

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF MASON COUNTY, WASHINGTON

RESOLUTION NO. 69-93

IN REF: EXECUTION OF INTERLOCAL AGREEMENT FOR COST EQUALIZATION
PAYMENTS FROM MASON COUNTY TO GRAYS HARBOR COUNTY AND FOR
MASON COUNTY TO PAY ITS SHARE OF THE PUBLIC BID PROCESS TO
BOTH LEWIS COUNTY AND GRAYS HARBOR COUNTY AND AUTHORIZING
SIGNATURES THEREON

WHEREAS, The Board of County Commissioners (hereinafter referred to
as the Board) has had reviewed the interlocal agreement with Grays
Harbor County and Lewis County Solid Waste Disposal District #1 for
cost equalization payments from Mason County to Grays Harbor
County (attached as Exhibit A); and,

WHEREAS, The Mason County Board shall authorize payment of
its share of the costs incurred in the public bid process in
amounts equaling \$15,800 to Grays Harbor and \$16,488 to Lewis
County; and

WHEREAS, after due consideration it appears to be in the best
public interest to execute this interlocal agreement; NOW THEREFORE

BE IT RESOLVED that the Board agrees to enter into this agreement
with Grays Harbor County and Lewis County Solid Waste Disposal
District #1 as set forth in Exhibit A and the Board of County
Commissioners is authorized to sign said agreement.

DONE IN OPEN SESSION this 13th day of July 1993.

ATTEST:

Rebecca P. Rogers
CLERK OF BOARD

APPROVED AS TO FORM

Mike Platt
CHIEF DEPUTY PROSECUTOR

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON

William O. Hunter
CHAIRMAN

M. L. Faughender
MEMBER

Absent 7/13/93

MEMBER

**AGREEMENT REGARDING PARTICIPATION OF MASON COUNTY IN WASTE
EXPORT AND DISPOSAL SYSTEM**

This agreement is made and entered into this 13TH day of July, 1993 by and between Grays Harbor County, and Mason County (hereinafter the "Joining County"), political subdivisions of the State of Washington, and the Lewis County Solid Waste Disposal District #1 ("Disposal District"), a quasi-municipal corporation formed pursuant to Chapter 36.58 of the Revised Code of Washington.

RECITALS

A. Lewis County and Grays Harbor County (together the "Counties") jointly undertook a process to procure waste transport and disposal services ("Public Bid Process") as set out in bid documents dated February 26, 1992, Addendum No. 1 dated March 10, 1992, Addendum No. 2 dated April 8, 1992, and Addendum No. 3 dated April 17, 1992 ("Bid Documents").

B. The Bid Documents provided the Counties with the option to either contract alone for waste export and disposal services (Grays Harbor County would select bid option 1 and Lewis County would select bid option 2), or to proceed under a multiple county option (bid option 3). Only bid option 3 provided the option to allow Jefferson, Mason and/or Thurston Counties ("Joining Counties") to obtain waste export and disposal services from the successful bidder conditioned upon entering into an agreement with Grays Harbor County and the Disposal District. All of the Joining Counties expressed the desire to have this option available in letters which were included in the Bid Documents.

C. Pursuant to Chapter 36.58 of the Revised Code of Washington, Lewis County formed the Disposal District. Formation occurred prior to the execution of a contract with the successful bidder. The Bid Documents provided that if the Disposal District had been formed prior to the execution of a contract, it would execute the contract and Lewis County would not be a party.

D. Although overall project costs were similar for Grays Harbor County and the Disposal District under all three options, the unit price of the long-haul transport component varied among the three options. The Disposal District would have obtained the lowest long-haul transport costs under bid option 2. Grays Harbor County would have obtained the lowest costs under bid option 3.

E. The Counties and the Disposal District agreed to proceed under bid option 3 in order to provide the Joining Counties the

option to obtain waste disposal services without duplication of the costs and time required to complete a bidding process. The Counties and the Disposal District agreed that in order to proceed under bid option 3, it would be necessary to implement a payment mechanism whereby Grays Harbor County would pay the Disposal District an amount that would make bid option 3 approximately as cost effective for the Disposal District as bid option 2. The Counties and the Disposal District also agreed that, in order to join in the waste export and disposal system, each of the Joining Counties would be required (1) to contribute in an equitable manner to the total costs of the Public Bid Process and (2) to share equitably in the payments Grays Harbor County would make to the Disposal District. These agreements are set out in an Agreement Regarding Long-Haul Transport Cost Equalization Payments and Bid Costs Reimbursement dated October 12, 1992, a copy of which is attached hereto as Exhibit A and by this reference incorporated herein as if set forth in full.

