

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

IN THE MATTER OF:

RESOLUTION NO. 23-386

AUTHORIZE THE EXECUTION OF AN INTERLOCAL
AGREEMENT BETWEEN COWLITZ COUNTY,
LEWIS COUNTY SOLID WASTE DISPOSAL
DISTRICT NO. 1, AND LEWIS COUNTY FOR
DISPOSAL OF SOLID WASTE

WHEREAS, Cowlitz County has planned for and desires to receive solid waste from customers and jurisdictions outside of Cowlitz County for disposal of their certain solid wastes at Cowlitz County's Landfill; and

WHEREAS, Lewis County has planned for and desires to dispose of solid wastes generated in Lewis County at a landfill outside of Lewis County; and

WHEREAS, Lewis County and Lewis County Solid Waste Disposal District No. 1 ("District") desire to enter into an agreement with Cowlitz County to provide for Cowlitz County to dispose of certain solid wastes generated in Lewis County; and

WHEREAS, Cowlitz County, Lewis County, and the District are authorized and empowered to enter into this interlocal agreement to perform solid waste services pursuant to RCW 39.34.080.

NOW THEREFORE BE IT RESOLVED that the Lewis County Board of County Commissioners hereby acknowledge and approve the attached interlocal agreement between the parties herein.

DONE IN OPEN SESSION this 5th day of December, 2023.

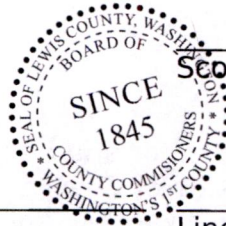
APPROVED AS TO FORM:
Jonathan Meyer, Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

David Bailey
By: David Bailey,
Chief Civil Deputy Prosecuting Attorney

Sean D. Swope
Sean D. Swope, Chair

ATTEST:



Scott J. Brummer
Scott J. Brummer, Vice Chair

Rieva Lester, CMC
Rieva Lester, CMC,
Clerk of the Lewis County Board of
County Commissioners

Lindsey R. Pollock, DVM
Lindsey R. Pollock, DVM, Commissioner

**INTERLOCAL AGREEMENT BETWEEN COWLITZ COUNTY AND LEWIS
COUNTY SOLID WASTE DISPOSAL DISTRICT NO. 1 AND LEWIS COUNTY
FOR DISPOSAL OF CERTAIN SOLID WASTES**

This Interlocal Agreement between Cowlitz County and Lewis County Solid Waste Disposal District No. 1 for Disposal of Certain Solid Wastes ("Interlocal Agreement") is made and entered by and between Cowlitz County, Washington ("Cowlitz County"), and Lewis County, Washington ("Lewis County") political subdivisions of the State of Washington, and Lewis County Solid Waste Disposal District No. 1 ("District") a quasi-municipal corporation formed pursuant to Chapter 36.58 of the Revised Code of Washington. The Cowlitz County and Lewis County and the District may be referred to herein collectively as the "Parties" and individually as a "Party".

WHEREAS, the Cowlitz County has planned for and desires to receive solid waste from customers and jurisdictions outside of Cowlitz County for disposal of their certain solid wastes at the Landfill, and,

WHEREAS, Lewis County has planned for and desires to dispose of solid wastes generated in Lewis County at a landfill outside of Lewis County, and,

WHEREAS, the District desires to enter into an agreement with Cowlitz County to provide for Cowlitz County to dispose of certain solid wastes generated in Lewis County, and,

WHEREAS, Cowlitz County and Lewis County and the District are authorized and empowered to enter into this interlocal agreement to perform solid waste services pursuant to RCW 39.34.080; now therefore,

COWLITZ COUNTY AND LEWIS COUNTY AND LEWIS COUNTY SOLID WASTE DISPOSAL DISTRICT NO. 1 UNDERSTAND AND AGREE AS FOLLOWS:

1. Definitions. For purposes of this Interlocal Agreement, the following definitions shall apply.
 - 1.1. "Acceptable Waste" means those Certain Solid Wastes as defined herein which are not Excluded Wastes and that conform to Cowlitz County's waste acceptance criteria for disposal at the Landfill, as determined by applicable regulations, Cowlitz County policies, and permit conditions associated with the Cowlitz County's Landfill.
 - 1.2. "Certain Solid Wastes" means any Solid Waste generated within Lewis County which requires landfill disposal, and for which District has responsibility and flow control authority, whether generated or collected by a private or public entity, including by the District itself, a District contractor, a city within Lewis County, a city contractor, or

a private hauler operating within Lewis County under the authority of a "G" certificate granted by the Washington State Utilities and Transportation Commission under the provisions of Chapter 81.77 RCW.

