

MONTANA

DEPARTMENT OF COMMERCE

MONTANA OFFICE OF TOURISM AND BUSINESS DEVELOPMENT DIVISION

NATIVE AMERICAN COLLATERAL SUPPORT (NACS) PROGRAM

APPLICATION GUIDELINES

Revised September 7, 2018

Application Period Begins July 1, 2015

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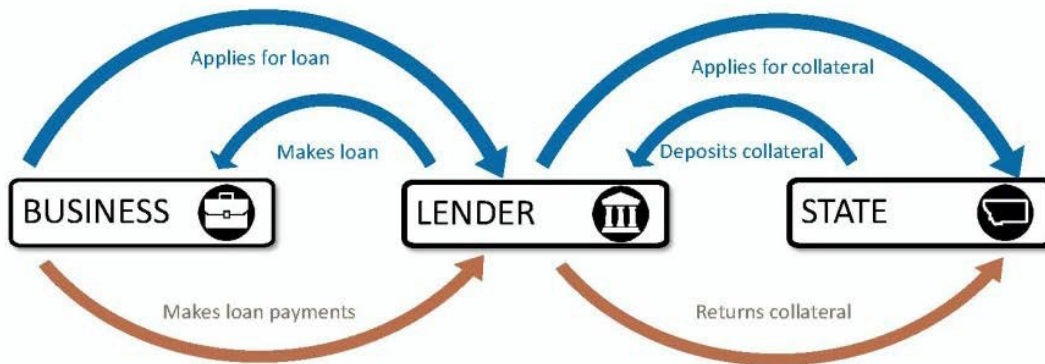
FORMS

Collateral Support Application (CSA) Instructions
Collateral Support Application (CSA)
Collateral Analysis and Review Form
Native American Business Owner Certification Form
Lender Participation Agreement (LPA)
Collateral Deposit Agreement (CDA)
Business Impact & Loan Status Report

I. ABOUT THE PROGRAM

The Native American Collateral Support (NACS) Program is designed to address the lack of access to capital for Native American-owned businesses. This program was developed from the feedback of a diverse set of stakeholders that prioritized the development of a financial product and pathway for Native businesses to access financing and capitalize the launch and growth of their businesses.

The Native American Collateral Support (NACS) Program addresses access to capital issues by providing collateral support security for Lenders making loans with Native American-owned businesses that only lack in sufficient collateral/equity for a business loan according to their loan risk profiles. (All other aspects of the credit analysis are satisfactory: cash flow, climate, character, and credit-worthiness).



BORROW	PAYMENTS	RESULTS
Business applies for loan	Business makes payments to Lender	Equity in business community increases
Lender applies for collateral support with State	Lender returns collateral to State	New jobs created
State deposits collateral with Lender	Program funding revolves to secure next business loan	New goods / services for community
Lender makes loan to Business		Growth of Montana economy / tax revenue
Business uses loan for growth / expansion		

II. DEFINITIONS

- A. "Application Guidelines" means the guidelines for the NACS Program as established by Department and provided to Lender by Department, as amended from time to time.

- B. "Business Impact & Loan Status Report" means the reporting format and content that the Lender will submit annually to the Program in the form set forth in the Application Guidelines no later than January 16th of each year for each collateral deposit agreement that a Lender may have.
- C. "Borrower" means an Eligible Borrower which is the recipient of a Loan which is, has been, or will be applied for by the Lender under the NACS Program for collateral support through a Collateral Deposit Agreement.
- D. "Collateral Deposit Account" means the interest bearing account opened with Lender in the name of State of Montana.
- E. "Collateral Deposit Agreement" or ("CDA") means the NACS Program CDA to be executed by the Department and the Lender and in the form set forth in the Application Guidelines.
- F. "Collateral Support Application" means the Collateral Support Application or ("CSA") that the Lender submits to the Program on behalf of a Native American-owned business for collateral support from the Program as set forth in the Application Guidelines.
- G. "Department" means the Montana Department of Commerce.
- H. "Eligible Borrower" means a Native American-owned business with a structure that is a recognized entity under Montana or tribal law that is registered with the Montana Secretary of State's Office or under respective tribal ordinances; see the Native American Business Owner Certification Form to be completed by the Borrower.
- I. "Eligible Loan" means a Loan that meets the criteria under the NACS Program Application Guidelines in effect at the time the Loan is applied for.
- J. "Lender" means any bank, community development financial institution, tribal revolving loan institution, certified regional development corporation, microbusiness development corporation, credit union, local development corporation authorized to conduct business in the State of Montana.
- K. "Loan" means any advance of money to a Borrower by the Lender under the NACS Program that is evidenced by a promissory note or other instrument that obligates the Borrower to repay the advance.
- L. "NACS" means the Native American Collateral Support Program.
- M. "Program" means the Native American Collateral Support (NACS) Program

- N. “Resettlement” means the process by which a collateral deposit account will be modified to reflect the annual review of the collateral support need.
- O. “Lender Participation Agreement” means the Lender Participation Agreement (“Participation Agreement”) or (“LPA”) to be executed by the Department and the Lender establishing that the Lender is willing to abide by the Program terms to access the NACS funding on behalf of eligible borrowers.

