfall composed of a 10-inch diameter concrete pipe flowing approximately 0.2 miles westerly and terminating in Lake River with a submerged diffuser assembly located at latitude 45.82150 and longitude -122.75402; (ix) a solids treatment process consisting of two aerobic digesters and a sludge storage basin; (x) plant support systems consisting of a non-potable water system, a plant drain pump station, an auxiliary generator for backup power, an equipment building, laboratory and office buildings, and supporting site, instrumentation and control, and electrical and mechanical systems; and (xi) all improvements and upgrades now existing or in the process of construction that comprise of or are used by the secondary treatment plant and the west routed 10-inch diameter outfall pipeline.

2. **RTPO Personal Property.** The “RTPO Personal Property” means the personal property located in, on, and around the RTPO Improvements, as defined in Section 2.2 of the RTPO Transfer Agreement, and the RTPO Premises, including: (i) all laboratory equipment and supplies purchased for and stored in the on-site laboratory; (ii) all tools and specialized equipment purchased for or required for operation and maintenance of the RTPO Improvements; (iii) all spare parts purchased for or furnished by equipment manufacturers for the treatment plant; (iv) all fixtures, furniture, furnishings, appliances and related items purchased for or routinely used in the operation of the treatment plant; and (v) all forms of documentation associated with the RTPO Improvements including, but not limited to, reports, plans, specifications, estimates, designs, drawings, maps, surveys, construction records, photos, documentation, operation and maintenance manuals and correspondence associated with the RTPO Improvements, any component thereof, and any existing, in-progress or proposed parts of the RTPO Improvements.
3. **Contracts and Intangibles.** “Contracts and Intangibles” means (i) all warranties or guarantees connected with the construction of all or part of the RTPO Improvements and connected with the construction or purchase of the RTPO Personal Property; (ii) all permits relating to the ownership or operation of the RTPO Improvements and the RTPO Personal Property; and (iii) all rights and duties under any other existing contracts relating to the RTPO Improvements and the RTPO Personal Property, including, but not limited to, the City’s State Revolving Fund Loans.

4. **Assignment.** For good and valuable consideration received by Assignor, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby grants, transfers, and assigns to Assignee the entire right, title, and interest of Assignor in and to the Contracts and Intangibles. Assignor shall continue to be responsible for, and shall perform and satisfy its obligations under, the Contracts and Intangibles insofar as such obligations relate to the period on or before the date of this Assignment. The assignment of warranties shall be on a non-exclusive basis, and Assignor reserves the right to pursue warranty claims in the event claims are brought against Assignor which might give Assignor claims under such warranties.

5. **Assumption.** Assignee hereby assumes the covenants, agreements, and obligations of Assignor under the Contracts and Intangibles which are applicable to the period and required to be performed from and after the date of this Assignment, but not otherwise. No person or entity other than Assignor shall be deemed a beneficiary of the provisions of this Section 5.

6. **Indemnification.** Assignor shall indemnify and hold harmless Assignee from and against all obligations of the Assignor under the Contracts and Intangibles to the extent such obligations were applicable to the period and required to be performed prior to the date of this Assignment. Assignee shall indemnify and hold harmless Assignor from and against all obligations assumed by the Assignee under the Contracts and Intangibles to the extent that such obligations are applicable to the period and required to be performed from and after the date of this Assignment.

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

8. **Enforcement; Prevailing Party Costs.** In addition to the remedies provided by law, this Agreement shall be specifically enforceable by either Party. If either Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs, and expenses shall be recoverable by the prevailing Party.
9. **Successors and Assigns.** All of the provisions, conditions, regulations, and requirements of this Assignment shall be binding upon the successors and assigns of the Parties.

10. **Power and Authority.** Each Party represents and warrants to the other that it is fully empowered and authorized to execute and deliver this Assignment, and the individual signing this Assignment on behalf of such Party represents and warrants to the other Party that he or she is fully empowered and authorized to do so.

11. **Counterparts.** This Assignment may be executed in several counterparts, each of which shall be deemed an original, but all of, which shall constitute one agreement, binding on all parties.

[Signatures Follow.]
IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the date first written above.

