

**CONTRACT FOR SERVICES**  
**Between the**  
**Montana State Library**  
**And**  
**The University of Montana**  
**State Fiscal Year2007**

This Agreement is made and entered into this \_\_\_\_ the day of \_\_\_\_\_, 2006, by and between the Montana State Library, Helena, Montana (hereinafter referred to as the Library) and The University of Montana, Missoula, Montana (hereinafter referred to as the University).

**PURPOSE**

This Agreement transfers from the Library to the University primary responsibility for administration of the Montana Natural Heritage Program (hereinafter referred to as "NHP") established by Chapter 650, Montana Laws of 1983, and Chapter 395, Laws of 1985, and codified under Title 90, Chapter 15, MCA. The program is funded through an appropriation to the Library by the Montana State Legislature.

**PROVISIONS**

1. Library Obligations. The Library shall:
  - a. provide the Digital Library Division Administrator as the liaison with the University and as contract administrator for this Agreement;
  - b. provide technical consultation or other assistance to the University as available and appropriate;
  - c. assist the University in making contacts and developing partnerships with other state natural resource agencies; assist the University in the development and implementation of a long-term strategic plan for sustaining the NHP;
  - d. take over management of and continue to monitor and update the information in the NHP data storage and retrieval systems at the end of the contract period or continue to contract for such services, provided funds are available for such purpose and authorization is received for necessary personnel;
  - e. make available at no cost sufficient space for the NHP based upon a staff of sixteen (16) full-time employees and three (3) part-time employees, and will consider options for housing additional NHP staff should the need

arise;[language to address the space allotment yet to be reviewed by State Librarian]

- f. provide utilities at no cost;
- g. provide telephone equipment and basic and long distance telephone service to University NHP staff out of the funds described in section XXX held back to support NHP programs;
- h. provide, through the state network and MSL data center, the necessary infrastructure to support: file and print services, Internet access, web-based services, email services, geographic information system (GIS) services, and database management, except as noted under section ?????, University Obligations;
- i. provide desktop and network support relating to authentication to the network, shared file and print services, email functionality, and state-owned software administration. Work in a support role with NHP IT staff to resolve desktop and network issues for NHP non-core staff.
- j. provide up to XXX state network connections for NHP staff.
- k. seek input from the University in the design and implementation of NRIS computer and information delivery systems that support NHP needs and in the development of programming, web interface, and related standards;
- l. submit to the University on a quarterly basis an itemized accounting of all Heritage Program expenses incurred and paid by the Library from the state funds held back to support NHP programs.
- m. permit NHP employees to use state motor vehicles for NHP work and charge the University no more than the rate charged by the State Motor Pool for actual usage. NHP employees will use standard Library procedures to reserve vehicles and will comply with all Library rules with regard to vehicle use. Payment for the services and related expenses described in this subsection will be as provided in Section 5 of this Agreement.
- n. provide web-programming and related services to the University for implementation of the NHP for a minimum of XXX hours and a maximum of XXX hours for a cost not to exceed \$XXXXXX. The Library agrees that it will provide a staff person with appropriate expertise in web programming and application development to serve as the primary web programmer for the NHP. In fulfilling this obligation the parties agree that specific assignments may be performed by other qualified Library staff, with the mutual agreement of the parties to this Agreement. Specific work tasks and projects to fulfill the services described in this subsection will be developed and managed jointly by the NHP Systems and

Services Manager and the NRIS Project Manager. It is understood and agreed that any Library staff persons who provide services described under this subsection are at all times Library employees and not University employees, and they are subject to the supervision and direction of the Library and not the University. Payment for the services and related expenses described in this subsection will be as provided in Section 5 of this agreement.