III. COLLATERAL SUPPORT INFORMATION

THE PROCESS

- 1) An eligible Lender requests to participate in the NACS Program.
- 2) The Department executes a *Lender Participation Agreement (LPA)* with the Lender to utilize NACS funding. Lenders have 10 days from the date of execution to provide the Program documentation of Worker’s Compensation insurance.
- 3) A Native American business owner seeks commercial financing from an eligible Lender and lacks only in sufficient collateral to obtain a business loan as a Borrower according to the Lender’s underwriting criteria.
- 4) The Native American business owner, “Borrower,” completes and submits a *Native American Business Owner Certification Form* to the Lender.
- 5) The participating Lender determines initial eligibility of the Native American-business Borrower and submits a *Collateral Support Application (CSA)* to the Program on behalf of the business, and provides initial representation that the loan will meet the requirements referenced in the Application Guidelines and Loan Participation Agreement. The CSA is accompanied by a Collateral Analysis and Review Form, a copy of the loan committee’s collateral analysis contained in their credit presentation/ loan memo, and an amortization schedule of loan repayment.
- 6) Program staff receives the application, makes an initial determination of a ‘fully and properly completed’ CSA, and formally notifies the Lender by email that the CSA will go to an internal review committee. Lenders must execute loan closing documents with the Borrower no later than 50 days after they’ve received notice from the Program of a ‘fully and properly’ completed CSA.
- 7) Program staff reserves the requested funding for the CSA until it goes through a formal internal review process and a final determination is made.

- 8) The Department will notify the Lender if an accepted CSA has been approved for funding no more than 30 business days after the date of acceptance via a formal Reservation of Funds letter. The letter will contain the approved amount of collateral deposit, the term, the form of collateral deposit, whether the deposit resettlement will be tiered or proportionate, and the amount of resettlement per year.
- 9) Once approval has been communicated to the Lender, the Lender will have 90 calendar days to get the CD account established and documented. The Reservation of Funds Letter will serve as documentation for collateral support in the loan closing process as the actual CD will not be in place until after the Loan has closed.
- 10) The Program executes a *Collateral Deposit Agreement (CDA)* with the Lender for the benefit of the specific Loan and Borrower. The CDA identifies the terms of the deposit, accessibility of deposited sums and the process for retrieving deposited sums based on terms, resettlement, or default. Lenders are advised to review the CDA template with their legal and operational team prior to execution as this document will actuate the Assignment of Deposit Account and establish a Certificate of Deposit Account with the Lender.
- 11) Upon loan closing, the Department will establish a deposit account with the Lender with the reserved funding for the benefit of the supported Native American-owned business which will be used to support the collateral gap. The Lender will send the Department a copy of the Loan closing documents. (The borrower will not have access to collateral support deposit.)
- 12) Resettlement of the collateral deposit will occur annually in conjunction with the closing date of the supported loan. 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.
- 13) The Lender will submit an annual *Business Impact & Loan Status Report* for each NACS Program supported loan, due by January 16th for the previous year's annualized performance.
- 14) The Program will review the submitted *Business Impact & Loan Status Report*.
- 15) Lenders will only draw upon collateral support deposits if, upon loan default, the business assets collected by the Lender do not cover the remaining loan value and in accordance with the terms outlined in the Lender Participation Agreement and Collateral Deposit Agreement.

COLLATERAL SUPPORT AMOUNTS

Collateral support amounts vary. Collateral support deposits are intended to address collateral shortfalls and will be evaluated by the Program on a case-by-case basis.

INTEREST RATE

The interest rate is set by the Lender and reviewed by the Program.

LOAN TERM

The maximum loan term is five (5) years.

APPLICATION DEADLINES

Collateral Support Applications (CSA) will be accepted on an open cycle basis. If additional information is required to complete the application, the Program will notify the Lender of the missing information who will then obtain the information and submit it to the program. **Please note: the Program will make an initial determination of a “substantially complete” CSA and notify the Lender of this determination. A substantially complete CSA must be submitted and an LPA must be executed before a CSA will be reviewed for funding. Upon approval an executed CDA secures the funding for the specific loan.

UNDERWRITING

Underwriting will be based on the Lender’s risk profile and collateral underwriting criteria. The participating Lender must determine that each application meets its normal underwriting criteria “but for” a collateral gap. The Lender assumes full responsibility for the credit and ongoing servicing of the loan.

INTERNAL REVIEW PROCESS

The NACS Program Manager will first review a CSA for completeness and sufficiency. During this initial review, the Program may contact the Lender for additional information, documentation, or clarification. After the CSA is deemed complete and sufficient information is available to evaluate the application, the Program Manager will notify the Lender by email that the CSA will be presented to an internal review committee. The internal review committee will make preliminary funding recommendations to the Director of the Department who will make the final decision on whether to approve collateral support for an application. The Program will communicate the determination to the Lender through a formal award or denial letter.

ELIGIBLE BORROWERS

An eligible borrower is a Native American-owned business with a structure that is a recognized entity under Montana or tribal law that is registered with the Montana Secretary of State's Office or under respective tribal ordinances. Borrowers shall complete a Native American Business Owner Certification Form and submit it to the Lender.

INELIGIBLE BORROWERS

The NACS Program does not provide financing to:

- 1) Board members, Loan Committee members, officers, or employees of the Lenders listed in the section "Eligible Lenders" below
- 2) Entities owned more than 20% or controlled by individuals listed in 1) above and 3) below.
- 3) Immediate family (parents, siblings, children, spouses, or equivalent) of individuals in 1) above; or
- 4) Borrowers who have had a past Department of Commerce loan balance written off.

ELIGIBLE LENDERS

Any bank, community development financial institution, tribal revolving loan institution, certified regional development corporation, microbusiness development corporation, credit union, local development corporation authorized to conduct business in the State of Montana is an eligible Lender.