ASSIGNOR:  
City of Ridgefield, Washington,  
a Washington municipal corporation

By: __________________________ Date: __________
  Phil Messina, City Manager

Attest: __________________________
  Lee Knottnerus, City Clerk

Approved: ______________
  Janean Parker, City Attorney

ASSIGNEE:  
Discovery Clean Water Alliance,  
a Washington municipal corporation

By: __________________________ Date: __________
  Lisa Walters, Chair, Board of Directors

Attest: __________________________
  Neil Kimsey, Secretary,  
  Board of Directors

Approved: ______________
  Hugh D. Spitzer, Alliance Attorney
Exhibit 2.3.A

Legal Description
LEGAL DESCRIPTION
CITY OF RIDGEFIELD
TREATMENT PLANT
CLARK COUNTY, WASHINGTON

Real property situated in the City of Ridgefield, Clark County, Washington, being a portion of the James Carty Donation Land Claim and lying in the Southeast quarter of Section 13 and the Northeast quarter of Section 24, Township 4 North, Range 1 West of the Willamette Meridian described as follows:

Beginning at the intersection of the South line of the North half of the James Carty Donation Land Claim and the West right of way line of the Burlington Northern Sante Fe Railroad as shown in Book 48 of surveys, at Page 72, records of said county, said intersection being the Southeast corner of that tract of land conveyed to the Town of Ridgefield by deed recorded under Auditor’s File No. G 458184; thence along said West right of way line, the East line of said Auditor’s File No. G 458184, the East line of that tract of land conveyed to the Port of Ridgefield by deed recorded under Auditor’s File No. G 734063 and the East line of Parcel 2 of that tract of land conveyed to the City of Ridgefield by deed recorded under Auditor’s File No. 4506341 North 00° 34’ 57” West 411.75 feet to the Northeast corner of said Parcel 2; thence along the North and West lines of said Parcel 2 the following courses:

South 89° 34’ 10” West 198.18 feet to the Northwest corner thereof, said corner being on the arc of a 324.00 foot radius curve; thence from a tangent bearing of South 24° 45’ 17” West, along said curve to the right, through a central angle of 05° 33’ 58”, an arc distance of 31.47 feet to a point of reverse curvature with a 270.00 foot radius curve; thence along said curve to the left, through a central angle of 28° 03’ 33”, an arc distance of 132.23 feet to a point of tangency; thence South 02° 15’ 42” West 95.00 feet to a point of curvature with a 270.00 foot radius curve; thence along said curve to the left, through a central angle of 26° 08’ 48”, an arc distance of 123.21 feet to a point of reverse curvature with a 324.00 foot radius curve; thence along said curve to the right, through a central angle of 23° 18’ 09”, an arc distance of 131.77 feet to a point of tangency; thence South 00° 34’ 57” East 70.46 feet
to the Southwest corner of said Parcel 2, said corner being on a Northerly line of that tract of land conveyed to the Port of Ridgefield by Bankruptcy Trustee’s Deed recorded under Auditor’s File No. 9403100278; thence along the South line of said Parcel 2 and a Northerly line of said Bankruptcy Trustee’s Deed South 88° 30’ 12” East 114.73 feet; thence North 00° 34’ 57” West 23.83 feet to the Southwest corner of Parcel 1 of said deed recorded under Auditor’s File No. 4506341; thence along the South line of said Parcel 1 South 87° 28’ 34” East 93.08 feet to the Southeast corner of said Parcel 1, said corner being on the West right of way line of said Burlington Northern Sante Fe Railroad; thence along the East line of said Parcel 1 and said West right of way line North 00° 34’ 57” West 139.84 feet to the Point of Beginning.

Containing approximately 2.995 acres.

Subject to easements and restrictions of record.
Exhibit A

City of Ridgefield and Discovery Clean Water Alliance Operator Agreement
Staff Report
Board Meeting of November 15, 2013

6b. Draft Battle Ground Franchise Agreement

<table>
<thead>
<tr>
<th>STAFF CONTACTS</th>
<th>PHONE</th>
<th>EMAIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hugh Spitzer, Foster Pepper, Alliance Legal Counsel</td>
<td>206-447-8965</td>
<td><a href="mailto:spith@foster.com">spith@foster.com</a></td>
</tr>
<tr>
<td>Lee Marchisio, Foster Pepper, Alliance Legal Counsel</td>
<td>206-447-6264</td>
<td><a href="mailto:marcl@foster.com">marcl@foster.com</a></td>
</tr>
<tr>
<td>Scott Sawyer, Battle Ground Public Works Director</td>
<td>360-342-5075</td>
<td><a href="mailto:scott.sawyer@cityofbg.org">scott.sawyer@cityofbg.org</a></td>
</tr>
<tr>
<td>John M. Peterson, P.E., District General Manager</td>
<td>360-993-8819</td>
<td><a href="mailto:jpeterson@crwwd.com">jpeterson@crwwd.com</a></td>
</tr>
</tbody>
</table>

**PURPOSE:** As the Board is aware, one of the Regional Assets to be transferred to the Alliance is Regional Asset No. 9 – the Battle Ground Force Main (BGFM). The BGFM is a 9 mile long 16-inch diameter pipeline routed generally southwesterly from the City to a point of connection with the Salmon Creek Wastewater Management System (SCWMS).