- 1.3. "Comprehensive Solid Waste Management Plan" means the Cowlitz County Comprehensive Solid Waste Management Plan adopted and periodically reviewed, amended, or updated by the Cowlitz County pursuant to Chapter 70.95 RCW.
- 1.4. "Disposal District" or "District" means Lewis County Solid Waste Disposal District No. 1, a quasi-municipal corporation of the State of Washington, its successors and assigns. The term shall include the officials, officers, agents, and employees of the Disposal District and, to the extent that such officials, officers, agents, or employees are officials, agents, officers, or employees of Lewis County, or acting on behalf of Lewis County interests, it shall include Lewis County.
- 1.5. "Effective Date" means that date upon which this Agreement is fully executed by the District and Cowlitz County and Lewis County, and upon compliance with RCW 39.34.040.
- 1.6. "Excluded Wastes" means waste that:
 - (a) is prohibited from acceptance at the Landfill by state, federal or local law, regulation, rule, code, ordinance, order, or permit condition, or by directive of any governmental agency with jurisdiction to prohibit such acceptance;
 - (b) is or contains Hazardous Waste (as defined below), provided that any such Hazardous Waste the acceptance of which at the Landfill is permitted by applicable law or permit, or an exemption, exclusion, or variance thereto issued by a governmental entity with jurisdiction, shall not be an "Excluded Waste";
 - (c) Cowlitz County, in compliance with the designation methodology and process set forth in Appendix A to this Agreement and incorporated herein by reference, designates as Excluded Waste in a writing signed by ____ and issued to the District in compliance with the Notice provision of this Interlocal Agreement;
 - (d) Cowlitz County reasonably believes would, as a result of or upon disposal, be a violation of local, state or federal law, regulation or ordinance, including land use restrictions or conditions applicable to the Landfill;
 - (e) Cowlitz County reasonably believes would present a significant risk to human health or the environment, cause a nuisance, or otherwise create or expose Cowlitz County to significant liability;
 - (f) is debris from construction or demolition activities which contains gypsum except as incidental amounts, where incidental amounts

are intended to be no greater than approximately 10% of the debris;

- (g) is any other solid waste Cowlitz County reasonably believes contains sulfur compounds in sufficient concentration to cause one or more of the outcomes contemplated in clause (d) of this section, in Cowlitz County's sole determination; or
- (h) is a solid waste which contains free liquids as determined by the Paint Filter Liquids Test, Method 9095, in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846.

- 1.7. "Hazardous Waste" means those solid wastes designated by 40 CFR Part 261, and regulated as hazardous and/or mixed waste by the United States EPA or designated a dangerous or extremely hazardous waste as defined by Washington State regulations adopted pursuant to Chapter 70.105 RCW or as amended.
- 1.8. "Interlocal Agreement" means this Interlocal Agreement for Disposal of Certain Solid Wastes, including as amended from time to time.
- 1.9. "Landfill" means the Cowlitz County Headquarters Landfill for Solid Waste Disposal.
- 1.10. "Parties" means Lewis County Solid Waste Disposal District No. 1 and Cowlitz County and Lewis County, and their respective successors and assigns.
- 1.11. "Solid Waste" means "solid waste" as that term is defined by RCW 70.95.030 and regulations promulgated thereunder.
- 1.12. "Transfer Station" means the facility or facilities in Lewis County that receive(s) and consolidate(s) municipal solid waste and other solid wastes in preparation for transport for disposal at a landfill outside of Lewis County.
- 1.13. "Uncontrollable Circumstance" means:
 - (a) Any act or event that has had or may reasonably be expected to have a material adverse effect on the rights or obligations of a Party to this Agreement, if that act or event is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of that Party under this Agreement, those acts or events shall include, but are not limited to, the following:
 - i. An act of God (except normal weather conditions for the geographic area of the Landfill or Transfer Station as applicable), hurricanes, tornadoes, epidemic, landslide,

lightning, earthquake, volcanic eruption, nuclear radiation, fire or explosion, flood or similar occurrence, an act of public enemy, war, blockade, insurrection, riot, general arrest, or restraint of government and people, civil disturbance or similar occurrence, that directly affects the operation of the Landfill or Transfer Station;

- ii. The failure of any appropriate federal, state or local agency or public or private utility having operation jurisdiction over, or responsibility to serve the Landfill or Transfer Station, to provide, maintain and assure maintenance of any necessary utility which failure is not caused by Cowlitz County's or Lewis County's or District's (as applicable) failure to pay for those utilities or failure to comply with applicable law; or
- iii. Any strike or work stoppage.