FUNDING AVAILABILITY

An original pool of \$500,000 is available starting July 1, 2015 for collateral support. Funding is contingent upon availability of NACS funds. Please inquire with staff the current availability of funds prior to submitting a Collateral Support Application (CSA).

IV. PROHIBITED USES OF FUNDS

A business must be engaged in an activity the State determines as acceptable for financial assistance from public state funds. The following list of business types are not eligible for assistance and include but are not limited to the following restricted activities:

- | | |
|------------------------------|----------------------------------|
| 1) Refinancing Existing Debt | 3) Owner Reimbursement of Equity |
| 2) Change of Ownership | 4) Paying Delinquent Taxes |

- | | |
|-----------------------------|------------------------------|
| 5) Speculative Activities | 10) Gambling |
| 6) Lending | 11) Casino Establishments |
| 7) Life Insurance Companies | 12) Charities and Nonprofits |
| 8) Pyramid Schemes | 13) Government entities |
| 9) Illegal Uses | |
-
- 14) Businesses located in a foreign country
 - 15) Consumer and Marketing Cooperatives (producer cooperatives are eligible)
 - 16) Businesses principally engaged in teaching, instruction, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting
 - 17) Purchase of the Ownership of any Owner in a Business
 - 18) Private clubs or businesses that limit the number of memberships for reasons other than capacity
 - 19) Businesses in which the Lender or any of its associates owns an equity investment
 - 20) Businesses primarily engaged in political or lobbying activities
 - 21) Businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except when the property is leased to the business at zero profit for the property's owner)

V. REPORTING REQUIREMENTS

During the LPA term, the Lender must provide the Program with an annual Business Impact & Loan Status Report for the lifetime of any loans the Lender maintains with the NACS Program. Reports are due on January 16th for the prior year. The most recent annualized numbers provided by the business to the Lender will be required as part of the reporting information. Please see the NACS Business Impact & Loan Status Report form for specific reporting requirements. The Department reserves the right to request additional information if it deems necessary.

VI. ACCESS TO RECORDS

The Lender shall maintain detailed records of all loan related documents and will allow access to these records by the Department, the Legislative Auditor, or their authorized agents.

VII. RESETTLEMENT/ REPAYMENT METHOD

Each NACS associated 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. The 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.

VIII. PROGRAM CONTACT

If you have any questions regarding the Native American Collateral Support (NACS) Program or other aspects of the Program, contact:

Philip Belangie, Program Manager
Telephone: (406) 721-3663
Fax (406) 841-2731
Email address: doctribal@mt.gov

301 South Park Avenue
PO Box 200533
Helena, MT 59620-0533

COLLATERAL SUPPORT APPLICATION (CSA) INSTRUCTIONS

Required for Native American Collateral Support (NACS) Program consideration:

- Complete the two-page Collateral Support Application (CSA) in the pdf form, print the application and sign and date.
- Complete the Collateral Analysis and Review Sheet and provide a copy of the collateral analysis contained in the credit presentation/loan memorandum.
- Forward the completed CSA, Collateral Analysis and Review sheet, an amortization schedule for the loan, and internal collateral analysis memo by email to doctribal@mt.gov, fax (406) 841-2731, or by mail to:

Montana Department of Commerce
Native American Collateral Support Program
PO Box 200533
Helena, MT 59620

Information to consider when completing the collateral support application:

LENDER INFORMATION

- EIN #- This is the Lender/ Financial Institution's EIN #.
- Branch Address- If a PO Box is provided for mailing purposes, also include a physical street address for the branch originating the application.
- DUNS- Enter the Dun and Bradstreet Number registered to the Lender.

BORROWER INFORMATION

- Date Business Established- This should be the year the business was incorporated/organized OR the year the business opened.
- Lender's Loan Number- If a loan number hasn't been assigned when completing and submitting the CSP application, indicate TBD. The loan number can be provided at the time of loan closing.
- Business Description- Describe the business history, products and/or services and current business plans.
- Native American-owned Business- The Lender verifies the Borrower is a Native American-owned business

PROJECT INFORMATION

- Annual Revenues Last Fiscal Year- This should be the "gross revenues" for the primary business (operating company) taken from either the tax return or the financial statements of the business.

o For Sole Proprietorships- Schedule C (Tax Form 1040), Part I, Line 3

- For Agriculture Producers- Schedule F (Tax Form 1040), Part 1, Line 9
- For Partnerships – Tax Form 1065, Line 1c
- For Corporations- Tax Form 1120, Line 1c
- For S Corporations- Tax Form 1120 S, Line 1c
- Total “Project” Loan Amount- This is the loan amount necessary to finance the project. This may be different than the “Loan Amount Funded by Lender” if there is more than one source of financing for the project.
- Loan Purpose- Be as specific as possible.
- Loan Maturity- Expressed either in months or years.
- Borrower’s Cash Injection- Indicate the cash injection you are requiring the borrower to provide as part of the financing for the “project.”
- Portion of Loan Amount that is to be Funded by Other Sources- If there are multiple sources involved with financing the project, please provide the amount financed by outside sources and identify the name of the outside sources of financing.

FORM OF CASH COLLATERAL DEPOSIT REQUESTED

- Additional Comments- Provide any additional relevant information pertaining to the loan transaction and the project being financed. Include rationale for the collateral deposit request amount and the form of deposit requested. For Tiered or Proportional Ladder Time Deposit Accounts, please identify the amount you will be releasing back to the Department in Years 1 through 5. Please submit an amortization schedule showing the loan repayment.

