

INTERLOCAL COOPERATIVE AGREEMENT

among

THE CITIES OF PASCO, KENNEWICK AND RICHLAND, WASHINGTON, WASHINGTON MUNICIPAL CORPORATIONS; THE PORTS OF KENNEWICK, WASHINGTON, BENTON, WASHINGTON, PASCO, WASHINGTON AND THE TRI-CITIES VISITOR AND CONVENTION BUREAU, A PRIVATE, NON-PROFIT CORPORATION

for

DESIGN AND CONSTRUCTION OF MAYA LIN ART WORK
AT SACAJAWEA STATE PARK

THIS INTERLOCAL COOPERATIVE AGREEMENT is entered into this 8th day of August, 2003 among the City of Pasco, Washington, a Washington Municipal Corporation, the City of Kennewick, Washington, a Washington Municipal Corporation, the City of Richland, Washington, a Washington Municipal Corporation, the Port of Kennewick, Washington, the Port of Benton, Washington and the Port of Pasco, Washington, all collectively referred to as the "Jurisdictions" and the Tri-Cities Visitor and Convention Bureau, a private, non-profit corporation, referred to as the "Bureau".

WHEREAS, the Jurisdictions are, pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act), authorized to exercise their powers jointly, thereby maximizing their ability to provide services and facilities which will best fulfill common needs of the Jurisdictions, and;

WHEREAS, in 2003 to 2006 the Tri-Cities will be celebrating the Lewis and Clark Bicentennial, which will attract numerous visitors to the area, and;

WHEREAS, the development of Maya Lin artwork at Sacajawea State Park, which will have a historical motif, is deemed a regional priority and has been actively fostered by the Bureau through its support and coordination of the Tri-Cities Rivershore Enhancement Council (TREC); and

WHEREAS, the Jurisdictions, by their respective governing bodies, have determined that it is in the best interest of each Jurisdiction to facilitate the construction of Maya Lin artwork at Sacajawea State Park in Pasco, Washington, and;

WHEREAS, this effort may be best implemented on a shared basis in a manner deemed most efficient and effective for the Jurisdictions;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Jurisdictions agree as follows:

Section 1. Purpose. The purpose of this Agreement is to formalize a commitment to design and construct Maya Lin artwork at Sacajawea State Park. (the Artwork).

Section 2. Administration. This Agreement shall be administered by the President of the Bureau or her designee. Such person shall be responsible for:

- (a) Establishing policies for implementing this Agreement;
- (b) Providing periodic progress reports to the elected officials of each Jurisdiction;
- (c) Monitoring progress of the Jurisdictions and other agencies in the fulfillment of their respective responsibilities.

Section 3. Funding. Each Jurisdiction hereby commits to provide annual funding as set forth below:

(a) City of Pasco, Washington:	\$5,000
(b) City of Kennewick, Washington:	\$5,000
(c) City of Richland, Washington:	\$5,000
(d) Ports of Kennewick, Benton and Pasco (collectively)	\$5,000

Such funding shall reimburse the Bureau for its contribution required under the contract with the Confluence Project, a Washington non-profit corporation (Confluence), which contract is attached hereto as Exhibit "A". In addition to such funding, each Jurisdiction shall pay its proportionate share of all reasonable costs incurred by the Bureau or its designee in the administration of this Agreement, such as, but not limited to reimbursement of travel expenses to and from meetings with Confluence representatives. Such costs shall not exceed \$500 for each year of this Agreement. Battelle National Lab (not a party to this contract) has agreed to contribute the annual sum of \$5,000 for the purposes referenced above.

Section 4. Modification. This Agreement may be modified only by unanimous written consent of each Jurisdiction.

Section 5. Term Of Agreement And Termination.