2. District Designation of the Cowlitz County Headquarters Landfill for Solid Waste Disposal. By execution of this Agreement, the District designates the Landfill for the disposal of Acceptable Waste (as hereinabove defined) generated within the geographic limits of Lewis County, pursuant to Lewis County Code 8.15. This designation shall also apply to solid waste generated through the District's recycling collection and sorting operations, when a solid waste residual requiring disposal results from such operations. This designation of Cowlitz County's Landfill shall continue in full force and effect for the term of this Agreement. The designation of the Landfill in this section shall not reduce or otherwise affect the District's control over solid waste collection as permitted by applicable state law.

3. District's Obligation as to Acceptable Waste. By execution of this Interlocal Agreement, the District agrees that it is fully informed as to what currently constitutes Acceptable Waste, and that it shall exercise best efforts to assure to Cowlitz County on an ongoing basis that only Acceptable Waste is tendered to Cowlitz County for disposal, which at a minimum will include:

- (a) implementing a system to prescreen all incoming loads of construction and demolition debris, to ensure that each load contains less than an incidental quantity of drywall;
- (b) establishing and maintaining a program of operating and monitoring procedures to prevent the transportation or delivery to the Landfill of Excluded Waste; and
- (c) advising its drivers and its Transfer Station operators of Cowlitz County's prohibition on delivery of Excluded Waste.

Cowlitz County may also inspect waste delivered under this Agreement in accordance with its permit and operation plan, and reserves the right to reject any load(s) of waste that it determines in its sole discretion is not Acceptable Waste. Such rejected waste shall be returned to the District or otherwise properly disposed at the expense of the District. In the event Cowlitz County rejects or revokes acceptance of waste hereunder, the District shall, at its sole cost, promptly remove or arrange to have the rejected waste removed. If the rejected waste is not removed

within ten (10) days from receipt of notice, Cowlitz County shall have the right and authority to handle and dispose of the rejected or Excluded Waste, and the District shall pay and/or reimburse Company for any and all costs, damages and/or fines incurred as a result of or relating to the District's tender or delivery of Excluded Waste or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of Excluded Waste.

The District will not knowingly deliver solid waste to the Landfill from the District's Transfer Stations or otherwise by the District or its subcontractors that fails to conform to the definition of Acceptable Waste set forth in Section 1 of this Agreement or that contains Excluded Waste, except by prior consent or arrangement with the County.

4. Responsibility for Solid Waste Disposal. For the term of this Agreement, Cowlitz County shall be solely responsible for the disposal of all Acceptable Waste generated within Lewis County and delivered to the Landfill by the District. Cowlitz County shall operate the Landfill and associated facilities in a form and manner sufficient to perform the services under this Agreement. Cowlitz County at its sole expense shall keep all such facilities in good working order and repair. Cowlitz County's responsibilities under this Agreement include, but are not limited to:
 - 4.1. Acceptance of, storage of, handling of, and conditionally providing a vendor for unloading and disposal of Acceptable Waste delivered to the Landfill;
 - 4.2. Obtaining any permit, license, certificate or governmental approval required for the Landfill and the disposal of Solid Waste furnished under this Agreement.
 - 4.3. Compliance with applicable law in performing under this Agreement.
5. No Minimum Quantity. The District shall not be obligated, directly or indirectly, for the disposal of any specified or minimum quantity of Acceptable Waste for disposal at the Landfill.
6. Delivery of Acceptable Waste. The District shall cause the Acceptable Waste covered by this Interlocal Agreement to be delivered from the Transfer Stations within Lewis County to the Landfill for disposal by Cowlitz County in suitable transfer trailers. Suitable transfer trailers are trailers capable of fully containing the solid waste contents, of conveying a minimum 29-ton payload per trip, and of being emptied by the tipper at the Landfill. Generally, waste collections within Lewis County being delivered to the Landfill shall average 25 tons per load. Loads delivered shall take Exit 46 from I-5 and utilize Headquarters Road as the designated route to the Landfill. In the event Cowlitz County closes this route or it

becomes impassable or the Landfill becomes unavailable for any reason, Cowlitz County shall designate an alternative, adequate route to the Landfill if such adequate route is found to be available.