Information to consider when completing the Collateral Analysis and Review Form

- Loan Amount should be the same as the “portion of Loan Amount that is to be funded by Lender” reported on the CSA.
- Loan Maturity should correspond to the same loan maturity reported on the CSA.
- “Collateral required” should be the total value (fair market value prior to any discount(s)) of the collateral required by Lender in order to grant the loan to the eligible business and should include the amount of collateral support necessary in order to approve the loan.
- Project Overview- provide a brief description of the project the Lender is looking to finance.
- In the table, provide the fair market value of all collateral that will be held as security on the loan.
- In the Method or Source of Valuation column, provide the source for which the value of the collateral was determined (appraisal, invoice, etc.).
- The Collateral Support Required to authorize this loan must match the “Amount of Collateral Deposit required for Lender to Make Loan” on the CSA.

COLLATERAL SUPPORT APPLICATION (CSA)

LENDER INFORMATION	
Lender Name:	EIN:
Contact Person:	DUNS:
Financial Institution Address:	
City, State:	County & ZIP:
Telephone:	Fax:
Email:	
BORROWER INFORMATION	
Borrower Name:	
Business Name:	
State of Incorporation/Organization:	
Borrower Business Type:	
Date Business Established:	
NAICS Code:	
Operating Entity (if different than borrower):	
Borrower Address (must a physical address):	
City, State:	County & ZIP:
Telephone:	Fax:
Email:	
Business Representative & Title:	
Mailing Address:	
City, State:	County & ZIP:
Telephone:	Fax:
Email:	
Business Ownership Interest Names and Residences:	
Name:	City/State:
Title:	% Ownership:
Name:	City/State:
Title:	% Ownership: <i>Click here to enter text.</i>
Name:	City/State:
Title:	% Ownership: <i>Click here to enter text.</i>
Lender's Loan #:	
<input type="checkbox"/> Lender verifies that the Borrower is a Native-American-owned business with a structure recognized under Montana or tribal law that is registered with the Montana Secretary of State's Office or under respective tribal ordinances.	
Business Description (history, products, services, and current business plans):	
PROJECT INFORMATION	
Gross Annual Revenue Last Fiscal Year:	
Employment (enter number of employees)	

Existing Full Time Employees:	NAICS Code(s):
Existing Part Time Employees:	NAICS Code(s):
New Full Time Employees:	NAICS Code(s):
New Part Time Employees:	NAICS Code(s):
Estimated Annual Wages of New Jobs	
Full Time:	Part Time:
Total "Project" Loan Amount:	
Loan Purpose:	
Loan Maturity:	
Borrower's Cash Injection:	
Portion of Loan Amount to be funded by Lender:	
Portion of Loan Amount to be funded by Other Sources & Identity:	
Amount of Collateral Deposit required for Lender to make the Loan	
FORM OF CASH COLLATERAL DEPOSIT REQUESTED (select one)	
<input type="checkbox"/> Demand money market account <input type="checkbox"/> State-maintained STIP account (for non-depository institutions) <input type="checkbox"/> Tiered Ladder Time Deposit Account (lower amount of funds released back to Department at beginning of loan term/higher amount towards maturity) <input type="checkbox"/> Proportional Ladder Time Deposit Account (proportionate amount of funds released back to Department throughout loan term)	
Additional Comments: (Please include rationale for the collateral deposit request amount and the form of cash collateral deposit requested. For Tiered or Proportional Ladder Time Deposit Accounts, please identify the amount you will be releasing back to the Department in Years 1 through 5. Please submit an amortization schedule showing the loan repayment.):	
AUTHORIZATION	
This signature serves as initial representation that this loan meets all requirements as set forth in the Application Guidelines and Lender Participation Agreement.	
Lender Signature <input type="checkbox"/>	<i>By selecting the checkbox, you indicate that you agree with the terms and conditions of electronic signature.</i>
Name:	Title:
Date:	

Uniform Electronic Transactions Act: Montana Department of Commerce agrees to conduct this transaction by electronic means. By submitting this document electronically, you agree to conduct this transaction by electronic means and understand an electronic signature is the legal equivalent of a handwritten signature.

COLLATERAL ANALYSIS AND REVIEW FORM

LENDER INFORMATION				
Lender Name:				
Contact Person:				
Telephone:			Fax:	
Email:				
BORROWER				
OPERATING ENTITY (if different than borrower):				
LOAN AMOUNT:				
LOAN MATURITY:				
COLLATERAL REQUIRED (Total combined collateral necessary in order for the Lender to grant the loan to the eligible small business):				
PROJECT OVERVIEW:				
COLLATERAL SUMMARY AND LENDER ANALYSIS				
	Fair Market Value	Discount Percentage	Discounted Value	Method or Source of Valuation
Real Estate				
Equipment				
A/R				
Inventory				
Other				
Total				
Collateral Required				
Collateral Deficiency				
Collateral Support Required to authorize this loan				
Combined LTV- Market				
Combine LTV- Discounted				
AUTHORIZATION				
This signature serves as initial representation that this collateral analysis is uniform with the Lender's collateral underwriting criteria.				
Lender Signature <input type="checkbox"/>		<i>By selecting the checkbox, you indicate that you agree with the terms and conditions of electronic signature.</i>		
Name:			Title:	
Date:				

Uniform Electronic Transactions Act: Montana Department of Commerce agrees to conduct this transaction by electronic means. By submitting this document electronically, you agree to conduct this transaction by electronic means and understand an electronic signature is the legal equivalent of a handwritten signature.