2. University Obligations. The University shall:

- a. complete all technical tasks per the Scope of Work attached to this Agreement as Appendix 1, contingent upon receipt of sufficient funding from state and other sources.
- b. limit its use of facilities and equipment provided by the Library, pursuant to this Agreement, solely to fulfilling the purpose of this Agreement, as specifically expressed in the Scope of Work (Appendix 1) or, with the approval of the Library, for work of like nature that would benefit the interest of the Library and/or the State.
- c. provide a Natural Heritage Program Director, who shall also act as NHP technical liaison to the Library;
- d. provide and supervise staff for the program for the duration of the Agreement. Staff must include personnel with expertise in zoology, biology, botany, ecology, data management, and GIS. The parties to this Agreement understand that funding provided through this Agreement may not be adequate to support full-time positions within each of the listed areas of expertise. The University may, in its discretion, utilize funds provided under this Agreement to assign or hire as full-time employees staff having the combined expertise required, assign or hire part-time employees with the required expertise, or assign or hire employees into part-time or full-time positions partially or fully supported by other, non-Library [or non-NHP] funding sources.
- e. maintain the primary program operations center at the Montana State Library;
- f. furnish all necessary supplies, computer equipment, and computer software needed by the University to carry out its obligations under this Agreement, other than those specified under 1.h. The University shall furnish all necessary licensing of GIS software for NHP staff use and shall provide the hardware and software to support the NHP Biotics Oracle database;
- g. utilize the telephone equipment and services furnished by the Library;

- h. ensure that all new NHP staff receive training in the standard methods used by the NHP and training in implementation of NHP software and other Heritage Program technologies and methodology;
  - i. maintain and continue to update documentation detailing all methods and procedures necessary to operate the program; on request, provide training in natural heritage data bases and methodology to designated Library employees;
  - j. utilize programming standards adopted or approved by the Library for web application development;
  - k. develop, in coordination with MSL staff, a plan for implementing web interface standards as required under state policy and as adopted by the Library;
  - l. maintain database management systems capable of efficiently receiving, storing, manipulating, disseminating and incorporating updates of a statewide heritage inventory... Operate the NHP databases as an integrated component of the State Library's digital data holdings, including incorporation into its information discovery and access systems.
  - m. maintain the identity of the NHP as a program of the Library and where appropriate as a component of the Montana State Digital Library – Natural Resource Information System. Include, at a minimum, the phrase “A component of the Montana State Library administered for the Library by The University of Montana - Missoula” as part of this identification on all official correspondence and publications of the NHP, including electronic versions.
  - n. comply with the Montana Library Records Confidentiality Act, which protects the identity of users and requestors of NHP data; maintain scientific objectivity and political neutrality in the collection, analysis and dissemination of heritage data and information.
  - o. work with the NHP Director and Library staff to develop and implement a long-term strategic plan that includes stable financial support of the NHP; and
  - p. establish and maintain a “Partners Committee” consisting of representatives of the University, the Library, and the NHP principal partners and major contributors to funding for the program. The purpose of this Committee shall be to provide input and assistance in planning, priority-setting, data acquisition, and securing adequate funding. The Partners Committee shall meet at least 2 times during the year and shall be staffed by the Director of the NHP.
3. Compatibility with Other States. In carrying out its obligations under this Agreement, The University shall manage the NHP to maintain its compatibility with similar programs in other States and Provinces.

4. Contract Period. This contract shall become effective \_\_\_\_\_, and shall remain in effect until June 30, 2007, unless terminated in accordance with the "Termination" section of this agreement. This contract can be renewed upon mutual agreement of both parties.
  
5. Payments. The Library agrees to pay The University for the work performed and services rendered pursuant to Appendix 1, SCOPE OF WORK and in accordance with Appendix 2, BUDGET. The Library agrees to pay The University for direct expenses up to \$(prorated based on funds remaining when transfer from TNC occurs) for NHP operations for the remainder of FY06 and for all of FY07. The Library will retain an additional \$(prorated based on funds remaining when transfer from TNC occurs) for FY06 and FY07 for payment of documented expenses incurred directly by the Library in support of NHP operations. For direct expenses incurred by multiple library programs including NHP, the Library and the University shall negotiate schedules for prorating the costs to the various programs.

The Library agrees to pay the University in accordance with the following schedule. No later than sixty (60) days after the end of each calendar quarter, the University shall submit an invoice summarizing actual expenses incurred by the University for the work performed under this Agreement for the prior quarter. The Library will pay the invoice within thirty (30) calendar days after receipt. Vouchers shall be made payable to The University of Montana and mailed to the University liaison listed in Section 19.

The University agrees to pay the Library from grant funds, as appropriate, for costs incurred for NHP web programming services and, if necessary, the use of state vehicles accessed through the Library per Section 1.j. The Library shall provide an itemized invoice at least quarterly but no more frequently than monthly to the University technical liaison identified in Section 19. The University technical liaison will review and approve the invoiced costs, assign these costs to the appropriate NHP grant accounts and forward the invoice to the University administrative liaison for payment. Payment shall be made to the Montana State Library within thirty (30) days from receipt of the approved invoice from the University technical liaison.