A portion of the pipeline is located in the right-of-way (ROW) of the City of Battle Ground. After transfer of the asset, the Alliance will own infrastructure in the City of Battle Ground ROW and therefore a franchise agreement between the City and the Alliance is appropriate to define the terms and conditions for owning and operating infrastructure in the City ROW.

Attached to this staff report is a first draft of a franchise agreement between the Alliance and the City. This agreement has been modeled after other municipal-to-municipal franchise agreements in the state, including the current agreement between the City of Ridgefield and the Clark Regional Wastewater District.

The main provisions of the agreement require the Alliance to follow the City’s municipal code provisions and obtain the standard permits from the City for activities in the public ROW. The agreement also requires planning and coordination between the parties so that public expenditures for wastewater transmission systems may be implemented in an efficient and effective manner.

As this is the first touch for the Alliance Board on this agreement, Foster Pepper staff will be available by video conference to present an overview of the agreement and to address any questions or comments.

**ACTION REQUESTED:** Review of and policy direction for the draft Battle Ground franchise agreement.
CITY OF BATTLE GROUND AND DISCOVERY CLEAN WATER ALLIANCE
FRANCHISE AGREEMENT

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

1.1 “City” means the City of Battle Ground, a Washington municipal corporation, and its respective successors and assigns.

1.2 “Alliance” means the Discovery Clean Water Alliance, a Washington municipal corporation, and its respective successors and assigns.

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

1.4 “Alliance Facilities” means the Alliance’s then existing Facilities within the Franchise Area.

1.5 “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.

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

1.7 “Ordinance” means Ordinance No. ________, which approves the terms and conditions of this Franchise.

1.8 “Party” or “Parties” means the City 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 City within the Franchise Area for the purposes of public travel, and over which the City 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 City in its governmental or proprietary capacity or as an operator of a utility.

2. **Franchise.**

   2.1 **Grant of Franchise.** Pursuant to the Laws of the State of Washington, including, but not limited to, RCW 35A.47.040, RCW 39.106.040, and RCW 39.106.060, the City hereby grants to the Alliance a nonexclusive franchise to construct, own, 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 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 City’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 City.

   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 City must be sought on a case-by-case basis from the City.

   2.3 **Franchise Nonexclusive.** This Franchise shall be nonexclusive. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area, which do not interfere with the Alliance’s rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

   2.4 **Franchise Term – Termination.** This Franchise shall have a term of thirty (30) years from its Effective Date, and shall automatically renew on the anniversary date of the Effective Date for two (2) 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 or other monetary consideration, the City grants this Franchise as a component of the City’s authority under RCW 39.106.060 and its obligations under the Alliance Agreement, and the Alliance accepts this Franchise in connection with its obligation to provide Alliance Members and Alliance customers with Allocated Capacity under the terms of the Alliance Agreement.
3. **Compliance with Codes and Regulations.**

   3.1 **Scope.** This Franchise is granted subject to the applicable provisions of the Battle Ground Municipal Code, including, but not limited to, Chapter 12.116 BGMC, “Construction in Public Right-of-Way,” as now codified or as later amended, which shall apply in addition to the terms and conditions of this Franchise and Chapter 35A.47 RCW.

   3.2 **Franchise Controls.** The provisions of this Franchise shall control over any conflicting or inconsistent provisions of City Code or City ordinances now in effect or as subsequently amended.

   3.3 **Police Power Preserved.** Nothing in this Franchise limits the City’s lawful exercise of its police power to protect the public safety, health, and welfare.

   3.4 **Compliance with Laws.** Subject to Subsection 3.2, the Alliance shall perform all work in the Public Rights-of-Way in accordance with applicable federal, state, county, and City laws and regulations.

4. **Performance of Work.**

   4.1 **Permits.** 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; 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 an utility permit on or before noon of the next business day. The Alliance shall pay all required permit fees under the City’s then currently adopted fee schedule.

   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.