7. Pricing, Escalation, Payment, Records and Reports. Subject to the provisions of this Section 7, the District shall pay Cowlitz County a disposal fee for each ton of Acceptable Waste tendered to and accepted by Cowlitz County at the Landfill, plus the tipping fee surcharge in Section 7.1, if applicable. The District shall weigh each trailer load of waste at the Landfill. The Cowlitz County price for each ton of Acceptable Waste shall be as follows:

- 7.1. Disposal Fee. Cowlitz County will accept for disposal Acceptable Waste at a price of Thirty One Dollars and Twenty cents (\$31.20) per ton (the "Disposal Fee"). If tipping is required at the Landfill an additional charge of one dollar and fifteen cents (\$1.15) per ton (the "Tipping Fee") will be added to the Disposal Fee. The District will be responsible for all applicable refuse collection taxes, unless it presents an exemption certificate to Cowlitz County to evidence previous payment.
- 7.2. Annual Rate Adjustment. Cowlitz County agrees to charge the initial Disposal Fee of Thirty One Dollars and Twenty cents (\$31.20) per ton for period between the date of execution of Agreement and June 30 2024. On July 1, 2024, and annually thereafter during the term of this Agreement, the sum of the then-current Disposal Fee and the Tipping Fee surcharge (the "Fees") shall be automatically adjusted by 90% of the December to December percent change in the Consumer Price Index for All Urban Consumers, All Items, West Size B/C 96=100 ("CPI"), as published by the United States Department of Labor, Bureau of Labor Statistics ("BLS"), Series ID CUURN400SA0. The rate adjustments shall be determined by: (1) Calculating the difference between the CPI December Value for the previous year and the CPI December Value for the current year; (2) Dividing that difference by the CPI December Value for the previous year to determine the percentage change;
- 7.3. In consideration of the Services provided hereunder, the District agrees to pay Cowlitz County on a monthly basis. Cowlitz County will issue an invoice by the 15th of each month that includes a record of each transaction that occurred in the previous month together with any taxes due and adjustments. The District will pay invoices such that payment is received by Cowlitz County no later than the 15th of the month following the issuance of the invoice, or the preceding workday should the 15th fall on a weekend or holiday. i.e., May transactions will be invoiced no later than June 15th with payment receipt due on or before July 15th or the preceding workday. The District shall pay an

administrative late fee on all past due amounts at a rate of one percent (1%) of the amount past due with a minimum charge of \$10.00 per month.

- 7.4. Records. In accordance with State public records act and archiving schedules, Cowlitz County, Lewis County, and the District shall keep accurate records of all transactions connected with this Agreement including, but not limited to, all correspondence and invoices, weigh tickets or receipts.
 - 7.5. Reports. If requested by the District, Cowlitz County shall provide a report for the preceding month including: (a) The tonnage accepted by Cowlitz County from the District; (b) summary invoice listing by transaction of waste delivered for the month; (c) documentation regarding Excluded Waste, if any.
 - 7.6. Nothing in this Section prohibits nor shall it be construed to prohibit the adjustment of the Disposal Fee or Tipping Fee surcharge at any time by mutual consent of the Parties to reflect changes in load weights, equipment, routes or for any other reason mutually agreed upon. Cowlitz County shall be entitled to increase the Disposal Fee as necessary to offset Cowlitz County's actual increased costs due to any new tax or fees imposed by local, state or federal regulation.
8. Comprehensive Plans. For the duration of this Interlocal Agreement, the District and Lewis County shall adhere to Lewis County's Comprehensive Solid Waste Management Plan prepared and periodically reviewed and revised by it pursuant to Chapter 70.95 RCW, and Cowlitz County shall adhere to its own Comprehensive Solid Waste Management Plans prepared and periodically reviewed and revised by it pursuant to Chapter 70.95 RCW. For the duration of this Interlocal Agreement, the District authorizes Cowlitz County to include in its Comprehensive Solid Waste Management Plan provisions for the disposal at the Landfill of all Acceptable Waste provided by the District and generated within Lewis County, and Lewis County shall include provisions in its own Comprehensive Solid Waste Management Plan to provide for the District's disposal of Acceptable Wastes at the Landfill. Waste generated within Lewis County which is not Acceptable Waste shall remain the responsibility of the District, unless other arrangements are agreed to by Cowlitz County.
 9. Waste Reduction and Recycling. The District, Cowlitz County, and Lewis County agree to cooperate in any appropriate manner mutually agreeable to the parties, to achieve the priorities for waste reduction and waste recycling set forth in their respective Comprehensive Solid Waste Management Plans.

