

DISCOVERY CLEAN WATER ALLIANCE

RESOLUTION NO. 2021-____

A RESOLUTION OF THE DISCOVERY CLEAN WATER ALLIANCE, ADOPTING RULES AND REGULATIONS TO MANAGE THE QUALITY OF WASTEWATER FLOWS INTO THE ALLIANCE REGIONAL ASSETS, TO COMPLY WITH THE NPDES WASTE DISCHARGE PERMITS ISSUED TO THE ALLIANCE AND TO ESTABLISH A LOCALLY ADMINISTERED PUBLICLY OWNED TREATMENT WORKS (POTW) PRETREATMENT PROGRAM.

WHEREAS, Clark County, Clark Regional Wastewater District, the City of Battle Ground and the City of Ridgefield (collectively the "Members") formed the Discovery Clean Water Alliance ("Alliance"), a Washington municipal corporation, by entering into the "Discovery Clean Water Alliance Interlocal Formation Agreement" ("Alliance Agreement") and by causing the Alliance Agreement to be filed with the Washington Secretary of State, all pursuant to the Joint Municipal Utility Services Act, Chapter 39.106 RCW; and

WHEREAS, Section III.B of the Alliance Agreement grants the Alliance authority to provide regional wastewater transmission and treatment services to Members and other contracting municipal wastewater utilities; and

WHEREAS, Sections 3 and 4 of the Joint Municipal Utility Services Act (RCW 39.106.030 and .040) and Section VII.B of the Alliance Agreement together authorize the Alliance to acquire from Members or new Members Regional Assets for wastewater utility purposes; and

WHEREAS, on January 1, 2015, the Alliance assumed ownership and management responsibilities over the Initial Regional Assets listed in Exhibit B of the Alliance Agreement; and

WHEREAS, the Regional Assets are comprised, in part, of certain publicly owned treatment works ("POTW"), including without limitation the Salmon Creek Treatment Plant and Outfall ("SCTPO"), the Ridgefield Treatment Plant and Outfall ("RTPO"), related transmission system infrastructure described in the Alliance Capital Plan that conveys wastewater to the SCTPO and

the RTPO and any additional wastewater treatment and related transmission assets as determined by the Alliance Board, which together with the Member owned collection systems comprise the "Alliance POTW;" and

WHEREAS, under the Washington State Water Pollution Control Law, chapter 90.48 RCW ("WPCL"), the Washington State Department of Ecology ("Ecology") has jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington; and

WHEREAS, RCW 90.48.260 designates Ecology as the state water pollution control agency for purposes of the federal Clean Water Act ("CWA") and authorizes Ecology to establish a comprehensive state point source waste discharge or pollution discharge elimination permit program; and

WHEREAS, Chapter 173-220 WAC establishes a state individual permit program, applicable to the discharge of pollutants and other wastes and materials into the surface waters of the state, as a part of the National Pollutant Discharge Elimination System ("NPDES") created by section 402 of the CWA; and

WHEREAS, WAC 173-220-040 requires any political subdivision or municipality that discharges pollutants to surface waters of the state to obtain a NPDES permit from Ecology; and

WHEREAS, in accordance with WAC 173-220-200 and the respective NPDES waste discharge permits for the SCTPO and the RTPO ("NPDES Permits"), the Alliance notified Ecology of the transfer of ownership to the Alliance of the SCTPO and the RTPO effective January 1, 2015, for purposes of automatic transfer of the NPDES Permits to the Alliance, and the Alliance anticipates receiving from the Ecology updated NPDES Permits for the SCTPO and the RTPO based on Alliance ownership of the Regional Assets; and

WHEREAS, the NPDES Permits establish discharge limits, monitoring requirements, reporting and recordkeeping requirements, facility loading limits, and operating and maintenance requirements for wastewater transported to and treated by the SCTPO and the RTPO; and

WHEREAS, the NPDES Permits require the Alliance POTW permittees (the Alliance and all of the flow contributing Members) to work with Ecology to ensure that all commercial and industrial users of the Alliance POTW are in compliance with the general pretreatment regulations promulgated by the Environmental Protection Agency ("EPA") in 40 CFR Part 403 and any

additional regulations that may be promulgated under section 307(b) (pretreatment) or 308 (reporting) of the CWA ("Federal Pretreatment Regulations"); and

WHEREAS, separately from any NPDES permits, the Alliance is responsible for developing POTW pretreatment programs pursuant to and in compliance with the Federal Pretreatment Regulations; and