F. Grays Harbor entered into a contract with the successful bidder, Regional Disposal Company on June 7, 1993 and the Disposal District entered into a contract with Regional Disposal Company, on June 1, 1993 for waste export and disposal services. (Hereinafter these contracts are referred to individually as the "Contract" or collectively as the "Contracts".)

G. Chapter 36.58 of the Revised Code of Washington permits counties to enter into agreements to acquire and implement solid waste handling systems, including the transportation and disposal of solid waste. Chapter 36.58 also provides that Solid Waste Disposal Districts may provide for all aspects of disposing of solid waste.

H. Grays Harbor County, the Disposal District and the Joining County have determined that this agreement is mutually fair and advantageous to each of them and in the best interests of their citizens.

AGREEMENT

In consideration of the facts described above and the mutual promises made herein, Grays Harbor County, the Disposal District and the Joining County agree as follows:

ARTICLE 1

Joinder in Waste Export and Disposal System

1.1 Right To Obtain Services. Grays Harbor County, the Disposal District and the Joining County agree that upon payment of its share of costs as set out in paragraph 1.3, the Joining County shall be entitled to enter into a contract with Regional Disposal Company pursuant to the terms of the bid it submitted in the Public

Bid Process, and thereby receive all of the waste export and disposal services described in the Bid Documents.

1.2 No Warranty. The Joining County acknowledges that Grays Harbor County, Lewis County and the Disposal District make no warranty, express or implied, regarding the adequacy of the Bid Documents or whether the Public Bid Process satisfies all bid procurement requirements applicable to the Joining County.

1.3 Share of Costs. Within thirty days of the execution of this Agreement, the Joining County shall pay its share of the costs incurred by the Counties in the Public Bid Process including, but not limited to, administrative, engineering and legal costs. The payment shall be made in equal amounts, one-half to Lewis County and one-half to Grays Harbor County. The Joining County's share of costs is \$31,600. In addition, Mason County shall remit the sum of \$688.00 to Lewis County to reimburse Lewis County for legal expenses incurred in connection with preparation of this Agreement.

1.4 Pro Rata Share of Equalization Payments. The Joining County shall pay a pro rata share, as set out in paragraph 1.5 below, of the payments intended to make bid option 3 approximately as cost-effective for the Disposal District as bid option 2 ("Equalization Payments"). The pro rata share of Equalization Payments shall be paid as set forth in paragraph 1.7. The Equalization Payments are calculated on the number of trailers (as defined in the Contracts) of waste originating in Lewis County and transported on behalf of the Disposal District. The computation is based on the difference between the Long-Haul Transport Unit Price (as specified in the Contract with the Disposal District) that would have been charged to the Disposal District under bid option 2 ("Bid Option 2 Price") and the unit price charged under bid option 3 ("Bid Option 3 Price.") The formula to compute the Equalization Payment is:

$$\text{Equalization Payment} = (\text{BO3P} - \text{BO2P}) \times \text{LCT}$$

where

BO3P = Lewis County Disposal District Long-Haul
Transport Unit Price for Bid Option 3

BO2P = Lewis County Disposal District Long-Haul
Transport Unit Price for Bid Option 2

LCT = # of Lewis County Disposal District Trailers

The Long-Haul Transport Unit Prices shall be revised annually commencing on January 1, 1994 to reflect Consumer Price Index adjustments. Adjustments shall be made to both the Bid Option 2 Price and the Bid Option 3 Price in accordance with the formula set out in paragraph 8.1(d) of the Disposal District's Contract. In addition, the Long-Haul Transport Unit Prices shall be revised as required to reflect any adjustments to service fees or other

charges, as those terms are defined in the Disposal District's Contract, which are implemented in accordance with the terms of that Contract, including but not limited to paragraphs 8.1, 8.2, 8.3 and 8.4., to the extent such adjustments affect the Long-Haul Transport Unit Prices.

