COLLATERAL DEPOSIT AGREEMENT

Montana Department of Commerce Contract

#XX-51-NACS-[INITIALS OF LENDER]-CDA-[INITIALS OF BORROWER]

Native American Collateral Support (NACS) Program Collateral Deposit Agreement

SAMPLE

THIS COLLATERAL DEPOSIT AGREEMENT (hereinafter referred to as the "Deposit Agreement") is made by and between the Montana Department of Commerce (hereinafter referred to as the "Department"), a State agency, and [Name of Lender], [address, city, state, zip] (hereinafter referred to as the "Lender").

WHEREAS, the Department and Lender have previously entered into a Lender Participation Agreement, dated [Date], (the "Lender Participation Agreement") providing for Lender's participation in NACS; and

WHEREAS, the Borrower (defined below) desires to obtain a loan from Lender to [insert details of project] (the "Project"); and

WHEREAS, the Department and Lender desire to sign this Deposit Agreement to provide for the pledge by the Department of cash collateral to the Lender under NACS;

NOW THEREFORE, in consideration of the foregoing, the parties hereto agree and covenant as follows:

1. The Loan

[Insert business name(s)], a Montana registered domestic non-profit public benefit corporation (the "Borrower"), is receiving the following loan from the Lender, dated on or about the date of this Deposit Agreement. The Borrower's primary business purpose is assisting Native American owned businesses or tribal entities with economic development activities. The Loan shall be disbursed in accordance with loan documents among the Borrower, any co-maker, guarantor, endorser, other debtor or obligor of the Loan, and the Lender, which include without limitation, a loan agreement, note, security agreement(s), and as applicable, other hypothecations, guarantees, and other ancillary and related documents (the foregoing, and this Deposit Agreement, including all Appendices, and any permitted amendments thereto, collectively, the "Loan Documents"):

The Loan Principal Amount is [insert loan amount] [($0.00)] (the "Loan", or the "Loan Limit").

The Loan is a [insert loan term] [(XX)] year term loan with a fixed amount and specified repayment schedule (the "Term Loan").

The original Loan Documents shall be retained by the Lender.

2. Amount of Cash Collateral

On or about the closing of the Loan Documents, the Department shall deposit the following principal amount of cash collateral with the Lender in the name of the State of Montana (or in a State-maintained Short Term Investment Pool ("STIP") account in the event the Lender is a non-depository institution) (the "Collateral Deposit Account"):

Department Cash Collateral: [Insert initial deposit amount] [($0.00)] (the "Initial Deposit"). The Initial Deposit, and any reductions thereto as provided in the Deposit Agreement, collectively, shall be hereinafter referred to as the "Cash Collateral".

3. Form of Cash Collateral Deposit

The deposit to be maintained with or on behalf of the Lender will be in the following form:

a) [Demand money market account], or
b) [Tiered time deposit account(s). For each year of the Loan term, a time deposit account will be renewed representing a portion of the principal amount of the Loan to be released back to the Department annually. The term of the deposit is five (5) years in the form of one (1) renewing Certificate of Deposit (CD). Release of funds back to the Department will occur annually on the anniversary of the loan closing date], or
c) [Proportional time deposit account(s). For each year of the Loan term, a time deposit account will be opened representing a portion of the principal amount of the Loan to be released back to the Department annually. The term of the deposit is five (5) years in the form of one (1) renewing Certificate of Deposit (CD). Release of funds back to the Department will occur annually on the anniversary of the loan closing date].

4. Grant of Security Interest in Cash Collateral

To secure the prompt payment in full when due of the obligations of the Borrower to the Lender under the Loan (as limited by this Section), Department grants to the Lender continuing security interest, whether now owned or later owned, acquired or arising in the following:

a) The Collateral Deposit Account, and all certificates and instruments, if any, representing or evidencing the Cash Collateral, but in all cases, the security granted by the Department in favor of the Lender is limited to the amount of the Cash Collateral, and
b) All proceeds of the Collateral Deposit Account up to the amount of the Cash Collateral.