In addition, the Library shall submit to the University on a quarterly basis an itemized accounting of all Heritage Program expenses incurred and paid by the Library from the state funds held back by the Library for that purpose.

6. Other Sources of Support: The University will use its best efforts to seek to generate additional funding and in-kind support for the NHP through grants, cooperative agreements, contracts, and other revenue from federal, state, local, and private sources for support of the NHP. Similarly, if the Library receives funding for projects

or activities that it believes can best be carried out by the NHP, such funding can be transferred by amendments to this agreement or through separate agreements.

**7. Progress Meetings and Reports:** During the term of the contract, the Library's technical liaison will plan and schedule biannual progress meetings with the University's technical liaison to discuss the progress made by the University and the Library in the performance of their respective obligations. At each such meeting, the University shall provide the Library with a written status report that summarizes progress made towards completion of the objectives set forth in the SOW (Attachment XXX) and that identifies any problem or circumstance encountered by the University, or of which the University gained knowledge during the period since the last such status report, which may prevent the University from completing any of its obligations. The University shall identify the cause of any identified problem or circumstance and the steps taken to remedy the same. The University shall also provide program Natural Heritage Program updates as necessary to satisfy the Library's reporting requirements for the Library Commission, the Governor's Office, the Legislature, and as required by Library contracts and other agreements that directly affect the Natural Heritage Program.

**8. ACCESS AND RETENTION OF RECORDS:** The University agrees to provide the Department of Administration, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The University agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the Library, the State of Montana or a third party.

The Library, the State of Montana, the Montana Legislative Auditor, or any of their duly authorized representatives, have the right of access to any books, documents, papers, and records of the University which are pertinent to the services provided under this contract for purposes of making an audit, excerpts, or transcripts. Notwithstanding the provisions of Section XXX, this Agreement may be terminated upon any refusal of the University to allow reasonable access to records referred to above.

**8. Insufficient Funds.** In the event that total program funding to the Library for completion of work under this Agreement is eliminated or reduced by the Montana Legislature, the Library may terminate or re-negotiate the Agreement with thirty (30) days written notice to the University. In the event of termination, upon receipt of such notice, the University shall cease work as of the termination date. The Library shall pay the University for all unpaid work completed prior to termination as provided for in this Agreement and for any non-cancellable obligations. In the event of a funding reduction, the parties shall negotiate a modification of the agreement, reducing the Scope of Work to reflect the reduced funding.

**9.FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

**10. Rights to Data, Work Products and Intellectual Property.** All data in the Natural Heritage Program database and all data added thereto or any new databases established during the term of this contract are the property of the Library and the State of Montana. The University retains an irrevocable, non-exclusive, royalty-free license to use all such data for research and educational purposes. Ownership of all other products of this Agreement, as described in Section XXX above, e.g., documents, reports, and studies that are produced by the University, will be vested in the University. The Library shall retain an irrevocable, non-exclusive, royalty-free right to use such products for government purposes.

Ownership of patents and/or inventions resulting from this contract developed solely by University employees shall vest in the University. Ownership of patents and/or inventions resulting from this contract developed jointly by University and Library employees shall be jointly owned. In the case of University-owned patents and inventions, the University hereby grants the Library an irrevocable, non-exclusive, royalty-free license to use said patents and/or inventions for government purposes. Both parties shall have an irrevocable, non-exclusive, royalty-free license to reproduce or otherwise use copyrightable property created under this contract for research and educational (non-commercial) purposes. In addition, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use and authorize others to use, copyrightable property created under this Agreement, including all deliverables and other materials, products, modifications developed or prepared for the Library by the University under this Agreement, or any program code, including site related program code, created, developed, or prepared by the University under or in support of the performance of its obligations hereunder.

**12. Title and Ownership Rights.** The Library shall retain title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio and video), text and the like provided by the Library (the "content"), but grants the University the right to access and use content for the purpose of complying with its obligations under this contract and any applicable statement of work.

**13. Ownership of Work Product.** The University agrees to execute any documents or take any other actions as may reasonably be necessary, or as the Library may reasonably request, to perfect the Library's ownership interest in any work product.

**14. Copy of Work Product.** The University shall, at no cost to the Library, deliver to the Library, upon the Library's request during the term or at the expiration or termination of all or part of University's performance hereunder, a current copy of

all work product in the form and on the media in use as of the date of the Library's request, or as of such expiration or termination, as the case may be.

15. Ownership of Contractor Information. Techniques, sub-routines, algorithms and methods or rights thereto owned by University at the time this contract is executed and employed by University in connection with the services provided to the Library (the "contractor information") shall be and remain the property of the University. **The University must provide full disclosure of any University information to the Library prior its use and prove its ownership. [MUST CLARIFY WHAT CONSTITUTES PROOF OF OWNERSHIP].** The University grants to the Library a perpetual, irrevocable, royalty free, unrestricted right to use, modify, transfer and maintain the University information referenced above. Except as otherwise provided in this Agreement or as may be expressly agreed in any statement of work, the University shall retain title to and ownership of any hardware provided by the University.

16. Title to Capital Investments. With the exception of proprietary software for managing heritage data procured by contract with third-party providers, and to the extent permitted by federal law and commercial practices, title to all property and equipment acquired by the University under this Agreement, necessary for the uninterrupted continuation of the program after termination, including but not limited to computer hardware, computer software, office equipment and furniture, and maps, shall be vested in the Library upon termination of this Agreement. The University agrees to execute any documents that may be reasonably requested by the Library for purposes of transferring title to the Library.

17. Correction of Errors. The performance of services or acceptance of the reports required hereunder shall not relieve the University from the obligation to correct any University-caused defective work within a reasonable time, not to exceed twelve (12) months.

18. Termination. There are four possible ways that this Agreement may be terminated: (1) under the procedures described in Section 9 because of insufficient funds. (2) the Library may terminate this Agreement if the University fails to comply with the terms and conditions of the Agreement. In such a situation, the Library shall provide written notification at least thirty (30) days prior to the termination, setting out the basis for the termination and allowing the University the same thirty (30) day period to cure the deficiencies that were the basis for the termination notice. If the University cures the deficiencies within the thirty (30) day period, the Library shall withdraw the termination notice. (3) Both parties may mutually agree in writing to terminate the Agreement. (4) The University may terminate this Agreement if the Library fails to comply with the terms and conditions of the Agreement. In such a situation, the University shall provide written notification at least thirty (30) days prior to the termination, setting out the basis for the termination and allowing the Library the same (30) day period to cure the deficiencies that were the basis for the termination notice. If the Library cures the

deficiencies within the thirty (30) day period, the University shall withdraw the termination notice.

If this Agreement is terminated for any reason other than the University's failure to perform, the Library agrees to pay the University for all allowable costs properly incurred prior to the termination date and for non-cancellable obligations. If this Agreement is terminated due to University's failure to perform, the University will submit a summary of all allowable costs properly incurred prior to the termination date, following which the parties will negotiate in good faith a final settlement amount.

If this Agreement is terminated by mutual agreement or because the University failed to comply with the terms and conditions of the agreement, the Library shall retain use of the versions of any proprietary software in use by the Library at the time of termination. Under these circumstances, the Library shall not be entitled to sell, donate, or distribute in any manner the proprietary software without the prior written approval of the third-party copyright holder. If the agreement is terminated because the Library failed to comply with the terms and conditions of the Agreement or in accordance with paragraph 8 because of insufficient funds, the University may require the immediate delivery of all materials and documentation pertaining to the proprietary software. The University may also require the state to render unusable all copies of the proprietary software.

Upon expiration or termination of this Agreement, the data residing on the Library's system shall remain on the system as the sole property of the Library. If the Library decides not to enter into a new agreement with the University, the Library shall provide the University with a copy of the data in the databases, and all data in manual, map, and electronic files to the University, to be delivered within thirty (30) days of the date the termination or non-renewal becomes effective. The University shall retain an irrevocable, non-exclusive, royalty-free license to use the NHP data for research and educational (non-commercial) purposes.

If the contract is terminated or not renewed for any reason, the University agrees to provide for a reasonable period of time after the expiration or termination of the contract, all reasonable transition assistance requested by the Library, to allow the expired or terminated services to continue to the extent possible without interruption or adverse effect and to facilitate the orderly transfer of such services to the Library or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms and conditions that do not reasonably apply to such transition assistance. The Library shall pay the University for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the Library terminates this contract for cause, then the Library will be entitled to offset the cost of paying the University for the additional resources the University utilized in

providing transition assistance with any damages the Library may have otherwise accrued as a result of said termination for cause.

13. Release. The University, upon receipt of final payment of the amount due and the Library's compliance with all other applicable provisions under this Agreement, releases the Library, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The University agrees not to purport to bind the State Library to any obligation not assumed by the Library, unless the University has express written authority to do so, and then only within the strict limits of that authority.