1.5 Percentage of Equalization Payments. The pro rata share of Equalization Payments for the Joining County is 17%.

1.6 Adjustment of Pro Rata Share of Equalization Payments. Grays Harbor County and the Disposal District recognize that the amount of waste transported on behalf of the Joining Counties receiving service under a contract with Regional Disposal Company may change during the term of the Contracts, or extensions thereof, for reasons such as agreements by the Joining Counties to transport waste originating outside of the Joining Counties, increased or decreased waste due to population fluctuations or otherwise. In the event that the tonnage of all waste (including waste originating outside of a Joining County, if any) transported on behalf of a Joining County receiving service under a contract with Regional Disposal Company increases or decreases 5% or more for a calendar year (January 1st through December 31st) over the previous twelve month period, any Joining County receiving service under a contract with Regional Disposal Company, Grays Harbor County or the Disposal District may give written notice to the others of a request to adjust the pro rata shares of the Equalization Payments of all the Joining Counties. Within thirty days of receiving written notice, the Joining Counties receiving service under a contract with Regional Disposal Company, Grays Harbor County and the Disposal District shall adjust the pro rata shares of the Equalization Payments for each Joining County.

The adjustment shall result in new pro rata shares of the Equalization Payments which reflect the ratio that the total tonnage of waste disposed of by or on behalf of a Joining County during the preceding calendar year bears to the total tonnage of all waste disposed of by or on behalf of all Joining Counties within the preceding calendar year. The new pro rata shares of the Equalization Payments shall become effective for all Joining Counties receiving service under a contract with Regional Disposal Company for all billing statements for pro rata shares of Equalization Payments dated on or after January 1st of the year following the year during which the request for adjustment is made.

Tonnage figures shall be based:

(a) in the case of each Joining County which has been receiving service under a contract with Regional Disposal Company for at least one full calendar year preceding the year during which the request is made, upon the records of Regional Disposal Company showing the tonnage of waste disposed of on

behalf of the Joining County during the preceding calendar year;

(b) in the case of each Joining County which has been receiving service under a contract with Regional Disposal Company for less than one full calendar year preceding the year during which the request is made, upon the records of Regional Disposal Company showing the tonnage of waste disposed of during said preceding calendar year, together with the tonnage of waste disposed of otherwise by or on behalf of the Joining County during the balance of said preceding calendar year;

c) in the case of each Joining County not receiving service under a contract with Regional Disposal Company, the tonnage of waste disposed of by or on behalf of the Joining County during the calendar year preceding the year during which the request is made.

In order to determine the tonnage of waste disposed of by or on behalf of a Joining County other than by Regional Disposal Company pursuant to a contract, the Joining Counties receiving service under a contract with Regional Disposal Company, Grays Harbor County and the Disposal District shall agree upon that data and method which most accurately reflects the tonnage of waste disposed of by or on behalf of that Joining County during such period of time.

1.7 Payment and Billing Procedures. The pro rata share of the Equalization Payment shall be paid to Grays Harbor County, unless Grays Harbor County terminates or does not renew the Contract, or for other reasons ceases to obtain services under the Contract. In that event, the Joining County shall pay its pro rata share of Equalization Payments to the Disposal District. Grays Harbor County shall provide the Joining County with a billing statement within 30 days of its receipt of each quarterly billing statement for Equalization Payments from the Disposal District. The quarterly billing statement provided to the Joining County shall include a copy of the billing statement from the Disposal District and a computation of the Joining County's pro rata share of the Equalization Payment. The Joining County shall pay its pro rata share of the Equalization Payment to Grays Harbor County no later than 30 days from the date of receipt of the billing statement from Grays Harbor County. In the event that Grays Harbor County terminates or does not renew the Contract or for other reasons ceases to obtain services under the Contract, the Disposal District shall assume the responsibility for providing a quarterly billing statement to the Joining County. The Joining County shall remit its pro rata share of the Equalization Payment to the Disposal District no later than 30 days from the date of receipt of the billing statement.

ARTICLE 2

Waste Flow and Flow Control

2.1 Waste Flow and Flow Control Ordinances and Agreements.

The Joining County shall enact, maintain in force and effect, and use reasonable efforts to enforce applicable ordinances to require all Acceptable Waste, as defined in the Contracts (not including waste diverted by legal self-disposal, reuse, recycling or composting, household hazardous waste, construction and demolition waste, and wood waste) to be delivered to the transfer stations designated under its contract with Regional Disposal Company, or other facilities designated by the Joining County. The Joining County shall also use its best efforts to enter into, maintain and enforce agreements with the cities in the Joining County that participate in its Comprehensive Solid Waste Plan, through which the cities will grant the Joining County authority to designate disposal sites for waste collected in those cities. The Joining County shall enact and enforce all laws appropriate to carry out the requirements of this paragraph.