- (a) The term of this Agreement shall become effective on full execution hereof.
- (b) Because this Agreement provides for implementation of the Consulting Agreement to be entered into between The Confluence Project and the Tri-Cities Visitor and Convention Bureau (said Agreement is attached hereto as Exhibit "A"), this Agreement shall expire on the date of termination or expiration of said Consulting Agreement.
- (c) Notwithstanding the foregoing, any Jurisdiction may withdraw from this Agreement by giving written notice to the Chairman of TREC of its intent to withdraw at least six months prior to the designated date of withdrawal. Upon notice of withdrawal by any Jurisdiction, the remaining Jurisdictions may, by simple majority

vote of the remaining Jurisdictions, elect to continue participation in this Agreement or to terminate this Agreement.

Section 6. Inspection Of Records. The records and documents with respect to all matters covered by this Agreement shall be subject to inspection by any Jurisdiction during the term of this Agreement and for three years after its termination.

Section 7. No Separate Legal Entity. It is not the intention that a separate legal entity be established to conduct the cooperative undertaking nor is the acquiring, holding or disposing of real or personal property anticipated.

Section 8. Severability. In the event any term or condition of this Agreement or application thereof to any person, entity or circumstance is held invalid, such invalidity shall not effect any other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the day and year written below.

CITY OF PASCO

Michael Garrison
Michael Garrison,
Mayor

Date: 7/21 2003

ATTEST:

Sandy Kenworthy
Deputy City Clerk

APPROVED AS TO FORM:

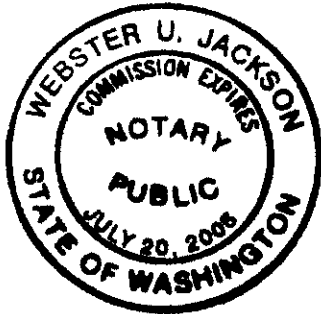
Leland B. Kerr
Leland B. Kerr, City Attorney

Date: 7/21 2003

STATE OF WASHINGTON)
) **ss.**
COUNTY OF FRANKLIN)

I certify that I know or have satisfactory evidence that Michael Garrison is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 21st day of July, 2003.



Webster U. Jackson
Signature of Notary

Webster U. Jackson
Print or stamp name of Notary
Notary Public for the State of
Washington, residing at

Pasco
My appointment expires 7/20/05

CITY OF KENNEWICK

James Beaver

James Beaver,
Mayor

Date: August 5, 2003

ATTEST:

Valerie Duffler
City Clerk

APPROVED AS TO FORM:

John Ziobro
John Ziobro, City Attorney

Date: August 5, 2003

STATE OF WASHINGTON)
)
COUNTY OF BENTON)

ss.

I certify that I know or have satisfactory evidence that James Beaver is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 5th day of AUGUST, 2003.



Shula Kaye Dunning
Signature of Notary

Shula Kaye Dunning
Print or stamp name of Notary
Notary Public for the State of
Washington, residing at
Kennewick, WA
My appointment expires 11-09-06

CITY OF RICHLAND

Robert J. Thompson
Robert Thompson, *UK*
Mayor

Date: July 17 2003

ATTEST:

Genevieve D. Bays
City Clerk

APPROVED AS TO FORM:

Thomas O. Lampson
Thomas O. Lampson, City Attorney

Date: July 17 2003

STATE OF WASHINGTON)
) **ss.**
COUNTY OF BENTON)

I certify that I know or have satisfactory evidence that Robert Thompson is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 17 day of July, 2003.



Jackie L. Carpenter
Signature of Notary
Jackie L. Carpenter
Print or stamp name of Notary
Notary Public for the State of
Washington, residing at
Franklin Co.
My appointment expires 2-11-06

PORT OF KENNEWICK

Gene Wagner

Gene Wagner,
President

Date: 8/27/ 2003

STATE OF WASHINGTON)
)
COUNTY OF BENTON)

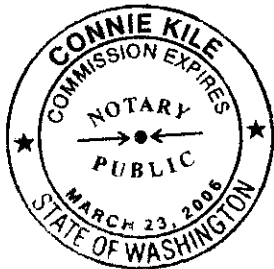
ss.

I certify that I know or have satisfactory evidence that Gene Wagner is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 27th day of August, 2003.