   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 City 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 City approval, but the Alliance shall obtain City 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 City standards and at least to the same condition existing prior to any such excavation, installation, construction, relocation, maintenance, or repair. Nothing herein shall require the Alliance to restore the surface to a higher standard or condition than previously existed. 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 City determines that the Alliance has failed to restore the right-of-way in accordance with Subsection 4.4, the City shall provide the Alliance with written notice, which shall include a description of actions the City believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the City’s notice within fifteen (15) days of that notice, or such longer period as may be specified in the notice, the City, 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 City in restoring the right-of-way in accordance with this Subsection 4.5 and Subsection 4.4. The rights granted to the City under this Subsection 4.5 shall be in addition to those otherwise provided by this Franchise.

5. Planning Coordination. The Parties acknowledge 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 further acknowledge that Alliance relocation expenses will be accounted for in the Alliance Operating and Capital Budgets under the terms of the Alliance Agreement. Therefore, the Parties shall work together to reduce the need for relocation of Alliance Facilities within the Franchise Area to the greatest extent possible. To accomplish this goal, the Parties shall each assign a representative whose responsibility shall be to coordinate planning for City 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 upon request by the other Party.

5.2 Alliance Schedule. By September 1st of each year, the Alliance shall provide the City with a schedule of the Alliance’s planned capital improvements which may affect the Franchise Area for the next year.

5.3 City Schedule. Upon request of the Alliance, the City shall provide the Alliance with a schedule of the City’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 rights-of-way activities that could affect Alliance capital improvements and infrastructure.

5.4 **Construction Coordination.** The Alliance shall meet with the City, and other franchisees and users of the right-of-way, as necessary, to schedule and coordinate construction activities.

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

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. Maps shall be provided in the digital electronic format used by the City or the Alliance unless the Parties agree on another format.

6. **Relocation of Facilities.**

6.1 **Notice of Projects.** Except as described in Subsection 6.4 below, as soon as practicable after the City learns or determines that the grading or widening of the Franchise Area or the construction and installation of storm drainage lines, lighting, signalization, street and sidewalk improvements, pedestrian amenities, or other public improvements are required, and the proposed project requires relocation of the Alliance Facilities within the Franchise Area, the City shall provide notice of the proposed project to the Alliance.

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. Consistent with RCW 35.21.905 (or as re-codified or amended), 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 City 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 City 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 City under the foregoing process and in accordance with state bid law requirements and applicable regulations, permits, and approvals. The Parties may carry out the cooperative discussion and collaboration described in this Subsection 6.2 through Alliance processes and committees.

6.3 Cost of Relocation – City. The City shall pay for the cost of relocation of Alliance Facilities within five (5) years of the initial construction of the Alliance Facilities; provided, however, that the City shall not pay for such cost where the relocation is required due to an emergency 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 City from obtaining payment under separate agreements or applicable law for the cost of relocation of Alliance Facilities.

6.4 Cost of Relocation – Other. Whenever any person or entity, other than the City, 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 City upon the person or entity), or whenever the City requires the relocation of Alliance Facilities within the Franchise Area for the benefit of any person or entity other than the City, then the Alliance shall have, and the City shall enforce to the extent allowed under applicable law or agreements, 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 City harmless from any and all claims and demands made against the Alliance or the City 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 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 City, and, consistent with the provisions of the City’s Code and applicable development agreements, that authorization shall not be unreasonably withheld, conditioned, or delayed.

8. **Record of Installations and Service.**

8.1 **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.

8.2 **Draft Plan Disclosure.** Upon written request of the City, the Alliance shall provide the City 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.

8.3 **Plan Disclosure.** Upon written request of the Alliance, the City 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 City 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.

8.4 **Record Drawings.** The Alliance shall make record drawings of the location of any Alliance Facilities in the Franchise Area available to the City within ten (10) working days of the City’s request.

9. **Excavations and Trenching.**

9.1 **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.

9.2 **Shared Use of Excavations.** If at any time, or from time to time, either the Alliance or the City 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:

9.2.1 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;

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

9.2.3 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.

9.3 **Trenching Limited.** The City reserves the right to prohibit open trenching for five (5) years following a street overlay or improvement project, except that the City’s prohibition shall not be unreasonably imposed. The City shall give the Alliance written notice at least one hundred eighty (180) days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five (5) year street trenching moratoria.

9.4 **Franchise Area Extended.** Subject to RCW 35A.14.900 (or as re-codified or amended), in the event that any territory served by the Alliance is annexed to the City after the Effective Date of this Franchise, the terms and conditions of this Franchise shall be effective within that territory upon the effective date of the annexation.