ARTICLE 3

General Provisions

3.1 Adequate Records. The Disposal District shall keep records adequate to verify the number of trailers of waste originating in Lewis County which were transported under the Contract. The Joining County shall keep records adequate to verify the number of trailers of waste transported on its behalf by Regional Disposal Company. Such records shall be maintained for a period of three years. The Joining County, Grays Harbor County, Lewis County and the Disposal District shall be given reasonable access to review and inspect said records.

3.2 Dispute Resolution. Grays Harbor County, Lewis County, the Disposal District and the Joining County shall attempt to resolve any and all disputes arising out of this Agreement by good faith negotiations. If any dispute is not resolved by negotiations within 20 days after either Grays Harbor County, Lewis County, the Disposal District or the Joining County notifies the others in writing of a dispute, either Grays Harbor County, Lewis County, the Disposal District or the Joining County shall have the option to submit the dispute for resolution pursuant to the Judicial Arbitration & Mediation Services, Inc. (JAMS) mediation/arbitration procedures set out in Form 2, a copy of which is attached hereto as Exhibit B and by this reference incorporated herein as if set forth in full. Grays Harbor County, Lewis County, the Disposal District and the Joining County also agree to follow the arbitration procedures set out in the JAMS Future Disputes

Submission Agreement, a copy of which is attached hereto as Exhibit C and by this reference incorporated herein as if set forth in full. The dispute resolution procedures set forth in this paragraph shall be mandatory and exclusive, unless otherwise agreed in writing by all parties to this Agreement.

3.3 Duration/Termination. This Agreement shall remain in full force and effect as long as both the contract between the Joining County and Regional Disposal Company and the Contract between the Disposal District and Regional Disposal Company remain in full force and effect. If either the contract between the Joining County and Regional Disposal Company or the Contract between the Disposal District and Regional Disposal Company is terminated for any reason, or is not renewed, then this Agreement shall also be deemed terminated, provided that any amounts due and owing hereunder by the Joining County to either or both Counties or the Disposal District at the time this Agreement is terminated shall remain due and owing and shall be subject to collection, and provided, further, that the provisions of paragraph 3.2 shall continue to govern dispute resolution for all disputes arising out of this Agreement prior to the nonrenewal or termination of the Contract with the Disposal Corporation. If this Agreement is terminated because the Contract between the Disposal District and Regional Disposal Company is terminated or not renewed, the termination of this Agreement shall have no effect on the contract between the Joining County and Regional Disposal Company and the rights and obligations thereunder, including the right of the Joining County to renew the contract.

3.4 Costs. Grays Harbor County, Lewis County, the Disposal District and the Joining County shall be solely responsible for their own costs incurred in implementing, administering and enforcing this Agreement, unless otherwise stated herein.

3.5 Third Party Beneficiary. This Agreement is entered into for the sole benefit of Grays Harbor County, Lewis County, the Disposal District and the Joining County and is not intended to nor does it create any third party beneficiary or rights in any other person or entity.

3.6 Assignment of Agreement. No rights, benefits or obligations under or arising from this Agreement shall be assigned by either Grays Harbor County, Lewis County, the Disposal District or the Joining County without the written consent of Grays Harbor County, Lewis County, the Disposal District and the Joining County.

3.7 Notices. All notices, requests, billings, payments and other communications required or permitted to be given hereunder shall be given at the addresses set forth below. For purposes of this agreement such notices, requests, billings, payments or other communications delivered by means of the U.S. mail shall be deemed

to have been delivered as of the fifth business day next following the date of the postmark thereof.

