

## **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

### **MONTANA DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE BUREAU PROGRAMS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ ("Company") and its affiliates and the Montana Department of Commerce ("MDOC") and its affiliates.

WHEREAS, the MDOC has requested and/or may request verbal and written information from the Company and its affiliates regarding the Company and certain of its affiliates and Project (including without limitation the proposed \_\_\_\_ to be located in \_\_\_\_\_, Montana incident to discussions concerning one or more possible loan transactions or grants for the benefit of the Company. The MDOC will accept a copy of the Business Plan and any supporting documentation submitted by the Company.

NOW, THEREFORE, in consideration of the premises and the disclosure of such information, each Party hereby, intending to be legally bound, agrees to the following provisions:

1. The Company understands and agrees that, pursuant to the Montana Supreme Court's decision in *Great Falls Tribune v. Public Service Commission*, 319 Mont. 38, 82 P.3d 876 (2003), all documents filed with the MDOC by the Company are presumptively available for access by the public under the "right to know" provision of Article 2, Section 9 of the Montana Constitution. Under the decision, however, the presumption that all documents filed by the Company with the MDOC are public may be overcome by the proper showing, consistent with the court's decision.
2. If the Company submits documents or information to the MDOC that it considers confidential and wishes the documents or information to be withheld from public disclosure, it will identify which part of the documents or information it considers confidential at the time the documents or information are submitted. The Company will identify the confidential items through an affidavit that clearly states the facts upon which it believes the documents or information should be withheld from public disclosure. The stated facts must be specific enough so that reviewing authorities can clearly understand the nature and basis of the Company's claims to the right of confidentiality. A statement that all documents or information submitted by the Company are confidential, or other conclusory statements, will be ineffective to prevent public disclosure. The Company understands and agrees that the affidavit it submits is subject to public disclosure.
3. If individual documents or information are not specified as confidential or the affidavit is factually insufficient to support confidentiality, the MDOC will deem the documents or information submitted as subject to public disclosure.
4. The MDOC will take reasonable steps to protect documents or information designated as confidential and for which the Company submitted an affidavit clearly stating the factual

basis for the claim of confidentiality. Upon receiving a written request from a third party to review any confidential documents or information, the MDOC will notify the Company of the request in writing. The written notice provided by MDOC will enclose a copy of the third-party request. The written notice and third party request will be sent by U.S. mail and by fax to the following addresses and fax numbers:

To: Address:

Attention:  
Fax #:

With a copy to:  
(If required) Address:

Attention:  
Fax #:

5. It is the responsibility of the Company upon receipt of the written notice from MDOC to take such action as is necessary to protect the documents or information from disclosure, including obtaining a court order protecting the documents or information from disclosure if necessary. If the MDOC does not receive an order from a court of competent jurisdiction ordering the MDOC to maintain confidentiality of the requested information or the MDOC is not notified of other arrangements made between the Company and the requesting party within 10 days from the date of the written notice by the MDOC to the Company of the third-party request, the information will be disclosed to the requesting party, notwithstanding the affidavit. The MDOC will not assert the right of confidentiality for the Company in any court, whether sitting at law or in equity.

6. The Company agrees that in the event MDOC discloses documents or information in accordance with the provisions of this Agreement, the Company will not assert any claim, liability, demand, or cause of action against MDOC for a violation of any confidentiality interest in any documents or information that it has submitted to MDOC.

7. The Company agrees it will defend, indemnify, and save harmless the MDOC against and from any and all claims, liabilities, demands, causes of action, judgments, damages, and losses, including costs and attorneys' fees associated with any action for release of documents or information submitted to MDOC by the Company, whether such action is brought in the name of the Company or a third party.

8. These programs are federal and state programs managed by the MDOC and are subject to audit and monitoring reviews by federal and state officials. The MDOC is required by federal and state regulations and laws to provide access to state and federal audit and monitoring officials in order to document compliance with applicable state and federal regulations and laws. In the event and to the extent access to information provided to the MDOC by the Company related to one of these programs and otherwise subject to this Agreement is requested by federal or state auditors, the Company agrees

that the MDOC may disclose such information to such auditors, provided that (a) such information is used only by such auditors for the purposes set forth in the previous sentence, and for no other purposes whatsoever; and (b) such information in the possession of or otherwise disclosed to such auditors shall remain subject to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first above written.

\_\_\_\_\_  
(Name of Company)

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name:  
Title:

MONTANA DEPARTMENT OF COMMERCE

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name: Pam Haxby-Cote  
Title: Director

APPROVED BY:

\_\_\_\_\_  
Attorney for the Department