NATIVE AMERICAN BUSINESS OWNER CERTIFICATION FORM

I, *Click here to enter text.*

certify and represent that I am an enrolled tribal member residing in Montana and own 51% of the business *Click here to enter text.*, which is recognized and registered with the Montana Secretary of State's Office or under tribal ordinance.

Borrower Signature:

Name: *Click here to enter text.*

Title: *Click here to enter text.*

Date: *Click here to enter text.*

LENDER PARTICIPATION AGREEMENT

Department of Commerce Contract #16-51-NACS-[INITIALS OF LENDER]

Native American Collateral Support (NACS) Program Lender Participation Agreement

THIS LENDER PARTICIPATION AGREEMENT (hereinafter referred to as the "Agreement") is made by and between the Montana Department of Commerce (hereinafter referred to as the "Department") and [Name of Lender, address, city, state, zip] (hereinafter referred to as the "Lender").

WHEREAS, the Montana Department of Commerce ("Department") is an agency of the State of Montana; and

WHEREAS, the Department and the State of Montana recognize that Native American-owned businesses in Montana often face challenges in obtaining access to sources of finance and capital due to shortfalls in collateral and equity; and

WHEREAS, the Department recognizes that "but for" a gap or shortfall in collateral and equity, lenders would otherwise make loans available to eligible Native American-owned business; and

WHEREAS, the Legislature provided funding for the Gap Financing program in the General Appropriations Act of 2015, passed by the 64th Legislature and as signed into law by Governor Bullock on May 5, 2015 (Chapter 400, Laws 2015); and

WHEREAS, the Department has created the Native American Collateral Support Program ("NACS" or "Program") to address this issue by providing access to capital through a collateral support program to encourage lenders to make loans to Native American-owned businesses that only lack sufficient collateral/equity resources; and

WHEREAS, the Department has created and adopted the NACS Program Application Guidelines for the administration of the Program;

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

1. Definitions

- a) "Accepted Loan" means a Loan accepted as eligible under the NACS Program pursuant to Section 4.

- b) "Application Guidelines" means the guidelines for the NACS Program as established by Department and provided to Lender by Department, as amended from time to time.
- c) "Borrower" means an Eligible Borrower which is the recipient of a Loan which is, has been, or will be applied for by the Lender under the NACS Program for collateral support through a Collateral Deposit Agreement.
- d) "Collateral Deposit Account" means the interest bearing account opened with Lender in the name of the State of Montana pursuant to Section 4(e) hereof.
- e) "Collateral Deposit Agreement" means the NACS Program Collateral Deposit Agreement ("Deposit Agreement") to be executed by the Department and the Lender and in the form set forth in the Application Guidelines.
- f) "Department" means the Montana Department of Commerce.
- g) "Eligible Borrower" means a Native American-owned business with a structure that is a recognized entity under Montana or tribal law that is registered with the Montana Secretary of State's Office or under respective tribal ordinances. A Native American Business Owner Certification Form shall be completed by the Borrower as set forth in the Application Guidelines.
- h) "Eligible Loan" means a Loan that meets the criteria under the NACS Program Application Guidelines in effect at the time the Loan is applied for and for which each of the representations and warranties set forth in Section 3 is true and correct.
- i) "Lender" means any bank, community development financial institution, tribal revolving loan institution, certified regional development corporation, microbusiness development corporation, credit union, local development corporation authorized to conduct business in the State of Montana.
- j) "Loan" means any advance of money to a Borrower by the Lender under the NACS Program that is evidenced by a promissory note or other instrument that obligates the Borrower to repay the advance.
- k) "NACS" means the Native American Collateral Support Program.
- l) "Program" means the Native American Collateral Support (NACS) Program

2. Representations and Warranties of the Lender

At the execution and delivery of this Agreement and as of the time of the acceptance of any Loan as eligible by NACS, the Lender represents and warrants:

- a) Due Organization and Qualification. The Lender is an Eligible Lender duly organized and authorized to make loans in the State of Montana and with an office and business operations in Montana.
- b) Due Authorization, Enforceability, No Violation. The Lender has all necessary power and has duly taken all action on its part to authorize, execute and deliver this Agreement. This Agreement when executed shall be valid, binding and enforceable against the Lender in accordance with its terms. The execution and performance of this Agreement by the Lender will not violate or conflict with any instrument, agreement, order or decree by which the Lender is bound.
- c) Examination of Books and Records.
 - i. The Lender shall permit the Department, Montana Legislative Auditor, or their authorized agents to visit the Lender and any other location where the books and records of the Lender are normally kept to inspect the books and records, including financial records and all other information and data, relevant to the Loan, the Loan documents and terms of this Agreement;