10. Indemnification.

10.1. Subject only to the limitations expressly set forth in this Section, Cowlitz County covenants and agrees that, to the maximum extent permitted by applicable law, it will indemnify and hold harmless Lewis County Solid Waste Disposal District No. 1, Lewis County, and their respective officials, officers, and agents, from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from:

- (a) any injury to or death of any person or persons, or loss of or damage to property caused or alleged to be caused by Cowlitz County or any of its officials, officers, agents, employees, subcontractors (or any officer, agent or employee of any subcontractor), or any person under the control of or alleged to be under the control of or acting at the direction of Cowlitz County or any subcontractor, arising in connection with or as a result of:
 - i. this Agreement;
 - ii. the performance by Cowlitz County of its obligations under this Agreement;
 - iii. the use or operation of the Landfill by Cowlitz County; or
 - iv. the condition of the Landfill under the management or control of Cowlitz County between the execution of this Agreement and the termination of this Agreement;
- (b) any actual or allegation of infringement, violation or conversion of any patent, license, proprietary right, trade secret or other similar interest, in connection with the operation of the Landfill by Cowlitz County or the design, technology, processes, machinery or equipment used at or in association with the Landfill by Cowlitz County.

10.2. Subject only to the limitations expressly set forth in this Section, Lewis County and Lewis County Solid Waste Disposal District No. 1 covenant and agree that, to the maximum extent permitted by applicable law, they will indemnify and hold harmless Cowlitz County and its respective officials, officers, and agents from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from:

- (a) any injury to or death of any person or persons, or loss of or damage to property caused or alleged to be caused by Lewis County and Lewis County Solid Waste Disposal District No. 1 or any of its officials, officers, agents, employees, subcontractors (or any officer, agent or employee of any subcontractor), or any person under the control of or alleged to be under the control of or acting at the direction of Lewis County and Lewis County Solid

Waste Disposal District No. 1 County or any subcontractor, arising in connection with or as a result of:

- i. this Agreement;
- ii. the performance by Lewis County and Lewis County Solid Waste Disposal District No. 1 of its obligations under this Agreement; or
- iii. Lewis County or Lewis County Solid Waste Disposal District No. 1's use of the Landfill beginning with the execution of this Agreement.

- 10.3. No Party hereto shall be required to indemnify the other or hold the other harmless pursuant to the provisions of this Section with respect to any loss, damage or claim due to the negligence of such other Party.
- 10.4. It is the intention of the Parties that each Party bear responsibility with respect to any claims of third parties to which Chapter 4.22 RCW is applicable to the extent of its own fault (as that term is defined in RCW 4.22.015). Each Party shall have the right of contribution against the other Party for any sums paid by it for which it has the right to look to such other Party.
- 10.5. The foregoing indemnification and hold harmless provisions are for the sole and exclusive benefit and protection of the Disposal District, Lewis County, Cowlitz County, and their respective officials, officers, agents, and employees, and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than the Disposal District, Lewis County and Cowlitz County and their respective officials, officers, agents and employees.
- 10.6. If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115, then each party's liability to provide indemnity for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from concurrent negligence of Cowlitz County, Lewis County and/or the District shall be limited to that party's own negligence.
- 10.7. It is further specifically and expressly understood that the indemnification provided in this Section constitutes Cowlitz County's waiver of immunity under industrial insurance and Title 51 RCW solely for the purposes of this indemnification and not with respect to a claim by any third party. This waiver has been mutually negotiated by the Parties.
- 10.8. It is further specifically and expressly understood that the indemnification provided in this Section constitutes District's waiver of immunity under industrial insurance and Title 51 RCW solely for

the purposes of this indemnification and not with respect to a claim by any third party. This waiver has been mutually negotiated by the Parties.

10.9. It is further specifically and expressly understood that the indemnification provided in this Section constitutes Lewis County's waiver of immunity under industrial insurance and Title 51 RCW solely for the purposes of this indemnification and not with respect to a claim by any third party. This waiver has been mutually negotiated by the Parties.

10.10. Cowlitz County shall pay all royalties fees and license payments, shall defend all suits or claims for patent infringements that may occur in the performance of this Agreement and shall hold the District harmless from any loss on account thereof.

10.11. Except as otherwise expressly stated herein, the Parties do not under this Section waive or surrender indemnity available under any federal, state, regional or local law. This Section shall survive termination or expiration of the Agreement.

11. Insurance. Each party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and /or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying part to the indemnified party(s). Each party shall provide the other with a certificate of insurance or letter of self-insurance as the case may be upon request.

(a) Cowlitz County is a political subdivision of the State of Washington and is self-insured by and through the Washington Counties Risk Pool (WCRP). If requested by the District, Cowlitz County will provide the District with a Certificate of Insurance or similar affirmation signed by WCRP that the County is self-insured by and through WCRP.