Notwithstanding anything to the contrary in this Deposit Agreement:

i. Department is not granting any security to the Lender in any interest or dividends or the like or other investment income accruing or otherwise arising from the Initial Deposit or Cash Collateral (the "Account Income");
ii. All Account Income, and reduction to the Initial Deposit as provided by this Deposit Agreement remain the sole and separate property of the Department, free and clear of any lien, claim, or interest of the Lender or any third party, and
iii. The extent of the security provided by Cash Collateral is:
The Collateral Deposit Account secures the Term Loan only up to the principal amount disbursed under the Term Loan, but in no event shall the Cash Collateral be deemed to secure any amount in excess of the Loan Limit (the "Term Loan Principal Balance").

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5. Perfection of Security Interest

The Department authorizes the Lender to file financing statement(s) describing the Cash Collateral and Collateral Deposit Account in all public offices deemed necessary by the lender, if any and to take any action, including, without limitation, filing all financing statements, continuation financing statements and all other documents that the Lender may reasonably determine to be necessary to perfect and maintain the Lender's security interests in the Cash Collateral and the Collateral Deposit Account.

6. Annual Settlement of Cash Collateral

[Add specific resettlement details for this Loan]: i.e. The term of the deposit is five (5) years in the form of one (1) renewing Certificate of Deposit (CD). The principal deposit settlement will be select tiered or proportional and released back to the Department in the following amounts:

Year 1: $XX,XXX
Year 2: $XX,XXX
Year 3: $XX,XXX
Year 4: $XX,XXX
Year 5: $XX,XXX
Total: $XXX,XXX

The Loan will be reviewed annually, based on the Loan closing date. No later than 10 business days after the anniversary of the Loan closing date, the Lender must notify the Department of the amount to be released back to the Department. This amount must include the principal, as well as the interest earned on that principal. The Lender will submit the released amount to the Department via an Automated Clearing House (ACH) transaction.

Nothing in this Section shall be deemed to imply or impose upon the Department any obligation to increase the amount of the Cash Collateral. The Lender shall provide all details reasonably requested by the Department regarding the breakdown of individual payments, credits, fees, or other charges against the Loan, including without limitation, itemization of the foregoing items.

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7. Termination of Security Interest and Return of the Initial Deposit

The security interest granted by this Deposit Agreement shall automatically terminate and the Cash Collateral shall be returned to the Department, upon the first to occur of:

a) Payment of credit in full of an aggregate amount equal to the outstanding Term Loan Principal Balance;
b) An Event(s) of Default (as defined below) by the Lender;
c) In the event of, and coincident with, the occurrence of the actions described in Section 12(b) (only the extent to which there is a balance remaining after application of the Cash Collateral as provided by Section 12(b)); or
d) The expiration of the maturity date of the Loan as provided by the Loan Documents, as may be amended from time to time by the Lender:
    i. With occurrence of an event described in Section 7(a); or
    ii. Without the Lender taking all action required of it under Section 12(b).

Upon such event, all funds and other investment property representing the Cash Collateral shall be the sole and separate property of the Department, free and clear of any lien, claim or interest of the Lender or any third party, and shall, along with any Account Income or other funds in the Collateral Deposit Account, be disbursed by the Department at its sole discretion. The Lender agrees to promptly execute and deliver to the Department all documents that the Department reasonably deems necessary or desirable to release the security interests granted in this Deposit Agreement, including, without limitation, termination statements.

The Department agrees to release any liens against the amount of collateral support being released back to the Department as part of the Annual Settlement of Cash Collateral as described in Section 6.