- ii. The Lender shall permit the Department, Montana Legislative Auditor, or their authorized agents to make copies or extracts from information and to discuss the affairs, finances and accounts of the Lender and Borrower related to the Loan, the Loan documents and this Agreement;
 - iii. The Lender shall cooperate with the Department, Montana Legislative Auditor, or their authorized agents, if contacted; and
 - iv. The Lender agrees to create and retain records for a period of three (3) years after either the completion date of the Agreement or the conclusion of any claim, litigation, or exception relating to the Agreement taken by the State of Montana or third party, whichever is later.
- d) Qualified Financial Institution. The Lender meets the requirements for the definition of “Lender” under this Agreement.
- e) Underwriting. The Lender agrees to underwrite each Loan using its normal underwriting criteria and will perform a credit analysis of the Borrower for each Loan, assuming full responsibility for credit and ongoing security of the Loan. The Lender agrees to follow prudent industry loan underwriting processes and will determine that the collateral support to be provided under NACS is necessary in order for the Lender to make the Loan. The Lender will also determine that the amount required for deposit to the Collateral Deposit Account does not exceed the amount necessary to provide sufficient collateral for the Loan.
- f) Real Estate Ownership. All real estate financed by a Loan is owned for a business and is owner occupied by a Native American.
- g) Other Loans by Lender and Stipulation for a Draw Against Cash Collateral from the Collateral Deposit Account.
- i. The Department acknowledges that the Lender may have other existing loans with a Borrower, and may, in the future, make additional loans to such Borrower. The Lender has no obligation to attempt to collect Loan payments in preference over the collection or enforcement of any other loan with a Borrower.
 - ii. The Lender, shall, however, first take control (via foreclosure, deed-in-lieu of foreclosure, possession or other similar action) of any and all collateral securing the Loan (all such collateral, other than the Cash Collateral under the Collateral Deposit Agreement and other than any guarantees securing the Loan, is referred to as the “Additional Collateral”) and the Lender shall sell or liquidate the Additional Collateral and apply the gross proceeds thereof to the Loan prior to drawing any Cash Collateral from the Collateral Deposit Account under the Collateral Deposit Agreement to repay the Loan. If, and only to the extent that, the proceeds from the sale or liquidation of all of the Additional Collateral are not sufficient to repay in full the amount due under the Loan, then the Lender may draw Cash Collateral from the Collateral Deposit Account to repay the Loan up to the amount of any such shortfall in accordance with the procedures set forth in the Collateral Deposit Agreement.

3. Representations and Warranties of the Lender Made at Each Loan Registration

With respect to any Loan that the Lender requests be accepted by NACS hereunder, the Lender represents and warrants as of the time of each such request:

- a) Representations Obtained from Borrower. The Lender has obtained from the Borrower the following representations and warranties and, to its actual knowledge, the Lender has no

reason to believe based on information available to it that any such representation or warranty is not true:

- i. The Borrower is duly organized, validly existing and in good standing under Montana or tribal law.
- ii. The Borrower is an Eligible Borrower
- iii. The Loan is an Eligible Loan and all of the net proceeds of the Loan will be applied to support a Montana Native American-owned business.
- iv. The Borrower has not been promised or told by the Lender, its employees or agents that it has any legal, beneficial or equitable interest in any payment or other funds credited to the Collateral Deposit Account.
- v. The Loan must be used for a "business purpose". A business purpose includes, but is not limited to, start-up costs, working capital, business acquisitions and expansions, franchise fees, equipment, inventory, as well as the purchase, construction, renovation or tenant improvements of an owner-occupied eligible place of business.
- vi. The Loan will not be used for any prohibited purposes or activities as listed in the Application Guidelines.
- vii. The Borrower is not:
 - a. A Board member, Loan Committee member, officer, or employee of the Lender;
 - b. An entity owned more than 20% or controlled by individuals listed in a., above and c., below;
 - c. Immediate family (parents siblings, children, spouses, or equivalent) of individuals in a., above; or
 - d. A Borrower who has defaulted on a Department contract (NACS Program will verify)

b) Lender Representations and Warranties.

- i. The Lender shall have reaffirmed all representations, warranties and covenants set forth in Section 3 and elsewhere in this Agreement.
- ii. The Lender has complied in all material respects with all federal and state laws, statutes, and governmental rules and regulations pertaining to the making of the Loan.
- iii. The Lender shall service each Accepted Loan and shall proceed to recover against the Borrower and all collateral securing an Accepted Loan in the event of a default by the Borrower in accordance with its standard policies and procedures, and in accordance with the standard of loan servicing employed by the Lender for its commercial loan portfolio generally.
- iv. Immediately upon making the Loan, to the Lender's actual knowledge, neither the Borrower nor any affiliate of the Borrower will be in material violation of any term of any mortgage, loan agreement or indenture with the Lender.
- v. The Lender has determined that the Loan is an Eligible Loan and the Lender has completed all documents required to be filed with Department to register the Loan in accordance with the terms of this Agreement.
- vi. The Loan is not being made to benefit a Lender Insider or an affiliate of the Lender.
- vii. The Loan is made in accordance with the Application Guidelines currently in effect.
- viii. The Collateral Deposit Account has been established in accordance with this Agreement and the Application Guidelines and a Collateral Deposit Account

Agreement in the form set forth in the Application Guidelines has been entered into.

- ix. Upon closing of the Loan, the Lender shall have good and marketable title to the Loan subject to no encumbrance or disability, and except as created by the Collateral Deposit Agreement and the Loan documents, to the actual or constructive knowledge of the Lender, no party to the Loan shall have any defense or claim against the Lender arising out of the Loan.
- x. The Loan shall be in accordance with applicable Federal and State laws, including but not limited to, laws governing types of loans, interest rates and priority of security.
- xi. To the extent required under the law, the security documents for the Loan shall be properly recorded in order to validly perfect and maintain a security interest in the collateral securing the Loan, and the Lender shall take whatever additional actions may be necessary to validly perfect and maintain a security interest in all collateral securing the Loan.
- xii. The Lender has followed prudent industry loan underwriting processes in underwriting the loan and that the deposit to the Collateral Deposit Account was necessary in order for the Lender to make the Loan. The Lender has also determined that the amount required for deposit to the Collateral Deposit Account does not exceed the amount necessary to provide sufficient collateral for the Loan.