If to Mason County:

P. O. Box 578
Shelton, Washington 98584
Attention: Director of Community Development

If to Grays Harbor County:

P.O. Box 511
Montesano, WA 98563
Attention: Director of Public Works

If to Lewis County:

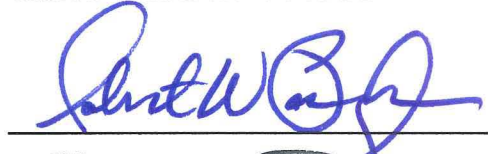
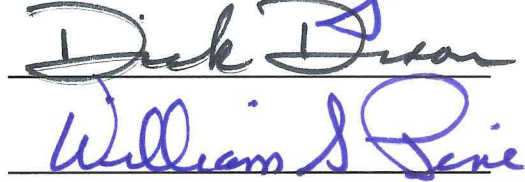
P.O. Box 899
Chehalis, WA 98532
Attention: Director of Public Services

If to the Lewis County Solid Waste Disposal District #1:

P.O. Box 899
Chehalis, WA 98532
Attention: Director of Public Services

3.8 Invalidity. If any provision of this Agreement is determined to be invalid, the remaining provisions shall remain in full force and effect.

GRAYS HARBOR COUNTY


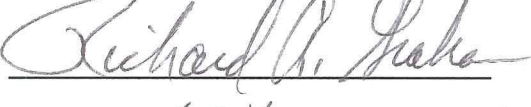

APPROVED AS TO FORM:

H. STEWARD MENEFEE

By: _____

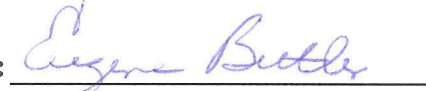
APPROVED BY RESOLUTION
NO. _____

LEWIS COUNTY SOLID WASTE
DISPOSAL DISTRICT #1

APPROVED AS TO FORM:

NELSON E. HUNT

By: 

APPROVED BY RESOLUTION
NO. 005-93

MASON COUNTY

William O. Hunter

M. H. Faughender

APPROVED AS TO FORM:

Gary Burleson, *PROS. ATT*

By: *Mike Ritt* D.P.A.

APPROVED BY RESOLUTION

NO. 69-93

EXHIBIT A

1991 TONNAGE OF WASTE OF JOINING COUNTIES

COUNTY	1991 TONNAGE	% OF TOTAL 1991 TONNAGE
THURSTON	108,000	73%
MASON	25,500	17%
JEFFERSON	14,276	10%
	147,776	100%

Mediation

The parties agree to attempt to settle all disputes arising under this contract through mediation at the local offices of Judicial Arbitration & Mediation Services, Inc. (J.A.M.S.). The complaining party must contact J.A.M.S. to schedule a mediation within thirty (30) days. The parties may agree on a jurist from the J.A.M.S. panel. If they are unable to agree, J.A.M.S. will provide a list of the three available panel members and each party may strike one. The remaining judge will serve as the mediator. Neither party may initiate arbitration proceedings until mediation is completed.

Arbitration

All disputes arising under this contract which are not resolved through mediation will be submitted to Judicial Arbitration & Mediation Services, Inc. (J.A.M.S.) for binding arbitration.

→ **OPTION 1:** The parties may agree on a jurist from the J.A.M.S. panel. If they are unable to agree, J.A.M.S. will provide a list of three available panelists and each party may strike one. The remaining panelist will serve as the arbitrator.

~~**OPTION 2:** A three-judge panel will be selected to arbitrate the dispute. J.A.M.S. will provide the names of five potential arbitrators, giving each party the opportunity to strike one name. The remaining three panelists will serve as the arbitration panel.~~

~~The parties agree that arbitration must be initiated within one year after the claimed breach occurred and that the failure to initiate arbitration within the one-year period constitutes an absolute bar to the institution of any new proceedings.~~

~~The aggrieved party can initiate arbitration by sending written notice of an intention to arbitrate by registered or certified mail to all parties and to J.A.M.S. The notice must contain a description of the dispute, the amount involved, and the remedy sought.~~

→ **OPTION 1:** The parties have agreed to a Future Disputes Submission Agreement, a copy of which is attached hereto as ~~Exhibit~~ . This agreement sets forth the rights of the parties if the case is arbitrated and the rules and procedures to be followed at the arbitration hearing.

~~**OPTION 2:** If and when a demand for arbitration is made by either party, the parties agree to execute a Submission Agreement, provided by J.A.M.S., setting forth the rights of the parties if the case is arbitrated and the rules and procedures to be followed at the arbitration hearing.~~

FUTURE DISPUTES SUBMISSION AGREEMENT

Structuring The Arbitration Hearing

(NOTE: The Submission Agreement is important in that it sets forth the right of the parties and the rules and procedures to be followed at the arbitration hearing. The parties must decide whether they prefer to plan a potential arbitration proceeding before a dispute arises or if they would rather postpone those determinations until they actually face an arbitration hearing.)