WHEREAS, those POTW pretreatment programs are pretreatment regulations for the purposes of section 307(d) of the CWA; and

WHEREAS, to carry out and implement cooperatively the POTW pretreatment program, the Alliance by Resolution No. 2014-08, effective January 1, 2015, established a framework for each Member discharging wastewater into the Regional Assets to adopt pretreatment regulations that satisfy the minimum pretreatment requirements and standards of the CWA, the Federal Pretreatment Regulations, the WPCL, the pretreatment requirements and procedures of the NPDES Permits, and any other applicable laws, regulations and permits; and

WHEREAS, a POTW pretreatment program that meets the requirements promulgated at 40 CFR Part 403.8 for development of a locally administered pretreatment program may be delegated responsibility for administering, managing and overseeing such POTW pretreatment program by Ecology, including issuing discharge permits to Significant Industrial Users discharging wastewater to the Regional Assets; and

WHEREAS, the Alliance and the Members have cooperated to develop the POTW pretreatment program of the Alliance ("Alliance POTW Pretreatment Program"), which includes without limitation: (1) the adoption of this Resolution and the POTW pretreatment program rules and regulations attached as **Exhibit A** that govern, regulate and control the discharge of wastewater to the Regional Assets ("Alliance Pretreatment Regulations"); (2) each flow contributing Member adopting as of the date of this Resolution Member POTW pretreatment program rules and regulations that are not less stringent than those set forth in the Alliance Pretreatment Regulations, which may include adopting the Alliance Pretreatment Regulations by reference ("Member Pretreatment Regulations"); (3) each flow contributing Member repealing or rescinding as of the date of this Resolution any existing pretreatment regulations that are inconsistent with the terms of the Alliance Pretreatment Regulations or the Member Pretreatment Regulations; (4) each flow contributing Member providing the Alliance, by contract or other formal statement acceptable to Ecology, the Member's endorsement or approval of and participation in the enforcement of the Alliance Pretreatment Regulations and the Member Pretreatment

Regulations; and (5) each Member adopting all other local laws and regulations that are necessary to comply with, implement and enforce the Alliance Pretreatment Regulations and the Member Pretreatment Regulations; and

WHEREAS, the Alliance POTW Pretreatment Program meets the requirements promulgated at 40 CFR Part 403.8 for development of a locally administered POTW pretreatment program, and as such Ecology has delegated upon the effective date of this Resolution to the Alliance responsibility for administering, managing and overseeing the Alliance POTW Pretreatment Program, including over the issuance of discharge permits to Significant Industrial Users discharging wastewater to the Regional Assets; and

WHEREAS, the Alliance desires to repeal and replace the rules and regulations adopted under Resolution No. 2014-08 and adopt POTW pretreatment program rules and regulations sufficient to receive delegated responsibility from Ecology to implement the Alliance POTW Pretreatment Program, all as set forth by this Resolution and the requirements of the NPDES Permits; and

WHEREAS, Section 4 of the Joint Municipal Utility Services Act (RCW 39.106.040) and Section IV.B of the Alliance Agreement authorize the Alliance Board to adopt rules, policies, and guidelines to administer and regulate the Regional Assets and regulate dischargers of wastewater to the Regional Assets, including without limitation in connection with the Alliance's status as a delegated municipality responsible for issuing discharge permits for Significant Industrial Users discharging wastewater to the Regional Assets; and

WHEREAS, it is necessary for the Alliance from time to time to establish or update rules and regulations to manage the quality of wastewater accepted by the Alliance from its Members, including wastewater from Industrial Users subject to pretreatment requirements (where applicable), in order to efficiently and effectively manage the Regional Assets consistent with the customary practices for wastewater facilities in Washington State of the type comprising the Regional Assets and consistent with applicable federal, state and local laws and regulations, now, therefore

BE IT RESOLVED by the Board of Directors of Discovery Clean Water Alliance as follows:

Section 1. Authority and Intent.

Pursuant to Chapter 39.106 RCW and the powers granted by the Alliance Agreement to the Alliance, the Board of Directors declares as follows:

A. It is the intent of the Board to manage the Regional Assets, which are comprised of the Alliance's wastewater transmission and treatment facilities, in accordance with levels of service and operating standards that are customary for similar wastewater facilities in the state of Washington and that are consistent with applicable state and federal laws and regulations, including but not limited to the WPCL, the CWA, and the regulations promulgated under those laws.

B. In accordance with its policy, oversight, and governance powers granted by Section IV.B of the Alliance Agreement, the Board desires to set forth the rules and regulations for managing the quality of wastewater flows into the Regional Assets, including with regard to pretreatment programs for wastewater discharged by all commercial and industrial users.

C. The rules and regulations adopted in this Resolution are incorporated in, and considered a part of, the Alliance Administrative Framework or the Alliance Administrative Code, as those terms are referenced from time to time.

Section 2. Definitions.

For the purposes of construing this Resolution, capitalized terms have the same meanings as the terms that are defined in the "Definitions" section of the Alliance Agreement. For the purposes of this Resolution, the following definitions are incorporated herein:

A. "Administrative Lead" means any Member or other entity serving in that capacity, consistent with Sections V.A and V.B of the Alliance Agreement. If the Alliance determines to undertake administrative responsibilities itself, using its own staff, then as used in this Agreement the term "Administrative Lead" shall mean the chief executive officer or executive director of the Alliance. *[Reference: see Alliance Agreement at § II.B]*

B. "Alliance" means the Discovery Clean Water Alliance. *[Reference: see Alliance Agreement at § II.D]*

C. "Alliance Agreement" means the Discovery Clean Water Alliance Interlocal Formation Agreement, amended and restated August 15, 2014, and as may be further amended. *[Reference: see Alliance Agreement at § II.C.]*

D. "Alliance Pretreatment Regulations" means the POTW pretreatment program rules and regulations attached as **Exhibit A** that govern, regulate and control the discharge of wastewater to the Regional Assets. The Alliance Pretreatment Regulations satisfy the minimum pretreatment requirements and standards of the CWA, the Federal Pretreatment Regulations, the WPCL, the pretreatment requirements and procedures of the NPDES Permits and all other applicable laws, regulations and permits.

E. "Board" means the Board of Directors of the Alliance. *[Reference: see Alliance Agreement at § II.I.]*

F. "Collection System" means all sewer lines, pump stations and other sewer facilities upstream from the Influent Points respectively owned and operated (or operated under contract) by a Member or a Contracting Municipal Wastewater Utility.

G. "Contracting Municipal Wastewater Utility" means a county, city, town, water-sewer district, public utility district, other special purpose district, municipal corporation, or other unit of local government of this or another state and any Indian tribe recognized as such by the United States government authorized by law to provide a system of sewers for the collection, transmission, or treatment of Wastewater that has entered into an agreement with the Alliance that provides for Alliance acceptance of some or all of that entity's Wastewater.

H. "CWA" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251-1387.

I. "Domestic User" means any person who contributes, causes or allows the contribution of wastewater to the Regional Assets that is of similar volume and/or chemical make-up to that of a residential dwelling unit.

J. "Ecology" means the Washington State Department of Ecology.

K. "Federal Pretreatment Regulations" means the general pretreatment regulations promulgated by the EPA in 40 CFR §§ 403.1-403.20 pursuant to section 307(b) (pretreatment) and 308 (reporting) of the CWA.

L. "Industrial User" has the same meaning as the term defined in the Federal Pretreatment Regulations, including a source of indirect discharge as that term is defined in the Federal Pretreatment Regulations.

M. "Member" (collectively, "Members") means one or more governmental members of the Alliance, and includes Original Members and Additional Members. For purposes of this Resolution, "Member" includes any "Contracting Municipal Wastewater Utility," unless expressly excluded. *[Reference: see Alliance Agreement at § II.S]*

N. "Member Pretreatment Regulations" means the POTW pretreatment program rules and regulations adopted by a Member that govern, regulate and control the discharge of wastewater to that Member's POTW, including without limitation the portion of that Member's Collection System that conveys wastewater to the Regional Assets, and that are not less stringent than the Alliance Pretreatment Regulations. The Member Pretreatment Regulations of each Member satisfy the minimum pretreatment requirements and standards of the CWA, the Federal Pretreatment Regulations, the WPCL, the pretreatment requirements and procedures of the NPDES Permits, the Alliance Pretreatment Regulations and all other applicable laws, regulations and permits.

O. "NPDES Permit" (collectively, "NPDES Permits") means the National Pollutant Discharge Elimination System waste discharge permit issued by Ecology to the Alliance or a Member, as applicable, for a Regional Asset pursuant to the WPCL and the CWA.

P. "Operator(s)" means any Member or other entity serving in that capacity, consistent with Sections V.A and V.C. of the Alliance Agreement. If the Alliance determines to undertake Operator responsibilities itself, using its own staff, then as used in this Agreement the term "Operator" shall mean the chief executive officer or executive director of the Alliance. *[Reference: see Alliance Agreement at § II.W]*

Q. "POTW" means a publicly owned treatment works as defined by section 212 of the CWA. For purposes of this Resolution, the Regional Assets together and separately are considered a "POTW."

R. "Regional Assets" means the assets listed in Exhibit B of the Alliance Agreement and any additional assets as the Board may later determine to be Regional Assets under Section VII.B of the Alliance Agreement. *[Reference: see Alliance Agreement at § II.Z]*

S. “Significant Industrial User” means any Industrial User required to obtain a discharge permit in accordance with the Pretreatment Regulations.

T. “Wastewater” means the sewage and other wastewater flows in the sewers of the Alliance, a Member or a Contracting Municipal Wastewater Utility.

U. “WPCL” means the Water Pollution Control Law, Chapter 90.48 RCW.

Section 3. Compliance with NPDES Permits.

A. Alliance Compliance. The Alliance is responsible for compliance with the terms and conditions of the NPDES Permits issued to the Alliance to operate the Regional Assets.

B. Member Compliance. All Members are responsible for compliance with their respective duties and responsibilities under the NPDES Permits.

Section 4. Compliance with Pretreatment Regulations.

A. Adoption of Alliance Pretreatment Regulations. The Alliance adopts and incorporates herein by this reference the Alliance Pretreatment Regulations attached as **Exhibit A**.

B. Industrial User and Domestic User Compliance. Each Industrial User must comply with the Alliance Pretreatment Regulations and the Member Pretreatment Regulations adopted by any Member that operates a Collection System into which the Industrial User discharges wastewater. Each Domestic User must comply with the Alliance Pretreatment Regulations and the Member Pretreatment Regulations adopted by any Member that operates a Collection System into which the Domestic User discharges wastewater.

C. Amendments to Pretreatment Regulations. The Alliance reserves the right to amend the Alliance Pretreatment Regulations from time to time in order to ensure compliance with applicable federal, state or local law or regulation or to implement all known, available and reasonable methods of prevention, control and treatment of wastewater being discharged to the Regional Assets. Each Member reserves the right to amend its Member Pretreatment Regulations from time to time in order to ensure compliance with applicable federal, state or local law or regulation or to implement all known, available and reasonable methods of prevention, control and treatment of wastewater being discharged to the Member’s Collection System and the Regional Assets. Prior to amendment of the Alliance Pretreatment Regulations or any Member Pretreatment Regulations, the Alliance and the Members will coordinate to consider at a minimum potential local and regional impacts of any such amendment.

Section 5. Wastewater Quality.

A. Acceptance and Treatment of Wastewater. The Alliance will accept and treat only wastewater that complies with the Alliance Pretreatment Regulations, the applicable Member Pretreatment Regulations, all Alliance adopted wastewater quality policies, the NPDES Permits and all other applicable laws, regulations and permits.

B. Monitoring of Wastewater Quality. Collectively, the Alliance and the Members will cooperatively monitor the quality of wastewater transported to and treated by the Regional Assets in order to implement and enforce compliance with this Resolution, the Alliance Pretreatment Regulations, the applicable Member Pretreatment Regulations, all Alliance adopted wastewater quality policies, the NPDES Permits and all other applicable laws, regulations and permits.

Section 6. Collection Systems.

A. Collection System Standards and Practices. Each Member must observe or cause to be observed the highest practicable standards and practices in the construction, maintenance and operation of its Collection System. In accordance with those standards, each Member must regulate the pollutants, substances or wastewater in its Collection System and adopt regulations to enforce compliance. Each Member must periodically inspect its Collection System to ensure adherence to this Resolution, applicable laws and regulations, the NPDES Permit, and other permits for the Regional Assets.

B. Correction and Prevention of Collection System Violations. Each Member must take sufficient measures to correct or prevent any condition within or discharge into its Collection System that violates this Resolution, applicable laws and regulations, the NPDES Permits, or other permits for the Regional Assets. If a Member does not correct or take actions to correct or prevent the condition or discharge immediately upon knowledge or notice, the Alliance may act to correct or prevent the condition or discharge or direct the Member to act. The non-responsive Member must pay all reasonable and necessary costs and expenses incurred by the Alliance in connection with the correction or prevention of the condition or discharge.

C. Inspection of Collection Systems. The Alliance, or its agents and contractors, at any reasonable time and with appropriate notice, may inspect the Collection System of any Member.

Section 7. Wastewater Violations.

A. Discontinuance of Wastewater Violations. Upon receipt of notice from the Alliance, a Member, Industrial User or Domestic User must immediately discontinue discharging pollutants, substances, or wastewater into the Regional Assets that the Alliance reasonably believes:

- i. Is causing or is likely to cause damage to the Regional Assets;
- ii. Is causing or is likely to cause the Alliance to violate any laws and regulations, the NPDES Permits, or other permits for the Regional Assets; or
- iii. Is creating a public nuisance or a hazard to life or property.

B. Costs and Expenses of Violations. Any Member, Industrial User or Domestic User violating subsection 7(A) above must pay any reasonable and necessary costs and expenses incurred by the Alliance to respond to or remedy the violation.

C. Enforcement Mechanisms. The Alliance is responsible for communicating with Ecology or other federal, state or local agencies, as applicable, regarding the NPDES Permits and other permits for the Regional Assets. If necessary to obtain compliance with a directive or order of Ecology or other federal, state or local agencies, the Board may take action against a Member, Industrial User or Domestic User in order to comply with the directive or order. This action may include, but is not limited to, termination of wastewater transmission and treatment, in whole or in part, imposition of special charges and penalties, or filing of a lawsuit to obtain a preliminary and/or permanent injunction.

D. Responsibility for Fines and Penalties. If the Alliance is fined or penalized by federal, state, or local agencies for failure to operate or maintain the Regional Assets or to transport, treat or discharge in accordance with applicable laws, regulations, the NPDES Permits, or other permits for the Regional Assets, then each Member, each Industrial User and each Domestic User whose wastewater flows caused the fines or penalties, in whole or in part, will be obligated to pay to the Alliance any reasonable and necessary costs and expenses incurred by the Alliance in connection with the fines or penalties.

Section 8. General Provisions.

A. Powers and Duties of Administrative Lead. In consultation with the relevant Alliance Standing Committees, the Administrative Lead is authorized to administer, manage and enforce the rules and regulations contained in this Resolution and to monitor the NPDES Permits and

other permits for the Regional Assets on behalf of the Alliance in accordance with the terms and conditions of the Administrative Lead Agreement, as currently in effect or as amended. The Administrative Lead may establish additional written policies from time to time as the Administrative Lead may deem necessary to carry out this Resolution.

B. Operators. In consultation with the Administrative Lead and the relevant Alliance Standing Committees, the Operators must operate their respective assigned Regional Assets in accordance with the rules and regulations contained in this Resolution.

C. Rules and Regulations Binding. The rules and regulations contained in this Resolution may not be waived, altered, or amended by the Administrative Lead, an Operator, a Member, or any other user of the Regional Assets. Changes, amendments, or additions to this Resolution may be made at any time by action of the Board. The Board may decide any question that arises under but is not fully settled by any of the provisions of this Resolution, and its decision in those cases will be final.

Section 9. Approval of Interlocal Agreement.

The Alliance hereby approves the Interlocal Agreement among the Alliance, Clark Regional Wastewater District and the City of Battle Ground, "Program Implementation and Enforcement Relating to a Locally Administered Multijurisdictional Pretreatment Program," in the form attached hereto as **Exhibit B** and authorizes the Chair of the Board to sign the Interlocal Agreement on behalf of the Alliance.

Section 10. Repealer.

Resolution No. 2014-08 is repealed effective immediately.

Section 11. Effective Date.

This Resolution will take effect and be in full force from and after adoption.

Section 12. Corrections.

Upon approval of the Administrative Lead and the Alliance attorney, the clerk of the Alliance is authorized to make necessary corrections to this Resolution, including the correction of (1) clerical errors, (2) references to other local, state or federal laws, codes, rules or regulations, and (3) resolution numbering and section and subsection numbering.

ADOPTED by the Board of Directors of Discovery Clean Water Alliance at a regular meeting held on _____, 2021.

DISCOVERY CLEAN WATER ALLIANCE

Chair, Board of Directors

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**EXHIBIT A
PRETREATMENT REGULATIONS**

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**EXHIBIT B
[FORM OF]
INTERLOCAL AGREEMENT**

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