

CONTRACT FOR SERVICES
Between the
Montana State Library
And
The Nature Conservancy
State Fiscal Years 2002/2003

This Agreement is made and entered into this ____ the day of _____, 2001, by and between the Montana State Library (hereinafter referred to as the Library) and The Nature Conservancy, a non-profit corporation incorporated under the laws of the District of Columbia and having an office at 4245 N. Fairfax St., Arlington, Virginia, U.S.A. (hereinafter referred to as The Conservancy).

PURPOSE

This Agreement is intended to implement 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.

PROVISIONS

1. Library Obligations. The Library shall:
 - a. provide the Natural Resource Information System (NRIS) Director as the liaison with The Conservancy and as contract administrator for this Agreement;
 - b. provide technical consultation or other assistance to The Conservancy as available and appropriate;
 - c. assist The Conservancy in making contacts and developing partnerships with other state natural resource agencies; assist The Conservancy 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 sufficient space for the NHP based upon a staff of ten (10) full-time employees and four (4) part-time employees, and will consider options for housing additional NHP staff should the need arise;

- f. provide utilities, other than telecommunications;
- g. make available telephone equipment to be used by The Conservancy, with The Conservancy to be billed for the cost of telephone service;
- h. make available access to necessary hardware and support for conducting geographic information system (GIS) projects and services as deemed appropriate by The Library and The Conservancy; cooperate in the design and implementation of NRIS computer and information delivery systems;
- i. submit to The Conservancy on a quarterly basis an itemized accounting of all Heritage Program expenses incurred and paid by the Library.

2. Conservancy Obligations. The Conservancy shall:

- a. 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 work of like nature that would benefit the interest of the State.
- b. provide a Natural Heritage Program Director, who shall also act as NHP liaison to the Library;
- c. provide and supervise staff for the program for the duration of the contract;
- d. maintain a program operations center at the Montana State Library or at an off-site location, providing that sufficient funds are available;
- e. furnish all necessary supplies, computer equipment, and computer software needed by The Conservancy to carry out its obligations under this Agreement, other than those specified under 1.h;
- f. utilize the telephone equipment furnished by the Library and pay to the Library the billed cost of furnishing telephone service;
- g. ensure that all new NHP staff receive core training in the standard methods used throughout the NHP and training in implementation of NHP software and other Heritage Program technologies and methodology; and provide broad technical oversight of NHP databases;
- h. 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 a designated Library employee, with travel expenses to be borne by the Library separate from this agreement;

- i. maintain and ensure the growth of a data bank for Montana consisting of several cross-referenced manual, map, and computerized file systems capable of efficiently receiving, storing, manipulating and incorporating updates of a statewide heritage inventory, completing all technical tasks per the Scope of Work attached to this Agreement as Appendix 1.
 - j. include the phrases "Montana State Library" and "Natural Resource Information System" as part of the identification of the program on all correspondence and publications of the NHP, including electronic versions;
 - k. 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.
 - l. ensure that any work performed for the Conservancy's Montana Field Office is paid for by The Conservancy, and work with the NHP Director and Library staff to develop and implement a long-term strategic plan for stable financial support of the NHP; and
 - m. through its Montana Field Office, work with NHP staff to identify and address priority data gaps.
3. Compatibility with Other States. In carrying out its obligations under this Agreement, The Conservancy shall manage the NHP to maintain its compatibility with similar programs in other States and Provinces.
4. Contract Period. This contract shall become effective July 1, 2001, and shall remain in effect until June 30, 2003, unless terminated in accordance with the "Termination" section of this agreement. Upon expiration of this agreement, The Conservancy shall have access to and use of the NHP data base for six months, or until a new agreement is signed by all appropriate parties, whichever comes first. If the Library decides not to enter into a new agreement with The Conservancy, the Library will provide a copy of all data in map, manual or electronic files to The Conservancy.
5. Payments. The Library agrees to pay The Conservancy for the work performed and services rendered pursuant to Appendix 1, SCOPE OF WORK. The Library agrees to pay The Conservancy for direct expenses up to \$642,864 for NHP operations under the terms of this agreement. The Library will reserve an additional \$20,000 for payment of expenses incurred directly by the Library in support of NHP operations. If, at the end of the contract period, expenses incurred directly by the Library exceed \$20,000, the final payment to the Conservancy will be decreased by the amount of such difference. If the Library's direct expenses fall short of \$20,000, the remaining unspent balance will be available for payment of direct expenses incurred by the Conservancy.

The Library agrees to pay the Conservancy in accordance with the following schedule of payments and procedures:

An advance of \$80,358 will be paid by the Library to cover an estimate of expenses for the first quarter (the period prior to payment of the first invoice). No later than forty-five (45) calendar days after the end of each calendar quarter, The Conservancy shall submit invoices itemizing all actual expenses incurred by The Conservancy for the work performed under this agreement for the prior quarter. Within thirty (30) calendar days after receipt of the documentation the Library will pay the lesser of either:

- 1) actual itemized expenses submitted, or
- 2) 1/8 (\$80,358) of the total contract amount for NHP operations and any of portion the pro-rated allocation from previous quarters that has not been paid to The Conservancy (up to the maximum of the actual itemized expenses for the quarter being billed).