Connie Kile

Signature of Notary



Connie Kile

Print or stamp name of Notary
Notary Public for the State of
Washington, residing at

Kennewick
My appointment expires March 23, 2006

PORT OF BENTON

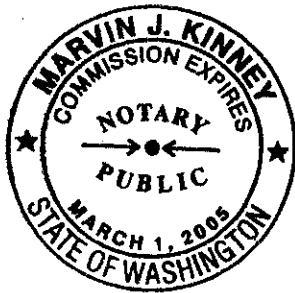
Jane Hagarty
Jane Hagarty
President

Date: 7-17-03 2003

STATE OF WASHINGTON)
) **ss.**
COUNTY OF BENTON)

I certify that I know or have satisfactory evidence that *** is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 7TH day of JULY, 2003.



Marvin J. Kinney
Signature of Notary

MARVIN J. KINNEY
Print or stamp name of Notary
Notary Public for the State of
Washington, residing at

KENNEWICK
My appointment expires MARCH 1, 2005

PORT OF PASCO

Jim T. Klindworth
Jim T. Klindworth,
President

Date: August 28, 2003

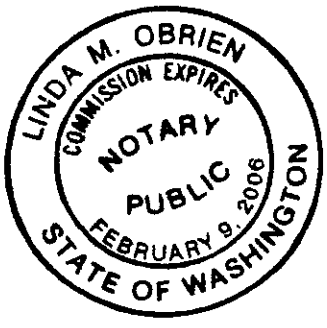
STATE OF WASHINGTON)
) **ss.**
COUNTY OF FRANKLIN)

I certify that I know or have satisfactory evidence that Jim T. Klindworth is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 28th day of August, 2003.

Linda M. O'Brien

Signature of Notary



LINDA M. O'BRIEN

Print or stamp name of Notary
Notary Public for the State of
Washington, residing at

Kennewick
My appointment expires 2/9/06

Exhibit "A" to Interlocal Agreement

CONSULTING AGREEMENT

This Consulting Agreement (Agreement) is entered into as of _____, 2003, between The Confluence Project, a Washington non-profit corporation (Confluence) and the Tri-Cities Visitor and Convention Bureau (TCVCB).

WHEREAS, TCVCB is an organization tasked with enhancing the rivershore areas within the Tri-Cities area;

WHEREAS, the Lewis and Clark Bicentennial Celebration honoring the Lewis and Clark Expedition is scheduled for 2003-2004;

WHEREAS, an agreement has been entered into between Confluence and Maya Lin, a nationally recognized artist, for artistic work to be constructed and placed at Sacajawea State Park, Franklin County, Washington, in honor of the Lewis and Clark Expedition;

WHEREAS, **TCVCB** is in need of consultation services regarding the artistic work to be constructed and placed at Sacajawea State Park;

WHEREAS, Confluence has agreed to perform such consulting services for TCVCB;

NOW, THEREFORE, the parties have agreed to enter into an agreement defining their mutual rights and obligations:

1. **Services.** Confluence shall:

- (A) Use its best efforts to secure funding for, and to facilitate the design, engineering and construction of the artistic work described in the Agreement entered into between Confluence and Maya Lin Studio, dated _____, 2003, (Maya Lin Agreement) at Sacajawea State Park, on or before May 1, 2005; and
- (B) Perform all obligations required of Confluence as described in the Maya Lin Agreement as may be hereafter amended; a copy of which is attached hereto as Exhibit 1 to this Consulting Agreement.

The Services shall include all travel expenses to and from work sites, meals, lodging, and any and all other related

expenses. TCVCB shall have the right to review all records related to the performance of the Services, including financial records of Confluence. All Services will be performed in a competent manner in accordance with applicable standards of the profession and all Services are subject to final approval by TCVCB prior to TCVCB's payment.

2. Consideration/Payment.

In consideration of the Services provided under this Agreement, TCVCB will pay Confluence the annual sum of \$25,000. Confluence shall invoice TCVCB quarterly and TCVCB shall pay Confluence the amount due within twenty days after such invoice is received by TCVCB.