(b) The Lewis County Solid Waste Disposal District No. 1 is a quasi-municipal corporation of the State of Washington. The District shall at all times during the term of this Interlocal Agreement maintain insurance coverage as fully self-insured through the Washington Cities Insurance Authority (WCIA) or WCRP, or shall maintain private insurance coverage. If District is not a member of a risk pool, District shall carry liability coverage to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000; shall include liability arising out of

premises, operations, independent contractors, personal injury, advertising injury, and liability assumed under an insured contract. District shall provide evidence to Cowlitz County within by the time of execution of this Agreement, and thereafter as requested by Cowlitz County, a Certificate of Insurance of private coverage or a signed affirmation from WCIA or WCRP that the District is self-insured by and through WCIA or WCRP. All non-risk pool policies shall name Cowlitz County as a covered entity under said policy(s).

- (c) Lewis County is a political subdivision of the State of Washington and is self-insured by and through the Washington Counties Risk Pool (WCRP). If requested by the Cowlitz County, Lewis County will provide Cowlitz County with a Certificate of Insurance or similar affirmation signed by WCRP that Lewis County is self-insured by and through WCRP.

- 12. Term. This Interlocal Agreement shall continue to be in full force and effect unless amended, supplemented, or terminated as provided in herein.

- 13. Uncontrollable Circumstances.

- 13.1. Uncontrollable Circumstances Limited. No Party shall be considered in default in the performance of its obligations under this Agreement (not including the obligation to make payments) to the extent that such performance is prevented or impaired by the occurrence of Uncontrollable Circumstances.

- 13.2. Notification. As soon as possible after the occurrence of an Uncontrollable Circumstance, following the time the knowledgeable Party becomes aware of the Uncontrollable Circumstance, such Party shall notify the others of the event. The obligations under this Agreement of the affected Party shall be suspended, other than for payment of monies due, but only with respect to the particular component of obligations affected by the event and only for the period during which the event of Uncontrollable Circumstances exists; given a reasonable time during which to assess the impacts caused by an event of Uncontrollable Circumstances. Cowlitz County will have sole discretion to determine whether it will make repairs and resume all or part of the operations or whether it will terminate all operations at the Landfill.

- 14. Amendment, Supplementation or Mutual Termination. This Interlocal Agreement shall be reviewed by the parties every five (5) years or in conjunction with the respective Party's Comprehensive Solid Waste Management Plan update process, whichever occurs first, and may be amended, supplemented or terminated upon the agreement of all the Parties with the same formalities as the original Agreement. Any amendments, supplements, or mutual termination shall be in writing and shall

be signed by the authorized officers of the Parties at least thirty (30) calendar days in advance of the effective date of such action.

15. Unilateral Termination.

15.1. Public Convenience. This Agreement may be terminated for public convenience by any Party, upon one hundred twenty (120) calendar days' written notice to the other Party. Written notice may include, but is not limited to notice provided by United States Postal Service (USPS), FAX or hand-delivery. If this Agreement is so terminated, Cowlitz County is entitled to payments required under the terms of this Agreement for disposal services provided prior to the Effective Date of Termination. Notice of termination shall be conclusively deemed to have been delivered to and received by a Party as of midnight of the fifth (5th) day following the date of its posting in the United States mail.

16. Independent Contractor. Each Party shall perform all respective work under this Agreement as an independent contractor. No Party is or shall be considered an employee, agent, subagent or servant of the other Party for purposes of this Agreement or otherwise; one Party's subcontractors, employees or agents are not and shall not be considered or deemed employees, agents, subagents or servants of the other Party for this Agreement or otherwise.

17. No Partnership or Joint Venture. Each Party shall have the exclusive right to control the solid waste and disposal services which it is respectively obligated for performance under this Agreement and the persons responsible for those wastes and performing those services. Each Party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture or similar undertaking between the Parties or giving on Party the duty to supervise or control the acts or omissions of any person responsible for solid wastes or performing disposal services under this Agreement for the other Party.

18. Party Representatives. Cowlitz County, Lewis County, and the District shall each designate an agent to serve as a competent representative for the term of this Agreement. The District and Counties, respectively, shall keep each other informed of the identity of their respective representative and shall provide each other with a telephone number and other means by which that representative may be reached twenty-four hours every day.

19. Representations and Warranties of the Parties. Each Party makes the following representations and warranties to and for the benefit of the other Parties:

19.1. Each Party has the full legal right, power and authority to execute and deliver, and perform its obligations under this Agreement, and has duly

authorized the execution and delivery of this Agreement by proper action of its governing body under RCW 39.34.