10. **Vacation of Franchise Area.** If the City determines to vacate any Public Rights-of-Way in the Franchise Area where Alliance Facilities are located or maintained, any ordinance vacating those Public Rights-of-Way shall provide and condition the City’s vacation on the Alliance obtaining, at no cost to the Alliance, a permanent easement at least fifteen (15) feet wide in such vacated Public Rights-of-Way for the Alliance Facilities located or to be located in such vacated Public Rights-of-Way.

11. **Assignment.** 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 City, which the City 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 11.

12. Default.

12.1 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 City 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 City may act to remedy the violation and may charge the costs and expenses of such action to the Alliance. The City may act without the thirty (30) day notice in case of an emergency. The City may, in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which the Alliance will have an opportunity to be heard) on the impending ordinance, 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.

12.2 Remedies at Law. Following completion of the remedies of Subsection 12.1, the Parties have the right to seek any and all remedies available at law or equity, singly or in combination, in a court of competent jurisdiction.

12.3 Remedies Cumulative. In addition to the other remedies provided herein, if the Alliance is not in compliance with the requirements of this Franchise, and if a good faith dispute does exist concerning such compliance, the City may place a moratorium on issuance of pending Alliance right-of-way use permits until compliance is achieved.

13. Indemnification.

13.1 City Indemnified. The Alliance shall indemnify, defend, and hold the City, 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 which is caused by or arises out of, in whole or in part, 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 negligence or willful misconduct of the City, its agents, officers, employees, volunteers, or assigns.
13.2 **Alliance Indemnified.** The City shall indemnify, defend, 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 which is caused by or arises out of, in whole or in part, the willful, tortious, or negligent acts, failures, or omissions of the City or its agents, servants, employees, contractors, subcontractors, or assigns in the City’s performance, administration, and operation of this Franchise or in exercising the rights granted the City 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.

13.3 **Notice.** In the event any such claim or demand be presented to or filed with the Alliance or the City arising out of or relating to the acts or omissions in whole or in part of the other Party, the Alliance or the City 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.

13.4 **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 City and the Alliance, their officers, employees, and agents, the City’s and the Alliance’s liability hereunder shall be only to the extent of the City’s or the Alliance’s respective negligence.

13.5 **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 13.5** has been specifically negotiated by the Parties.

14. **Insurance.**

14.1 **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.

14.2 **Self and Pooled Insurance.** In satisfying the insurance requirement set forth in this **Section 14**, 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 City with sufficient written evidence, the sufficiency of which shall be determined at the reasonable discretion of the City, 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 14**.
15. **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 City, the notice shall be sent to:

City of Battle Ground  
Attn: City Manager  
109 S.W. 1st St., Suite 221  
Battle Ground, WA 98604

with a copy to:

City of Battle Ground  
Attn: City Attorney  
109 S.W. 1st St., Suite 221  
Battle Ground, WA 98604

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.

16. **Dispute Resolution.**

16.1 **Mediation.** The Parties shall first attempt to resolve a dispute arising from this Franchise by discussions among a City representative or representatives selected by the City Manager 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 shall not resolve a dispute by mandatory arbitration. The Parties reserve their rights to pursue any available Court remedies at any time after the conclusion of the mediation.

16.2 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 City and the Alliance shall file suit to enforce this Franchise only in the Superior Court of Clark County, Washington.

16.3 Enforcement; Prevailing Party Costs. In addition to the remedies provided by law, this Franchise shall be specifically enforceable by either Party. If either Party incurs attorney fees, costs, or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs, and expenses shall be recoverable by the substantially prevailing Party.

17. 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.

18. Amendment.

18.1 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. Without limiting the generality of the foregoing, this Franchise, including, without limitation, Section 10 above, shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented, or otherwise amended by any permit, approval, license, agreement, or other document required by or obtained from the City in conjunction with the exercise, or failure to exercise, by the Alliance of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement, or document specifically:

18.1.1 References this Franchise; and

18.1.2 States that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement, or otherwise amend the terms and conditions of this Franchise.

18.2 Conflict. In the event of any conflict or inconsistency among the provisions of this Franchise and the provisions of any such permit, approval, license, agreement, or other document that does not comply with Subsection 18.1 referenced immediately above, the provisions of this Franchise shall control.
19. **General.**

19.1 **Survival of Terms.** The Parties’ mutual obligations in **Section 13** ("Indemnification") of this Franchise shall survive the termination, expiration, revocation, or forfeiture of this Franchise.

19.2 **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.

19.3 **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.

19.4 **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.

19.5 **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.