4. Acceptance of Loans in NACS

- a) Loan Terms. Although the execution of this Agreement does not require Lender to request that Department accept any Loans as eligible under NACS, a Loan must be accepted under NACS before a Collateral Deposit Agreement will be entered into and a Collateral Deposit Account will be established for such Loan and funds deposited therein. A Loan to be accepted as eligible under NACS may be made with such interest rate, fees, and other terms and conditions as the Lender and Borrower may lawfully agree, subject to the provisions of this Agreement to qualify the Loan as an Eligible Loan. Only Eligible Loans may be accepted by the Department as eligible under NACS.
- b) Acceptance Procedure. In order to request acceptance of a Loan by the Department under NACS, the Lender shall satisfy the following requirements no later than the close of business on the fiftieth (50th) business day prior to the date on which any and all of Lender's required Loan documents are to be executed and delivered by the Borrower to the Lender. The Lender shall deliver to the Department a completed application in the form set forth in the Application Guidelines (or other form as specified by the Department from time to time), executed by an authorized officer of the Lender. For the purposes of this Agreement, the filing of an application for Loan acceptance shall be deemed to occur on the date on which the Department receives the fully and properly completed Collateral Support Application Form, which may be submitted by mail, e-mail, or fax. Please refer to the Application Guidelines for current submission information.
- c) Acceptance of Loan as Eligible by Department. Upon the Department's determination that the Lender has satisfied the requirements set forth in this Agreement, which determination shall not be more than thirty (30) business days after receipt of the Collateral Support Application under 4(b), the Department shall send to the Lender a Reservation of Funds Letter in substantially the form set forth in the Application Guidelines. Said reservation of said Loan shall be valid for 90 days from the date of the said letter to Lender.

- d) Loan Fees. There are no fees for the NACS Program.
- e) Establishment of Collateral Deposit Account and Deposit of Funds by NACS. NACS will establish a Collateral Deposit Account with the Lender on or about the execution of loan closing documents, including without limitation, the Collateral Deposit Agreement. Once the Collateral Deposit Account is established, then funds shall be deposited in accordance with the Collateral Deposit Agreement. Thereafter, as other Loans are accepted by NACS, an additional Collateral Deposit Account shall be established for each Loan and upon execution of a Collateral Deposit Agreement for such Loan, funds shall be deposited in such account under such agreement.

5. Amendments to the Agreement

The Agreement may not be enlarged, modified, amended, or altered except upon written agreement signed by all parties to the Agreement. Without specific written consent of the Lender, no amendment to this Agreement shall be applicable to Loans made prior to the effective date of the amendment and no such amendment shall diminish Lender's rights as of the effective date of the amendment with respect to funds in the Collateral Deposit Account(s) in existence prior to the effective date of the amendment.

6. Lender's Waiver of Set-Off Rights

Notwithstanding any express or implied right of set-off provided to the Lender by any depository agreement or any other agreement, the Lender hereby waives any and all rights to set-off against any funds held in the Collateral Deposit Account arising in connection with any claim against NACS whether arising under this Agreement or otherwise.

7. Lender's Right to Terminate Participation in the Program

The Lender, upon 30 days written notice, may terminate their right to participate in NACS. Any termination shall be prospective only and shall not apply to any existing Collateral Deposit Agreements already signed and shall not have any binding effect on the originally executed Lender Participation Agreement to the extent that its provisions apply to collateral deposits and the Collateral Deposit Agreements already entered into.

8. Term of Agreement

This Agreement shall be in full force and effect until terminated pursuant to Section 7, 14 or 15.

9. Reporting Requirements

The Lender agrees to provide the Program with an annual Business Impact & Loan Status Report for the lifetime of any loans the Lender maintains with the NACS Program. Reports are due on January 16th for the prior year. The most recent annualized numbers provided by the business to the Lender will be required as part of the reporting information. The Department reserves the right to request additional information if it deems necessary.

10. Liaisons

The contact persons for this Agreement are:

For the Department:

[Enter Name, Title Here]
301 S Park Ave

For the Lender:

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

PO Box 200533
Helena, MT 59620-0533
[Enter Phone # Here]

[Enter Address Here]
[Enter City, State Zip Here]
[Enter Phone # Here]

11. Compliance with Applicable Laws

- a) The Lender, must under this Agreement, fully comply with all applicable federal, state, or 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 and the Patient Protection and Affordable Care Act (“Affordable Care Act”).

Compliance with the Affordable Care Act requires Lender to provide healthcare coverage for its employees, who provide services for the State, work for more than 29 hours per week and their dependents under the age of 26, and provide coverage that meets the minimum essential coverage, minimum value, and the affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and would otherwise satisfy the requirements of the Code § 4980H (ACA) if provided by the State.

In accordance with Section 49-3-207, MCA the Lender agrees that all hiring will be made on the basis of merit and qualification 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.

- b) The Lender accepts responsibility for supplying the Department with proof of compliance with the Montana Workers’ Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-401, 39-71-405, and 39-71-417.) Neither the Lender nor its employees are employees of the State. The proof of insurance/exemption must be in the form of workers’ compensation insurance, an independent contractor exemption, or documentation of corporate officer status and must be received by the Department within 10 working days of the execution of this Agreement, and must be kept current for the entire term of the Agreement.