14. Warranty. The University warrants that, to the best of its knowledge, it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

15. Independent Contractor. The University, and its agents and employees, are independent contractors performing technical services for the Library and are not employees of the Library. The University and its agents and employees shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding, or any other benefits afforded to employees of the Library.

22. Hold Harmless/Indemnification. The University agrees to protect, defend, and save the Library and its appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the University's employees or third parties on account of bodily or personal injury, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the University and/or its agents, employees, representatives, assigns, and subcontractors, except the sole negligence of the Library, under this Agreement. [NOTE University legal counsel doesn't normally allow them to accept Hold Harmless/Indemnification clauses unless they extend both ways. Since we cannot make the indemnification reciprocal because we are both state agencies, the University would prefer that the agreement remain silent on this issue.]

16. Lobbying Prohibition. The University, and its agents and employees, shall not charge any lobbying activities, as defined in state law, to the Agreement.

17. Compliance with Laws. The University shall comply with all applicable federal, state and local laws, rules, and regulations, including, but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the University subjects subcontractors to this same provision. In accordance with MCA section 49-3-207, the University agrees that the hiring of persons to perform under the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

The University shall comply with the provisions of the Montana Workers' Compensation Act. Upon request, proof of compliance shall be provided to the Library in the form of a certificate outlining the University's workers' compensation insurance coverage.

18. Governing Law. This Agreement shall be governed by Montana law. The parties agree that any litigation concerning this Agreement shall be brought in the District Court of the First Judicial District in and for the County of Lewis and Clark and that each party shall pay its own costs and attorney fees.

19. Liaison and Notices. All notices under this Agreement given by either party to the other shall be in writing and shall be sent by mail or express courier, postage prepaid, and addressed to the individuals identified below, unless changed in writing by the addressee party. The technical liaison shall be the contact for technical direction and programmatic matters. The administrative/contractual liaison shall be the contact for administrative review, modification, any change to the contract terms and conditions, or budgetary matters.

For the Library:

Technical

Jim Hill  
Digital Library Division Administrator  
Montana State Library  
1515 East 6<sup>th</sup> Avenue  
Helena, Montana 59620-1800  
Phone: (406) 444-5355  
FAX: (406) 444-0266  
E-mail: JimHill@mt.gov

Administrative/Contractual

Darlene Staffeldt  
Director  
Montana State Library  
1515 East 6<sup>th</sup> Avenue  
Helena, Montana 59620-1800  
Phone: (406) 444-3115  
FAX: (406) 444-0266  
E-mail: DStaffeldt@mt.gov

For the University:

Technical

Susan Crispin

Administrative/Contractual

Claire L. Carlson

Montana Natural Heritage Program  
P.O. Box 201800  
1515 East 6<sup>th</sup> Avenue  
Helena, Montana 59620-1800  
Phone: (406) 444-3019  
FAX: (406) 444-0581  
E-mail: [scrispin@mt.gov](mailto:scrispin@mt.gov)

Research and Sponsored Programs  
The University of Montana  
University Hall 202  
Missoula, Montana 59812-4104  
Phone: (406) 243-5796  
FAX: (406) 243-5739  
E-mail: [claire.carlson@umontana.edu](mailto:claire.carlson@umontana.edu)

Assignment. Neither party to the Agreement may assign or transfer any of its rights or obligations without the written consent of the other party.

**20. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** The University acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**21. CONFORMANCE WITH AGREEMENT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Agreement shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the Agreement terms, conditions, and specifications may be rejected and returned at the University's expense.

**22. SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the Agreement is illegal and void shall not affect the legality and enforceability of any other provision of the Agreement, unless the provisions are mutually dependent.

**23. Entire Agreement.** This Agreement, consisting of ten (13) pages and one (1) appendix, represents the entire agreement between the parties and may not be altered, supplemented or amended except by written amendment signed by both parties. A copy has the same force as the original.

Approved and Agreed:

For The Montana State Library:

By: \_\_\_\_\_  
Darlene Staffeldt

Date: \_\_\_\_\_

For The University of Montana

By: \_\_\_\_\_  
Claire L. Carlson, Assoc. Vice President for Research

Date: \_\_\_\_\_

12/19/2007 Draft

**Appendix 1**

**University Scope of Work**

**Appendix 2**

**Budget**