Exhibit

FUTURE DISPUTES SUBMISSION AGREEMENT

Pre-Hearing Conference

The arbitrator(s) shall schedule a prehearing conference to reach agreement on procedural matters, arrange for the exchange of information, obtain stipulations, and attempt to narrow the issues.

Discovery

~~OPTION 1: The parties will submit a proposed discovery schedule to the arbitrator(s) at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the arbitrator(s).~~

~~OPTION 2: It is our objective to expedite the arbitration proceedings by placing the following limitations on discovery:~~

- ~~a. Each party may propound only one interrogatory requesting the names and addresses of the witnesses to be called at the arbitration hearing.~~
- ~~b. On a date to be determined at the pre-hearing conference, each party may serve one request for the production of documents. The documents are to be exchanged two weeks later.~~
- ~~c. Each party may depose ___ witnesses. Each deposition must be concluded within four hours and all depositions must be taken within thirty (30) days of the pre-hearing conference. Any party deposing an opponent's expert must pay the expert's fee for attending the deposition.~~

→ **OPTION 3:** It is our objective to expedite the arbitration proceedings by eliminating discovery. Instead of discovery, the parties agree to the following exchange of information:

- a. Either party can make a written demand for lists of the witnesses to be called or the documents to be introduced at the hearing. The demand must be received prior to the pre-hearing conference.
- b. The lists must be served within fifteen (15) days of the demand.
- c. No depositions may be taken for discovery.

(Continued on reverse)...

LEWIS COUNTY

DEPARTMENT OF PUBLIC SERVICES

P. O. BOX 899, CHEHALIS, WA 98532-0896
PHONE: (206) 740-1370
FAX (206) 740-1479

DIVISIONS:
PUBLIC WORKS
FACILITIES
COMMUNITY DEVELOPMENT
ACCOUNTING
FLEET & ELECTRONICS
EMERGENCY MANAGEMENT

ROBERT BERG, DIRECTOR

DEBBIE LENNOX, ADMIN. SECRETARY

July 22, 1993

Gary Yando, Director of Community Development
Mason County
P.O. Box 357
Shelton, WA 98584

RE: Interlocal Agreement with Mason County

Dear Gary:

Enclosed is a fully executed interlocal agreement between Lewis, Grays Harbor and Mason Counties authorizing Mason County to join in our waste export program. If you have any questions, please feel free to contact me. Hope all is well with you.

Sincerely yours,



Robert B. Berg, Director
Department of Public Services

RB:dll

cc: Melody Armstrong, Solid Waste Manager

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**A RESOLUTION OF THE GOVERNING BOARD OF COMMISSIONERS
LEWIS COUNTY SOLID WASTE DISPOSAL DISTRICT #1**

RESOLUTION NO. 005-93

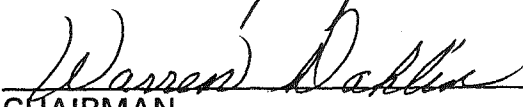
IN RE: APPROVAL OF INTERLOCAL AGREEMENT WITH MASON AND GRAYS
HARBOR COUNTIES ALLOWING MASON COUNTY TO JOIN IN WASTE
EXPORT PROGRAM AND AUTHORIZING SIGNATURES THEREON

WHEREAS, The Governing Board of Commissioners of Solid Waste Disposal District #1 (hereinafter referred to as the "Board") has reviewed an interlocal agreement contract agreement between Solid Waste Disposal District #1, Grays Harbor County, and Mason County allowing Mason County to join in cooperative waste export program under the terms of a bid award to Regional Disposal Company (attached as Exhibit A); and,

WHEREAS, after due consideration it appears to be in the best public interest to approve this interlocal agreement; NOW THEREFORE

BE IT RESOLVED that the Board authorizes Solid Waste Disposal District #1 to enter into this interlocal agreement with Grays Harbor County and Mason County as set forth in Exhibit A and the Governing Board of Commissioners for the District are authorized to sign said interlocal agreement.

PASSED IN SPECIAL SESSION this 22nd day of July, 1993.



CHAIRMAN
GOVERNING BOARD OF COMMISSIONERS
LEWIS COUNTY SOLID WASTE DISPOSAL
DISTRICT #1