8. Administration of the Loan

a) Upon the request of the Department as necessary to comply with NACS requirements, the Lender shall provide the Department with copies of all financial statements and tax returns provided by the Borrower to the Lender, and copies of all Loan Documents.

b) The Lender shall disclose to the Borrower and any co-maker, guarantor, endorser, other debtor or obligor of the Loan, the existence of this Deposit Agreement in connection with the making and servicing of the Loan and collecting payments to be made by the Borrower. The Lender shall exercise the same degree of care and discretion in servicing the Loan and collecting payments from the Borrower as it would take in servicing the Loan and collecting payments solely for its own account.

c) The Lender may amend the terms and conditions of the Loan Documents without the consent of the Department except as provided herein. The Lender must provide the Department with any amended Loan Documents as soon as practical. The Lender may not, without the express prior written approval of the Department, by amendment or otherwise:
    i. Amend any of the Lender warranties and representations herein; or
    ii. Waive or release any claim against any Borrower or any co-maker, guarantor, endorser, other debtor or obligor of the Loan; or
    iii. Consent to any release, substitution, or exchange of collateral, except:
        a. Sales of inventory in the ordinary course of business, or
        b. Collection of accounts receivable in the ordinary course of business, or
        c. Sales, substitution and exchange of worn or obsolete equipment in the ordinary course of business.

9. Fees

There are no NACS Program fees applying to this Deposit Agreement.

10. Liaisons

The contact persons for this Agreement are:

For the Department:

[Enter Name, Title Here]
301 S Park Ave
PO Box 200505

For the Lender:

[Enter Lender Here]
[Enter Name, Title Here]
[Enter Address Here]

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Helena, MT 59620-0505
[Enter Email Address Here]

[Enter City, State Zip Here]
[Enter Email Address Here]

11. Representation and Warranties of the Lender

The Lender represents and warrants that all of the warranties and representations and the terms and conditions set forth in the Lender Participation Agreement continue in full force and effect and apply to the Loan and the Lender's participation in NACS as well as the making of the Loan, and Lender further represents and warrants that:

a) The only recipient of the Loan is the Borrower identified and described in this Deposit Agreement;
b) Lender shall perform all of its obligations and duties, and shall otherwise comply with all terms and conditions, under the Loan Documents and this Deposit Agreement, including all obligations and duties set forth in the Lender Participation Agreement, which is hereby incorporated by this reference.

12. Default by the Borrower

Upon the occurrence of an event of default (or similar term or phrase under the Loan Documents) by the Borrower under the Loan Documents (which is not cured after the expiration of any applicable opportunity to cure), the Lender must comply with the following requirements:

a) In addition to all notices to the Borrower required under the Loan Documents, the Lender shall copy the Department on all notices to the Borrower, and further provide the Department written notice describing in reasonable detail the circumstances of the event of default; and
b) Prior to drawing Cash Collateral from the Collateral Deposit Account to repay the past due amount under the Loan as authorized herein, the Lender shall first take control (via foreclosure, deed-in-lieu of foreclosure, possession or other similar action, including exercising the Lender's rights as to any applicable assignment of rents) of any and all additional collateral and the Lender shall sell or liquidate the additional collateral and apply the proceeds thereof to the Loan. (The gross proceeds from the sale or liquidation of the additional collateral (exclusive of any costs and expenses related to such sale or liquidation, or interest, or fees or other charges of any kind) is referred to herein as the "Gross Proceeds from Additional Collateral"; and the difference between the Gross Proceeds from Additional Collateral and the amount due under the Loan shall be deemed the "Remaining Default Principal Balance").
    i. To the extent the Gross Proceeds from Additional Collateral is equal to or greater than the underwritten value assigned by the Lender for the additional collateral at the time of the Lender's initial advance of the Loan (the "Underwriting Value for Lending Purposes") then, upon at least forty-five (45) calendar days prior written notice to the Department, and in accordance with all applicable laws, the Lender may charge, set-off and otherwise apply up to 100% of the then existing balance of the Cash Collateral against the Remaining Default Principal Balance.
    ii. To the extent the Gross Proceeds from additional collateral is less than the Underwriting Value for Lending Purposes then, upon at least forty-five (45) calendar days prior written notice to the Department, and in accordance with all applicable laws, the Lender may charge, set-off and otherwise apply up to 100% of the then existing balance of the Cash Collateral against the Remaining Default Principal Balance.