- 19.2. Cowlitz County holds, or is expressly licensed to use, all permits, licenses and approvals necessary to operate and maintain the Landfill pursuant to and in accordance with the terms of this Agreement. Lewis County and the District hold, or are expressly licensed to use, all permits, licenses and approvals necessary to access and use the Landfill pursuant to and in accordance with the terms of this Agreement.
- 19.3. Neither the execution nor the delivery by any Party of this Agreement, nor the performance by any Party of its obligations hereunder nor the fulfillment by that Party of the terms and conditions hereof:
 - (a) Conflicts with, violates or results in a breach of any applicable law;
 - (b) Conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or to the best of that Party's knowledge, any other agreement or instrument to which it is a party or by which that Party or any of its properties or assets are bound, or constitutes a default thereunder.
- 19.4. Violation of any warranty or representation in this Section shall constitute a material default under this Agreement.

20. Default.

- 20.1. Any Party shall have the right to terminate this Interlocal Agreement for default if the another Party: (i) breaches any of its representations and warranties set forth in Sections 9 or 10 below, (ii) fails to comply with any federal, state or local laws, rules, orders or ordinances, or regulations that pertain to the collection, handling, storage, transportation, processing and/or disposal of the Acceptable Waste, or (iii) fails to substantially perform any material obligation under this Interlocal Agreement.
- 20.2. Notwithstanding anything in this Section to the contrary, a delay or interruption in the performance of all or any part of this Agreement by any Party resulting from an Uncontrollable Circumstance shall not be deemed a default under this Section.
- 20.3. Notice and Cure. If a Party incurs a default as described in this Agreement, another Party may give written notice of the violation to the defaulting Party. The defaulting Party must correct the violation or show cause why it should be entitled to reasonable additional time to

cure the default, within thirty-five (35) calendar days of the posting of the written notice in the United States mail. If the defaulting Party fails to take required actions, then the non-defaulting Party may, at its sole discretion, immediately terminate this Agreement by written notice to the defaulting Party provided by United States Postal Service (USPS), hand delivery or FAX. The terminating Party shall retain the right to pursue any cause of action or assert any claim or remedy it may have against the defaulting Party despite its termination of the Agreement.

21. Dispute Resolution.

21.1. The Parties shall first attempt to resolve any and all disputes to the mutual satisfaction of both Parties by good faith negotiation.

21.2. Whenever a Party desires to initiate dispute resolution processes set forth in this Section, it shall do so by giving a dispute resolution notice to the other Party. Upon delivery of any dispute notice, the representative of the recipient thereof shall deliver to the Party giving that dispute notice a signed and dated receipt therefor, which receipt shall serve as conclusive evidence of the date upon which such dispute notice was delivered. Within ten (10) working days after the delivery of a dispute notice, the Parties shall meet for the purpose of negotiating a resolution of the dispute.

21.3. Subject to the conditions and limitations of this Section, controversies or claims arising out of or relating to disputes unresolved by Dispute Resolution under this Agreement or any other unresolved disputes shall be decided exclusively by the Superior Court of the State of Washington in Clark County, Washington, unless otherwise agreed by the Parties.

(a) Only the District, Cowlitz County, or Lewis County shall have standing to bring or become a Party to claims or legal actions under this Agreement.

22. Assignment. No Party shall assign any rights or obligations under or arising from this Agreement without the prior written consent of all Parties.

23. Miscellaneous.

23.1. Waiver of Provisions. No waiver by any party of any term or condition of this Interlocal Agreement shall be deemed or construed to constitute a waiver of any other term or condition or at any subsequent breach whether of the same or of a different provision of this Interlocal Agreement.