3. Term.

This Agreement shall commence retroactively on January 1, 2003, and shall terminate on December 31, 2006, unless earlier terminated, with or without cause, by TCVCB upon 30 days prior written notice. In the event this Agreement is terminated by TCVCB, TCVCB shall pay Confluence all sums owing for Services performed through the date of termination, but shall have no liability for payment for Services performed after such date. Notwithstanding the foregoing, upon completion of the artistic work referenced in Section 1 (A) of this agreement, TCVCB shall be obligated to pay Confluence the sums referenced in Section 2 of this agreement (i.e. \$25,000 per year for each year of the remaining term of this Agreement).

4. Independent Contractor.

Nothing herein shall be construed to create an employer-employee or partnership relationship between the parties. This Agreement calls for the performance of services of Confluence as an independent contractor and Confluence shall not be considered an employee of TCVCB for any purpose. The consideration set forth above shall be the sole payment due for all Services rendered. It is understood that TCVCB will not withhold any amounts for payment of taxes from the compensation of Confluence and that Confluence will be solely responsible to pay all applicable taxes from said payments, including payments owed to its employees, agents and subcontractors.

5. Insurance/Indemnity.

Confluence will carry general liability, automobile liability, workers compensation, and employer's liability insurance in the amount of \$1,000,000. Confluence shall name TCVCB as an additional insured on said insurance and shall not cancel or alter such policies without providing TCVCB with 30 days advance notice of such changes. Additionally, Confluence shall indemnify and hold harmless TCVCB, its agents and employees, from and against any damages, claims and expenses arising out of or resulting from the Services conducted by Confluence and its employees, agents, and subcontractors.

6. Reservation of Copyright.

The parties understand and agree that Confluence will honor any and all copyright claims of the artist, including but not limited to the making and dissemination of copies or reproductions of the work consistent with the Maya Lin Agreement.

7. Warranty and Indemnity.

Confluence warrants and represents that the work submitted shall be wholly original work of artist and that she shall be the sole creator of the work when submitted.

Confluence agrees to indemnify TCVCB against any claim, demand, or recovery finally sustained in any suit that may be brought against either by reason of any violation of proprietary right or copyright, or because of any libelous or unlawful matter contained in the work.

8. Restriction of Assignment.

Confluence's rights and obligations under this Agreement shall not be assignable without the written approval of TCVCB. Said approval shall not be unreasonably withheld.

9. Partial Invalidity of Agreement.

If any of the provisions of this Agreement shall contravene or be invalid under the laws of the State of Washington, such contravention or invalidity shall not invalidate the entire agreement but it shall be construed as if not containing the particular

provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

10. **Arbitration.**

Any controversy or claim arising out of or relating to this contract or the alleged breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association.

11. **Representations and Warranties.**

Confluence is licensed to perform the agreed-upon Services enumerated herein and covenants that it maintains all valid licenses, permits and registrations to perform the same. Confluence will make no representations, warranties, or commitments binding TCVCB without TCVCB's prior written consent. TCVCB shall have no liability with respect to any obligations set forth in the Maya Lin Agreement.

12. **Notices.**

Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, by first-class regular mail, addressed to the other party's last known business address.

13. **Entire Agreement.**

This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral. No amendment, extension or change of this Agreement shall be binding unless in writing and signed by both parties.

14. **Binding Effect.**

This Agreement shall be binding upon and shall inure to the benefit of Confluence and TCVCB and to TCVCB's successors and assigns. Nothing in this Agreement shall be construed to permit the assignment by Confluence of any of its rights or obligations hereunder to any third party without TCVCB's prior written consent.

15. **Governing Law.**

This Agreement shall be governed by the laws of the State of Washington. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision.

16. **Attorneys Fees/Venue.**

If either party brings any action or proceeding to enforce, protect, or establish any right or remedy under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party. For any legal action, venue shall be Franklin County, Washington.

WHEREFORE, the parties have executed this Agreement as of the date first written above.

CONFLUENCE

By _____, 2003

Name and Title

TCVCB

By _____, 2003

Name and Title