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iii. In the event that funds remain in the Collateral Deposit Account after Lender takes the actions above, such funds shall be immediately remitted to the Department.

13. Default by the Lender

The occurrence of any one or more of the following events or conditions shall constitute an Event(s) of Default by the Lender under this Deposit Agreement, unless a written waiver of the default is signed by the Department:

a) Any representation or warranty made by the Lender under this Deposit Agreement or any of the Loan Documents is incorrect in any material respect;
b) Any material breach by the Lender of any duty or obligation of the Lender under this Deposit Agreement which is not cured by the Lender to the satisfaction of the Department within forty-five (45) calendar days after written notice thereof by the Department to the Lender;
c) The appointment of a receiver or custodian over a material portion of the Lender's assets, which receiver or custodian is not discharged within sixty (60) calendar days of such appointment; or
d) Any voluntary bankruptcy or insolvency proceedings are commenced by the Lender; or any involuntary bankruptcy or insolvency proceedings are commenced against the Lender, which proceedings are not set aside within sixty (60) calendar days from the date of institutions thereof.

Upon the occurrence of any one or more of an Event(s) of Default by the Lender under this Deposit Agreement, in addition to all rights and remedies created by this Deposit Agreement, the Department shall be entitled to pursue and enforce all rights and remedies available to the Department, legal and equitable, including without limitation, the right of recoupment, and the right to require the Lender's books and records related to the Loan, Loan Documents and this Deposit Agreement to be separately audited by the Department or its agents at no cost.

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14. Notice

All notices required under the provisions of this Deposit Agreement must be in writing and delivered to the parties' liaisons either by first class mail or personal service.

15. Counterparts: Facsimile/Pdf Signatures

This Deposit Agreement may be signed in counterparts and delivered by facsimile or by pdf, and in any such circumstances, shall be considered one document and an original for all purposes.

16. Severability

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

17. Jurisdiction and Venue

This Deposit Agreement is governed by the laws of Montana. The parties agree that any litigation concerning this Deposit Agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in Section 23. Hold Harmless and Duty to Defend.

18. Relationship between Parties

The Lender, and its officers, directors, agents and employees shall not describe or represent themselves as agents of the State of Montana, the Department, or NACS, to any person, firm or entity for any purpose.

19. Successors and Assigns

Except as otherwise provided by law, any rule of law or regulation, the Department may not pledge, sub-participate, assign, or otherwise transfer its rights, duties or obligations in this Deposit Agreement and the Loan Documents without the express prior written approval of the Lender, which shall not be unreasonably withheld. The Lender may not pledge, sub-participate, assign or otherwise transfer its ownership interest in the Loan, or its rights, duties or obligations under this Deposit Agreement or the Loan Documents, without the express prior written approval of the Department, which shall not be reasonably withheld. This Deposit Agreement shall bind the permitted successors and permitted assigns of the parties.

20. Waiver

A failure or delay in exercising any right under this Deposit Agreement will not be presumed to operate as a waiver unless otherwise stated in this Deposit Agreement, and a single or partial exercise of any right will not be presumed to preclude any subsequent or further exercise of that right or the exercise of any other right.

21. Amendment

This Deposit Agreement, and except as otherwise permitted in Section 8(c) of this Deposit Agreement, the Loan Documents, may not be modified or amended without the express prior written approval of the Department and no permitted modification or permitted amendment shall be binding except pursuant to a written instrument signed by the parties sought to be bound.

22. Compliance with Applicable Laws

Lender shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, 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. Lender is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Lender subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. Lender agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be

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no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

23. Hold Harmless and Duty to Defend

The Lender agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Lender's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, omissions of services, or in any way resulting from the acts or omissions of the Lender and/or its agents, employees, representatives, assigns, or subcontractors under this Deposit Agreement.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties hereto have caused this Agreement to be executed.

LENDER:

[Name, Title] Date
[Lender]

DEPARTMENT:

Mandy Rambo, Deputy Director Date
Montana Department of Commerce

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