20. **Directions to City Clerk.** Upon passage of the Ordinance that grants this Franchise, the City Clerk is authorized and directed to forward a certified copy of the Ordinance to the Alliance. The Alliance shall have sixty (60) days from the receipt of the certified copy of the Ordinance to accept in writing the terms of the Ordinance and this Franchise.

21. **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 Ordinance that grants this Franchise, file with the City its written acceptance of the Ordinance and this Franchise.

22. **Effective Date of Ordinance.** This Franchise, and the Ordinance that grants this Franchise, being an exercise of a power specifically delegated to the City Council, is not subject to referendum, and shall take effect thirty (30) days after passage and publication of an approved summary thereof consisting of the title.

23. **Effective Date of Franchise.** The terms and conditions of this Franchise shall not be binding on the City 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
Ordinance, 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.
Staff Report

Board Meeting of November 15, 2013

6c. Third Quarter 2013 Financial Report

<table>
<thead>
<tr>
<th>STAFF CONTACTS</th>
<th>PHONE</th>
<th>EMAIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ken Andrews, CPA, Treasurer</td>
<td>360-993-8824</td>
<td><a href="mailto:kandrews@crwwd.com">kandrews@crwwd.com</a></td>
</tr>
</tbody>
</table>

PURPOSE: Report to the Board the financial results from operations for the quarter ended September 30, 2013 for the Alliance.

Regional service charge revenues collected from three Members (Battle Ground, Ridgefield and the District) total $105k for the third quarter and $314k year-to-date.

Administrative Lead expenses have been paid to the District and Legal expenses paid to Foster Pepper through September. Administrative Lead expenses paid include executive/administrative/financial services ($22k for the quarter and $48k year-to-date), software ($0k for the quarter and $3k year-to-date) and insurance/other expenses ($0 for the quarter and $2k year-to-date). Legal expenses paid ($28k for the quarter and $70k year-to-date) include Board and committee meetings participation, operator and regional asset transfer agreements, property easements and financial policies review.

Actual expenses for Administrative Lead services are under budget 78% year-to-date and Legal expenses are over budget 6% year-to-date. We anticipate that actual expenses will be closer to budget in 2014 after the remaining grant monies are fully utilized.

ACTION REQUESTED: Information and Discussion
The following is a summary of the Alliance’s financial results for operating funds. This information is summarized from financial activity for the nine months ended September 30, 2013.

<table>
<thead>
<tr>
<th>Category</th>
<th>Adopted Budget</th>
<th>Budget 9/30/2013</th>
<th>% of Budget Period</th>
<th>Actual 9/30/2013</th>
<th>% vs Adopted Budget (1)</th>
<th>% vs Budget 9/30/2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional Service Charges</td>
<td>$ 836,280</td>
<td>$ 313,605</td>
<td>37.5%</td>
<td>$ 313,605</td>
<td>37.5%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Investment Interest</td>
<td>-</td>
<td>-</td>
<td>37.5%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td>$ 836,280</td>
<td>$ 313,605</td>
<td></td>
<td>$ 313,605</td>
<td>37.5%</td>
<td>100.0%</td>
</tr>
<tr>
<td><strong>Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>O&amp;M Operating Expenses</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Lead Contract</td>
<td>661,280</td>
<td>247,980</td>
<td>37.5%</td>
<td>53,184</td>
<td>8.0%</td>
<td>21.4%</td>
</tr>
<tr>
<td>Professional Services - Legal</td>
<td>175,000</td>
<td>65,625</td>
<td>37.5%</td>
<td>69,625</td>
<td>39.8%</td>
<td>106.1%</td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td>836,280</td>
<td>313,605</td>
<td>37.5%</td>
<td>122,809</td>
<td>14.7%</td>
<td>39.2%</td>
</tr>
<tr>
<td>Revenues Over (Under) Expenses</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
<td>$ 190,796</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes

(1) Administrative Lead contract services are under budget 78% due to executive/administration/financial expenses less than forecast and technical support allowance for Mackay Sposito unspent until 1st quarter 2014.
<table>
<thead>
<tr>
<th>OPERATIONS and MAINTENANCE</th>
<th>Adopted Budget</th>
<th>Budget 9/30/2013</th>
<th>% of Budget Period</th>
<th>Actual 9/30/2013</th>
<th>% vs Adopted Budget</th>
<th>% vs Budget 9/30/2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Materials and Supplies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office Supplies-General</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Professional and Consulting Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Lead Contract</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive/administrative/financial services</td>
<td>430,756</td>
<td>161,534</td>
<td>37.5%</td>
<td>48,281</td>
<td>11.2%</td>
<td>29.9%</td>
</tr>
<tr>
<td>Technical support allowance</td>
<td>200,000</td>
<td>75,000</td>
<td>37.5%</td>
<td>-</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Communications/public outreach allowance</td>
<td>10,000</td>
<td>3,750</td>
<td>37.5%</td>
<td>-</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Computer/IT</td>
<td>5,040</td>
<td>1,890</td>
<td>37.5%</td>
<td>2,471</td>
<td>49.0%</td>
<td>130.7%</td>
</tr>
<tr>
<td>CAFR / SAO audit</td>
<td>2,000</td>
<td>750</td>
<td>37.5%</td>
<td>-</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Other Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance (director &amp; officer)</td>
<td>3,244</td>
<td>1,217</td>
<td>37.5%</td>
<td>1,665</td>
<td>51.3%</td>
<td>136.9%</td>
</tr>
<tr>
<td>Utilities</td>
<td>2,740</td>
<td>1,028</td>
<td>37.5%</td>
<td>127</td>
<td>4.6%</td>
<td>12.3%</td>
</tr>
<tr>
<td>Advertising &amp; public relations</td>
<td>2,500</td>
<td>938</td>
<td>37.5%</td>
<td>110</td>
<td>4.4%</td>
<td>11.7%</td>
</tr>
<tr>
<td>Miscellaneous general administration</td>
<td>5,000</td>
<td>1,875</td>
<td>37.5%</td>
<td>530</td>
<td>10.6%</td>
<td>28.3%</td>
</tr>
<tr>
<td>Professional and Consulting Services - Legal</td>
<td>175,000</td>
<td>65,625</td>
<td>37.5%</td>
<td>69,625</td>
<td>39.8%</td>
<td>106.1%</td>
</tr>
<tr>
<td>Total Operations &amp; Maintenance Expenditures</td>
<td>836,280</td>
<td>313,605</td>
<td>37.5%</td>
<td>122,809</td>
<td>14.7%</td>
<td>39.2%</td>
</tr>
<tr>
<td>TOTAL OPERATING EXPENSES</td>
<td>$ 836,280</td>
<td>$ 313,605</td>
<td>37.5%</td>
<td>$ 122,809</td>
<td>14.7%</td>
<td>39.2%</td>
</tr>
</tbody>
</table>
## Quarterly Financial Report
Through the Quarter Ended September 30, 2013
CASH & INVESTMENT BALANCES

<table>
<thead>
<tr>
<th>FUND</th>
<th>Cash</th>
<th>Investments</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>O&amp;M</td>
<td>$ 211,786</td>
<td>$ -</td>
<td>$ 211,786</td>
</tr>
<tr>
<td>Rate Stabilization</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>R&amp;R</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Debt Service</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$ 211,786</td>
<td>$ -</td>
<td>$ 211,786</td>
</tr>
</tbody>
</table>
Staff Report

Board Meeting of November 15, 2013

6d. Transition Work Program Update

<table>
<thead>
<tr>
<th>STAFF CONTACTS</th>
<th>PHONE</th>
<th>EMAIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>John M. Peterson, P.E., District General Manager</td>
<td>360-993-8819</td>
<td><a href="mailto:jpeterson@crwwd.com">jpeterson@crwwd.com</a></td>
</tr>
<tr>
<td>Ken Andrews, CPA, District Finance Director</td>
<td>360-993-8824</td>
<td><a href="mailto:kandrews@crwwd.com">kandrews@crwwd.com</a></td>
</tr>
<tr>
<td>Bernie Bacon, District Senior Admin Assistant</td>
<td>360-993-8823</td>
<td><a href="mailto:bbacon@crwwd.com">bbacon@crwwd.com</a></td>
</tr>
</tbody>
</table>

**PURPOSE:** The goal of the transition work program is to address all of the transition activities needed to prepare the Alliance for its “go-live” date of January 1, 2015. District staff continues to develop the transition work program in close coordination with the Standing Committees and Alliance legal counsel, reviewing all work in meetings twice per month. This staff report provides a monthly Board of Director’s update for the ongoing activities.