- 23.2. Public Interest. This Interlocal Agreement is entered into to protect the public health, safety and welfare of the residents of the District, Cowlitz County, and Lewis County, and to promote the effective and efficient solid waste management provided in both counties.
- 23.3. Applicable Law. This Agreement is made in and shall be construed under the laws of the State of Washington.
- 23.4. Entire Agreement. This Agreement constitutes the entire and complete agreement and final expression of the Parties with respect to the subject matter it contains, and supersedes all prior or contemporaneous agreements, understandings, arrangements, commitments and representations, whether oral or written.
- 23.5. Severability. If any Agreement provision is for any reason determined by a court of competent jurisdiction to be invalid, illegal or unenforceable under any applicable law, the remaining provisions of the Agreement shall remain in effect and bind the Parties; however, the Parties shall negotiate in good faith to amend the Agreement to effectuate the intent of any invalid, illegal or unenforceable provisions, if permissible under applicable law.
- 23.6. Access. The District, through its employees, agents and subcontractors, shall have a limited license to enter the Landfill property for the sole purpose of off-loading Acceptable Waste at an area designated, and in the manner directed, by Cowlitz County. District shall, and shall ensure that its employees, agents and subcontractors, comply with all rules and regulations of the Landfill, including those relating to the use and operation of the Disposal Site and conduct of persons on the premises of the Disposal Site, as the same may be amended by Cowlitz County from time to time, and shall indemnify and hold Cowlitz County harmless for actions caused by exercise of its license rights granted herein. The District shall have a reasonable right of access to the Landfill to inspect the facilities during normal business hours and upon reasonable notice to Cowlitz County, and accompanied by a representative of Cowlitz County. Each Party also shall have the right to inspect any and all public records of the other Party related to this Agreement upon request for such and reasonable notice.
- 23.7. Personal Liability. This Agreement is not intended to create or result in any personal liability for any public official, Cowlitz County, Lewis County, or District employee or agent, nor shall the Agreement be construed to create that liability.

23.8. Notices.

- (a) Except as may otherwise be expressly provided, all approvals, requests, reports, notices, communications or other materials or information required or permitted to be made or given by a Party to the other Party hereunder shall be deemed to have been given or made only if the same is reduced to writing and delivered, either personally or by means of the United States Postal Service (registered or certified mail, postage prepaid), to the District Representative or respective County Representative designated pursuant to Section 18 of this Agreement, as the case may be, at their respective addresses set forth below.
- (b) For all purposes of this Agreement, any such approval, request, report, notice, communication or other material or information which is delivered by means of the United States Postal Service as aforesaid shall be deemed to have been delivered as of the fifth business day next following the date of the postmark thereof.
- (c) All notices, requests and other communications to any Party hereunder shall be in writing and shall be given to such Party at the following address, or such other address as such Party may hereafter specify for the purpose by notice to the other Party:
 - i. If to the District: Lewis County Solid Waste Disposal District #1 [PO Box 180 Centralia, WA 98531]
 - ii. If to the Cowlitz County: Mr. Mike Moss, Cowlitz County Public Works, 1600 13th Ave. South, Kelso, WA. 98626
 - iii. If to Lewis County: Lewis County Public Works Director, 57 W. Main Street, Chehalis, WA 98532

THIS INTERLOCAL AGREEMENT has been executed by the parties shown below and is dated as of the __ day of _____, 2023.

LEWIS COUNTY SOLID WASTE DISPOSAL DISTRICT NO. 1

By: _____

Chair

By: _____

Vice Chair

By: _____

Member

Attest:

Clerk of the Board

Approved as to form only:

Lewis County Deputy Prosecuting Attorney

LEWIS COUNTY, WASHINGTON

By: [Signature]
Chair Bocc vice chair

By: [Signature]
Vice Chair Bocc member

By: [Signature]
Member Bocc Chair

Attest:

[Signature]

Clerk of the Board

Approved as to form only:

[Signature]

Lewis County Deputy Prosecuting Attorney



COWLIZ COUNTY, WASHINGTON

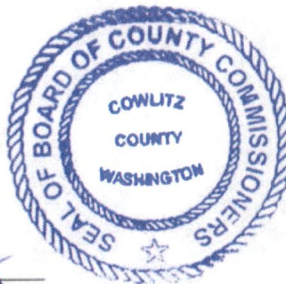
By: [Signature]
Chairman

By: Anne Mortensen
Commissioner

By: [Signature]
Commissioner

Attest:

Kelly Demkowich
8/22/23
Clerk of the Board



Approved as to form only:

Cowlitz County Deputy Prosecuting Attorney

BOCC AGENDA ITEM SUMMARY

Resolution:

BOCC Meeting Date: Dec. 5, 2023

Suggested Wording for Agenda Item:

Agenda Type: Deliberation

Authorizing the execution of an Interlocal Agreement between Cowlitz County, Lewis County Solid Waste Disposal District No. 1, and Lewis County for disposal of solid waste

Contact: Rocky Lyon

Phone: 3607401403

Department: PW - Public Works

Description:

Authorizing the execution of an Interlocal Agreement between Cowlitz County, Lewis County Solid Waste Disposal District No. 1, and Lewis County for disposal of solid waste

Approvals:

User	Status
Josh Metcalf	Pending
PA's Office	Pending

Publication Requirements:

Publications:

Additional Copies:

Tina Hemphill

Cover Letter To: