

**BEFORE THE BOARD OF COMMISSIONERS
FOR LEWIS COUNTY, WASHINGTON**

IN RE: APPROVING AN INTER-LOCAL AGREEMENT)
BETWEEN LEWIS COUNTY AND THURSTON COUNTY) RESOLUTION NO. 10 - 127
PUBLIC UTILITIES DISTRICT NO. 1 CONCERNING)
WATER SERVICES TO RESIDENTS IN LEWIS COUNTY)

WHEREAS, Thurston County Public Utilities District No. 1. (Thurston PUD) and Lewis County are both political subdivisions of the State of Washington, and desire to enter into an Agreement pursuant to the Inter-local Cooperation Act, RCW Chapter 39.34, to address Thurston PUD's provisioning of water utility services within Lewis County; and

WHEREAS, the previous agreement entered into between Lewis County and Thurston PUD has expired; and

WHEREAS, the parties desire to enter into a new agreement regarding the local terms and conditions under which Thurston PUD renders water utility services to residents in Lewis County;
NOW THEREFORE

BE IT RESOLVED that the Board of County Commissioners of Lewis County hereby approves of the terms and conditions of the attached inter-local agreement, and hereby authorizes the Chairman of the Board to execute the agreement on behalf of the County, to become effective immediately.

17th Amendment
PASSED IN REGULAR SESSION this 24th day of May, 2010.

ATTEST:

Harri Quinn
Clerk of the Board



BOARD OF COMMISSIONERS
for Lewis County, Washington

[Signature]
Chairman

[Signature]
Member

[Signature]
Member

APPROVED AS TO FORM:
Michael Golden, Prosecuting Attorney

By: *[Signature]*
Civil Deputy

**CERTIFIED COPY OF RESOLUTION
ADOPTED AT THE REGULAR MEETING OF THE COMMISSIONERS
OF
PUBLIC UTILITY DISTRICT NO. 1 OF THURSTON COUNTY**

We, the undersigned, being the President and Secretary of Public Utility District No. 1 of Thurston County, do hereby certify that the following Resolution was unanimously adopted by the Commissioners of Public Utility District No. 1 of Thurston County, in attendance at the meeting held at the office of the District, Suite 201, 921 Lakeridge Way S.W., Olympia, Washington, 98502 on Tuesday, May 11, 2010, and that said Resolution has not been revoked.

RESOLUTION NO. 10-27

WHEREAS, the Commissioners of Thurston Public Utility District No. 1 (TPUD) met with the Lewis County Board of County Commissioners (BOCC) on October 22, 2008 and entered into a memorandum of understanding (MOU), and

WHEREAS, the agreement has expired and the BOCC asked TPUD to enter into a new MOU with TPUD, and

WHEREAS, TPUD staff has been coordinating with BOCC staff and the Commissioners have had the opportunity to review and approve the changes in the MOU, and

WHEREAS, BOCC responded with an agreement on the proposed modified MOU on May 5, 2010, and

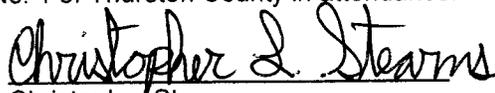
WHEREAS, TPUD concurs with the agreement which has been coordinated with BOCC and wishes to approve said MOU.

NOW, THEREFORE, it is hereby

RESOLVED that the TPUD Commissioners adopt the MOU agreed upon by the BOCC attached to Resolution 10-27.

Said Resolution was approved and adopted by the unanimous vote of the Commissioners present.

We do further certify that said meeting was attended by 3 of the three Commissioners of Public Utility District No. 1 of Thurston County and that the Resolution was adopted by the unanimous vote of the Commissioners of Public Utility District No. 1 of Thurston County in attendance.


Christopher Stearns
Commissioner and President of PUD

ATTES


Paul Pickett
Commissioner and Secretary

Attachments: Memorandum of Understanding By and Between Lewis County and Thurston PUD No. 1

**INTER-LOCAL AGREEMENT BY AND BETWEEN
LEWIS COUNTY AND PUBLIC UTILITY DISTRICT NO. 1 OF THURSTON COUNTY**

THIS AGREEMENT is made the ____ day of May, 2010, by and between **PUBLIC UTILITY DISTRICT NO. 1 OF THURSTON COUNTY**, a public utility district (hereinafter "Thurston PUD"), and **LEWIS COUNTY**, a political subdivision of the State of Washington (hereinafter "County")(collectively "the Parties").

WHEREAS, Public Utility District No. 1 of Lewis County (Lewis PUD) and Public Utility District No. 1 of Thurston County (Thurston PUD) have entered into a Memorandum of Understanding (Lewis-Thurston PUD MOU) providing that the Lewis PUD will not render water and sewer services in Lewis County during the term of the Lewis-Thurston PUD MOU;

WHEREAS, the Washington State Department of Health has authorized Thurston PUD to function as a Satellite Management Agency (SMA) for purposes of operating certain water systems;

WHEREAS, Lewis County is authorized by RCW 36.94 to construct, operate and maintain water systems;

WHEREAS, Lewis County wishes to provide these services, but is not yet ready to offer these services within Lewis County;

WHEREAS, Lewis County recognizes that Thurston PUD is presently authorized by the Washington State Department of Health to operate as a SMA in Lewis County and to provide such assistance in the operation and maintenance of water systems as requested by Lewis County municipalities and agencies;

WHEREAS, the Board of County Commissioners approved an initial Memorandum of Understanding with Thurston PUD by Resolution 09-035 and for a term to expire on December 31, 2009;

WHEREAS, it is appropriate for Lewis County and Thurston PUD to enter into another Memorandum of Understanding to supersede the current MOU;

WHEREAS, Lewis County and Thurston PUD recognize that water is a fundamental and scarce resource that must be conserved and to this end Thurston PUD agrees not to alienate, convey or transfer any water rights owned, associated with or claimed by it or any system it owns or operates in Lewis County or to apply or permit the distribution or application of water appropriated or treated by any such system to any beneficial use outside of Lewis County during the Thurston PUD's ownership and operation of any system in Lewis County;

WHEREAS, Lewis County and Thurston PUD recognize that regional water solutions frequently are more efficient and cost-effective than localized water solutions;

NOW, THEREFORE, in consideration of the terms and conditions set forth below and other consideration, the sufficiency of which is hereby acknowledged, Thurston PUD and the County agree as follows:

1. **Purpose:** This Inter-local Agreement ("Agreement") supersedes the expired or expiring Memorandum of Understanding between Thurston PUD and the County regarding the local terms and conditions under which Thurston PUD renders water utility services to residents of Lewis County.

2. **Means of Undertaking:** No separate entity will be created to implement the terms of this Agreement.

3. **Term:** This Agreement shall commence upon the expiration of the existing Memorandum of Understanding between the Parties or the Parties' execution of this Agreement, whichever date is earlier. This Agreement shall terminate December 31, 2019, unless terminated earlier pursuant to the terms of this Agreement. Either party may terminate this Agreement upon one year's advance written Notice terminating this Agreement.

4. **Notice:** Except as set forth elsewhere in this Agreement, and for all purposes except service of process, Notice required by this Agreement shall be given by Thurston PUD to the County by depositing it in the US Mail, first class, postage prepaid, and addressed to Chairman, Lewis County Board of County Commissioners, 351 NW North Street, Chehalis, WA 98532, and the County shall provide Notice to the Thurston PUD by depositing it in the US Mail, first class, postage prepaid, and addressed to General Manager, Public Utility District No. 1 of Thurston County, 921 Lakeridge Way SW, Suite 201, Olympia, WA 98502. Notice shall be deemed effective two business days after mailing.

5. **Recognition of Thurston PUD:** During the Term of this Agreement and until otherwise notified or informed of a change in the authorized status of the Thurston PUD, County recognizes that Thurston PUD is authorized by the Washington State Department of Health to operate as a SMA in Lewis County and to render such assistance in the operation and maintenance of water systems as it may be requested to provide by municipalities and agencies within the geographical limits of the County.

6. **No Alienation of Water Rights:** Thurston County PUD agrees that to the extent it has control over water rights owned or used by a water system solely within Lewis County, Thurston PUD will not assign, convey, sell, distribute or transfer those water rights or apply them to beneficial use outside of Lewis County. For purposes of this

section, a water right includes any water right certificate; permit, application, claim and groundwater exempt right.

7. Regional South County Utility: To the extent any part of any utility system Thurston PUD acquires, owns or manages in Lewis County is located within or serves customers within the proposed service area of a proposed regional South County Utility, Thurston PUD agrees to fully support and participate in the proposed regional utility and to agree to incorporate the utilities it acquires, owns or manages into the proposed regional South County Utility on terms and conditions comparable and proportionate to those of other municipal corporations incorporating their utility systems into the regional South County Utility, or the PUD agrees to allow Lewis County the preferential right to purchase on the terms and conditions outlined in the paragraph addressing "County Right to Preferential Purchase."

8. County Right to Preferential Purchase: If the PUD determines it will sell a system and upon obtaining a written good faith offer to purchase the system, the PUD shall notify, by written notice, the County of the terms thereof. Within thirty (30) days after its receipt by the County, the County may, at its option, accept the offer by giving written notice to the PUD of its election to purchase under this right of first refusal for the price as stated. Upon receipt of notice from the County of its intent to purchase, the PUD shall sell to the County and convey to the County the water system as soon as the transaction can reasonably be closed. The failure of the County to notify the PUD of its desire to exercise its purchase rights within said thirty (30) day period as required herein shall result in the termination of the County's preferential right, as to the proposed sale.

If the County does not elect to purchase the water system in accordance with this clause, the PUD shall be entitled to enter a contract for sale of the water system for a period of 6 months substantially in accordance with the terms and conditions upon which the purchase was to be made as described in the notice given to the County. However, if the sale is not completed substantially on the terms and conditions as set forth in the notice to the County the PUD shall not be entitled to complete the sale to said third party purchaser without first submitting the subsequent proposal to the County. The requirements under this section only apply to the extent they are consistent and do not violate the terms of the Thurston PUD agreements and contracts with the water systems, and Thurston PUD otherwise has the legal authority to comply with this section.

9. Amendments: Either party may request changes to this Agreement. Any and all agreed amendments shall be approved by Thurston PUD and the County, shall be in writing and signed by the parties, and shall be effective on the latter date of execution by the respective parties.

10. Waiver: Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties.

11. Severability: If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held to be invalid, then such invalidity shall not affect the other terms, conditions, or applications which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared to be severable.

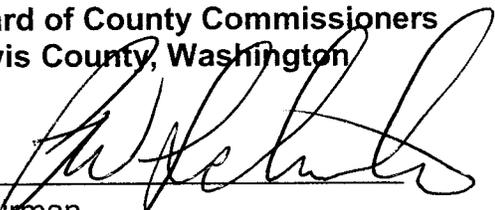
12. Survival: The provisions of Section 6 and 7 shall survive the termination of this Agreement notwithstanding the termination or invalidity of this Agreement for any reason.

13. Successors and Assigns: The rights and obligations of the Thurston PUD and Lewis County under this Agreement shall inure to the benefit of and be binding upon their respective successors and assigns.

14. Venue and Choice of Law: In the event any dispute should arise concerning the interpretation of any of the terms of this Agreement, the venue of litigation shall be in the courts of the State of Washington for the County of Lewis. This Agreement is governed by the law of the State of Washington. Each party shall be responsible for its own attorney fees.

15. Entire Agreement: This Agreement represents the entire Agreement of the parties and supersedes any prior statements, discussions, understandings or agreements between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this ___ day of May, 2010.

**Board of County Commissioners
Lewis County, Washington**


Chairman

**Public Utility District No. 1
of Thurston County**


President

5/17/10
Date

5/11/10
Date



Thurston
Public Utility District

Commissioners
Alan Corwin
Paul Pickett
Chris Stearns

May 12, 2010

Subject: Memorandum of Understanding Between Lewis County & Thurston PUD No.1

Robert A. Johnson
Director
Lewis County Department of Community Development
2025 Kresky Ave. NE
Chehalis, Washington 98532

Dear Robert:

Thank you for providing me with the Memorandum of Understanding (MOU) between Lewis County and Thurston Public Utility District No. 1. The MOU was approved at the PUD meeting last evening.

Two signed copies of the MOU are attached as you requested. Please return a signed copy to my attention once the MOU is approved by the Lewis County Board of County Commissioners.

Thank you for your prompt attention to this issue. I'm looking forward to working with you and other members of the County staff.

Sincerely,

A handwritten signature in black ink, appearing to read "John Weidenfeller". The signature is fluid and cursive, written over a light background.

John Weidenfeller
General Manager

cc: Thurston PUD No. 1 Board of Commissioners

BOCC EXECUTIVE SUMMARY

Proposed Action(s): Approve a resolution authorizing the Chairman of the Board to sign an agreement between Lewis County and the Thurston County Public Utility District No. 1 (Thurston PUD) concerning operation of public water systems by Thurston PUD within Lewis County.

Summary prepared by: Robert A. Johnson, Director of Community Development

Date: May 5, 2010

Date of Board action: May 25, 2010

Summary of proposal(s): Lewis County and Thurston PUD previously entered into an agreement concerning the PUD's ownership and operation of public water supplies in Lewis County. This resolution will approve a new agreement between the parties that will expire on December 31, 2019.

Discussion: The existing agreement between the parties has expired. Because Thurston PUD owns and operates several public water supplies within Lewis County, an agreement between the PUD and Lewis County that defines certain conditions and terms for operation within the county is prudent and timely.

Result of disapproval: In the event the Board does not approve the above actions, the County will not enter into an agreement with Thurston PUD concerning provision of water service within Lewis County.

Staff recommendation: Approve the resolution and authorize the Chairman of the Board to sign the agreement.

BOCC AGENDA ITEM SUMMARY (Revised 09-16-08)

RESOLUTION #: 10- 127

BOCC MEETING DATE: 05/24/10

SUGGESTED WORDING FOR AGENDA ITEM: Notice Consent Hearing

Approval of an agreement between Lewis County and Thurston PUD concerning the local terms and conditions under which Thurston PUD renders water utility services to the residents of Lewis County.

BRIEF REASON FOR BOCC ACTION: The previous agreement has expired, and a new agreement is prudent and timely.

SUBMITTED BY: Bob Johnson PHONE: X2620 DATE SUBMITTED: 05/05/10

CONTACT PERSON WHO WILL ATTEND BOCC MEETING: Bob Johnson

TYPE OF ACTION NEEDED:

- Approve Resolution
- Approve Ordinance (traffic or other)
- Execute Contract/Agreement
- Other (please describe): _____
- Call for Bids/Proposals
- Bid Opening
- Notice for Public Hearing *(see publication requirements)

*PUBLICATION REQUIREMENTS: Notice emailed to Clerk Not applicable

Hearing Date: _____ (Must be at least 10 days after 1st publication date)
Publish Date(s): _____ (2 weeks for routine budget, property disposal/ auction or vacations)
(3 weeks for property lease)

Publications(s): EAST COUNTY JOURNAL CHRONICLE OTHER _____

ALL AGENDA ITEMS:

Department Director/Head: RD
Prosecuting Attorney: [Signature]

Accounting/Budget & Payroll Items
Budget/Fiscal Director: _____
Chief Accountant: _____

HR Policy/Personnel Items
HR Administrator: _____

Banking or Revenue Items
Treasurer: _____
Fund: N/A
Department: _____
Total Amount: \$ _____

***APPROVALS
MUST BE
OBTAINED
BEFORE
SUBMITTING
ITEM TO BOCC**

CLERK'S DISTRIBUTION OF SIGNED DOCUMENTS:

Send cover letter: _____ Additional Copies: _____
 (address of recipient) _____
 File originals: BOCC mtg folder _____
 File copy: Hearing/Bid Folder _____