**Work Accomplished**

The Alliance legally formed on January 4, 2013. A series of initial resolutions and agreements were approved on January 18, 2013 to establish a basic operating framework for the Alliance. District staff has registered the Alliance with a series of state and federal agencies and has registered the new Alliance logo. A checking account has been established, regional services charges are being billed to Members and invoices are being paid. The Finance Advisory Committee (FAC) is reviewing monthly invoices for Alliance expenditures and has developed a format for quarterly reporting to the Board. Operator agreements have been approved between the Alliance and Clark County (for the Salmon Creek Wastewater Management System and Battle Ground Force Main) and between the Alliance and Ridgefield (for the Ridgefield Treatment Plant). In September, the Members celebrated the one-year anniversary of the Interlocal Formation Agreement approval.

**Work in Progress**

1.0 - Financial Framework and Accounts. The FAC is also working on a debt migration strategy to present in a future Board meeting that will provide a recommendation for the handling of all forms of debt on the Regional Assets at the time of asset transfer on January 1, 2015.
2.0 - Regional Asset Transfer. One of the most comprehensive transition activities is to complete asset transfer agreements for all of the assets listed in the Interlocal Formation Agreement (IFA). As a reminder, there will be three separate agreements prepared to complete the asset transfer to the Alliance. A brief status report for each one is listed below:

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Current Asset Owner</th>
<th>Regional Assets (Name and IFA Number)</th>
<th>Status Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Clark County</td>
<td>Salmon Creek Wastewater Management System (Asset nos. 1-7)</td>
<td>Background research largely complete. Estimate 30% complete overall.</td>
</tr>
<tr>
<td>2</td>
<td>Ridgefield</td>
<td>Ridgefield Treatment Plant and Outfall (Asset no. 8)</td>
<td>Draft agreement developed for policy level review. Estimate 95% complete overall.</td>
</tr>
<tr>
<td>3</td>
<td>Battle Ground</td>
<td>Battle Ground Force Main (Asset no. 9)</td>
<td>Background research largely complete. Agreement in development. Estimate 50% complete overall.</td>
</tr>
</tbody>
</table>

Exhibit Preparation – Real Property Findings. Contract consultant support has been ongoing for real property considerations such as easements, asset location and confirmation of property boundaries in select areas. This information will be depicted in exhibits prepared for each of the regional assets that will be incorporated in the asset transfer agreements.

Port of Ridgefield Coordination. City of Ridgefield and District (Administrative Lead) staff met with Port of Ridgefield staff on October 25. The staff level team concurred that the existing easements rights and current access agreement between the City and Port will meet the needs for the Alliance. Both of these frameworks are conveyed to the Alliance through the ground lease structure.

3.0 - Right-of-Way Franchise Agreements. The Alliance will own regional wastewater assets located in the right-of-way of the City of Battle Ground and Clark County. As such, it is appropriate for the Alliance to develop two right-of-way franchise agreements, one with Battle Ground and one with Clark County. Work has started with Alliance legal counsel and the Standing Committees evaluating a possible franchise agreement structure.

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Right-of-Way (ROW) Owner</th>
<th>Regional Assets</th>
<th>Status Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Battle Ground</td>
<td>Battle Ground Force Main</td>
<td>Draft agreement prepared and in review. Estimate 70% complete.</td>
</tr>
<tr>
<td>2</td>
<td>Clark County</td>
<td>Battle Ground Force Main Salmon Creek Wastewater Management System</td>
<td>Draft agreement prepared and in review. Estimate 50% complete.</td>
</tr>
<tr>
<td>N/A</td>
<td>Ridgefield</td>
<td>No Alliance assets anticipated in Ridgefield ROW</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>
4.0 - **Operating and Access Permit Transfers.** The Alliance will need to transfer operating and access permits for the regional wastewater assets. Examples of operating permits include: wastewater and storm water discharge permits with the Department of Ecology and air discharge permits with Southwest Clean Air Agency. Examples of access permits include those with WSDOT, BNSF railroad, and the Department of Natural Resources (DNR). Preliminary research has been completed on each of the permits. Work is ongoing to prepare the permit assignment forms.

5.0 - **Capital Planning Framework.** A total of eight regional planning documents and related environmental review reports were completed and submitted to Ecology as part of the grant-sponsored work. To-date, all of the documents have been formally approved. District (Administrative Lead) staff, has proposed an outline for the Capital Plan and Capital Budget document that has met with initial approval by the Standing Committees and Alliance legal counsel. Work is ongoing to develop a draft Capital Plan and Capital Budget for future review by the Standing Committees and adoption by the Board of Directors.

**Future Work Activities**

6.0 - **Administrative Code Framework.** The current transition work plan calls for the administrative code development to begin in early 2014 after the asset transfer agreements are largely complete.

**ACTION REQUESTED:** Discussion on the transition work program elements.