The advance will be deducted one-half from each of the last two quarterly billings.

The Conservancy is required to make available any files holding documentation for such expenses, in lieu of submitting detailed receipts, and to make reports on other Heritage Program revenues and expenditures available to the Library.

6. Other Sources of Support: The Conservancy 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 Conservancy, such funding can be transferred by amendments to this agreement or through separate agreements.
7. Records. The Conservancy shall maintain adequate records to document its work and expenses. These records shall be available for inspection by the Library, the Montana Legislative Auditor, and any other state or federal agency carrying out permissible audit functions.
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, state or federal agencies, or other third parties, the Library may terminate or re-negotiate the Agreement with thirty (30) days written notice to The Conservancy. Upon receipt of such notice The Conservancy shall cease work as of the termination date. The Library shall pay The Conservancy for all unpaid work completed prior to termination as provided for in this Agreement. Alternatively, the parties may agree to a modification of the agreement.

9. Rights to Work Product. 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 State of Montana. The Conservancy retains a nonexclusive license to use all such data. All other products of this Agreement, as described in Section 2 above, e.g., documents, reports, and studies that are jointly produced by The Conservancy and the Library with public funds, are jointly-owned by the parties. Such joint ownership shall in no way jeopardize or conflict with the rights of The Conservancy or the Library to the use of such products.
10. Title to Capital Investments. With the exception of BCD and other proprietary software developed by The Conservancy or the Association for Biodiversity Information (ABI), for managing heritage data, and to the extent permitted by federal law and commercial practices, title to all property and equipment acquired by The Conservancy 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 State of Montana upon termination of this Agreement. The Conservancy agrees to execute any documents that may be reasonably requested by the Library for purposes of vesting title in the State.
11. Correction of Errors. The performance of services or acceptance of the reports required hereunder shall not relieve The Conservancy from the obligation to correct any Conservancy-caused defective work within a reasonable time, not to exceed twelve (12) months.
12. Termination. There are four possible ways that this Agreement may be terminated: (1) Under the procedures described in paragraph 8 because of insufficient funds, (2) The Library may terminate this Agreement if The Conservancy 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 Conservancy the same thirty (30) day period to cure the deficiencies that were the basis for the termination notice. If The Conservancy 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 Conservancy may terminate this Agreement if the Library fails to comply with the terms and conditions of the Agreement. In such a situation, the Conservancy 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 Conservancy shall withdraw the termination notice.

If this Agreement is terminated by mutual agreement or because The Conservancy failed to comply with the terms and conditions of the agreement, the Library shall retain use of the versions of the BCD software and Heritage methodology documentation in use by the Library at the time of termination. Under these

circumstances, The Library would not be entitled to sell, donate, or distribute in any manner the BCD application software nor the basic Heritage methodology without the prior written approval of The Conservancy. 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 Conservancy may require the immediate delivery of all materials and documentation pertaining to the BCD software as well as all tangible expressions of the basic heritage methodology, including manuals and handbooks. The Conservancy may also require the state to render unusable all copies of the BCD software.

The Conservancy would be entitled to a copy of the data in the databases to be delivered within (30) days of the date the termination becomes effective under subsections (1), (2), (3) or (4) above. The data residing on the Library's system when the Agreement is terminated shall remain on the system as the sole property of the Library. In addition, if the Heritage Program is terminated by the Library in accordance with paragraph 8, it shall provide a copy of all data in manual, map and electronic files to The Conservancy.

13. Release. The Conservancy, 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 Conservancy agrees not to purport to bind the State Library to any obligation not assumed by the Library, unless The Conservancy has express written authority to do so, and then only within the strict limits of that authority.
14. Warranty. The Conservancy warrants that 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 Conservancy, and its agents and employees, are independent contractors performing technical services for the Library and are not employees of the Library. As a result of this Agreement, The Conservancy and its agents and employees shall not accrue leave, retirement, insurance, bonding, or any other benefits afforded to employees of the Library.
16. Lobbying Prohibition. The Conservancy, and its agents and employees, shall not charge any lobbying activities, as defined in state law, to the contract.
17. Compliance with Law. The Conservancy shall comply with all applicable state and federal laws, including, but not limited to, Montana worker's compensation laws, Montana unemployment insurance laws, Montana minimum wage laws, and Montana human rights and discrimination laws. In particular, all hiring by The Conservancy must be on the basis of merit and qualifications, and The Conservancy must not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

18. Governing Law. This Agreement shall be governed by Montana law. Any action under this Agreement shall be brought in the District Court of the First Judicial District in and for the County of Lewis and Clark.

19. Notices. Any notices to be given under this Agreement shall be sent to the following addresses, unless changed in writing by the addressee party.

Library: Natural Resource Information System
Montana State Library
1515 East 6th Avenue
Helena, Montana 59620-1800
Attn: Karen Strege

Conservancy: The Nature Conservancy
32 South Ewing
Helena, Montana 59601
Attn: Jamie Williams

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

21. Entire Agreement. This Agreement, together with Appendix 1, represents the entire agreement between the parties and may not be altered, supplemented or amended except by written agreement of the parties.

Montana State Library

By: _____
Karen Strege, Director

Date: _____

The Nature Conservancy

By: _____
Jamie Williams, State Director

Date: _____