AGREEMENTS WILL BE TERMINATED PURSUANT TO THE PROVISIONS OF SECTION 14 TERMINATION OF AGREEMENT IF THE LENDER FAILS TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.

Coverage may be provided through a private carrier or through the State Compensation Insurance Fund (406) 444-6500. An exemption can be requested through the Department of Labor and Industry, Employment Relations Division (406) 444-1446. Corporate officers must provide documentation of their exempt status.

- c) The Lender shall perform all of its obligations and duties as required under the Patriot Act of 2001, as amended, including without limitation, the provisions relating to the Customer Identification Program (CIP) and anti-terrorism, and the Department may so rely on the Lender’s performance of any such requirements, including that the Lender is in compliance with the requirements of 31 CFR § 1020.210-1020.220 (relative to anti-money laundering programs); and Lender acknowledges the aforesaid obligations and duties, and further certifies it is in compliance thereunder, including relative to implementation of reasonable

procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify a person's identity and determine whether the person appears on any lists of known or suspected terrorist organizations provided to the Lender by any government agency.

12. Assignment

The Lender shall not assign or transfer any portion of the Agreement without the express written consent of the Department.

13. Hold Harmless and Indemnification

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 or omissions of services or in any way resulting from the acts or omissions of the Lender and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under the Agreement.

Claims under this provision also include those arising out of or in any way connected with Lender's breach of this Agreement, including any Claims asserting that any of Lender's employees are actually employees or common law employees of the State of any of its agencies, including but not limited to, excise taxes or penalties imposed on the State under Internal Revenue Code ("Code") §§ 4980H, 6055 or 6056.

14. Termination of Agreement

Unless otherwise state, the Department may, by written notice to the Lender, terminate the Agreement in whole or in part at any time the Lender fails to perform the Agreement.

15. Default

Failure on the part of either party to perform the provisions of the Agreement constitutes default. Default may result in the pursuit of remedies for breach of contract, including but not limited to damages and specific performance.

16. Severability

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.

17. Notice

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

18. No Arbitration

Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under this Agreement.

19. No Waiver of Breach

No failure by the Department to enforce any provisions hereof after any events of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event or breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the Department to enforce each and all of the provisions hereof upon any further or other breach on the part of the Lender.

20. Jurisdiction and Venue

This Agreement is governed by the laws of Montana. The parties agree that any litigation concerning this 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.

21. Integration

This Agreement, in conjunction with any Collateral Deposit Agreement(s) executed by the Lender for each loan enrolled in NACS, contains the entire agreement between the parties. No statements, promises or inducements of any kind made by either party, or the agents of either party, not contained herein or in an executed Collateral Deposit Agreement, or in a properly executed amendment hereto are valid or binding.

22. Miscellaneous

- a) Funding Availability. Approval of a Collateral Support Application submitted to the Program is contingent upon availability of NACS funds.
- b) Information. The Lender shall promptly provide NACS with such information regarding its participation in the program as it may reasonably require.
- c) Limitation of Rights. This Agreement shall be for the exclusive benefit of the Lender and NACS and shall not be construed to give any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement.

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

[Name of Lender]:

[Name, Title]

Date

Montana Department of Commerce:

Pam Haxby-Cote, Director

Date

COLLATERAL DEPOSIT AGREEMENT

Department of Commerce Contract #16-51-NACS-[INITIALS OF LENDER]-CDA-[INITIALS OF BORROWER]

Native American Collateral Support (NACS) Program Collateral Deposit Agreement

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 [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

[Name of borrower], a [Native American-owned] business (the "Borrower"), is receiving the following loan from the Lender, dated on or about the date of this Deposit Agreement. 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 [] Dollars (\$0.00) (the "Loan", or the "Loan Limit").

The Loan is a [#] [years or months] term loan (fixed amount with 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: [] Dollars (\$0.00) (the "Initial Deposit") (the Initial Deposit, and any reductions thereto as provided in the Deposit Agreement, collectively, 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],
- d) [State-maintained Short Term Investment Pool ("STIP") account in the event the Lender is a non-depository institution.]

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, a 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").

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]

Each 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 detail 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.

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, provided however, 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 Loan.

10. Liaisons

The contact persons for this Agreement are:

For the Department:

[Enter Name, Title Here]
301 S Park Ave
PO Box 200533
Helena, MT 59620-0533
[Enter Phone # Here]

For the Lender:

[Enter Name, Title Here]
[Enter Address Here]
[Enter Address Here]
[Enter City, State Zip Here]
[Enter Phone # 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.

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):

- a) In addition to all notices to the Borrower required under the Loan Documents, the Lender shall copy the Department will 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 Loan, 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.
- 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.

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.

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.

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

[Name of Lender]:

[Name, Title]

Date

Department of Commerce:

Pam Haxby-Cote, Director

Date

SAMPLE

BUSINESS IMPACT & LOAN STATUS REPORT

(Due no later than January 16)

LENDER NAME:			
COLLATERAL SUPPORT BUSINESS CHARACTERISTICS REPORTING			
Business Name			
Project Location, City/County			
Annual Gross Revenues			
# New Jobs Created			
# of Existing Jobs			
NAICS Code(s)			
Annual Payroll with Benefits			
Average Salary of New Jobs with Benefits			
Average Salary with Benefits			
Annual State Income Tax			
Annual Purchase of MT Services/Goods			
Date UCC lien filed with Sec of State or tribal court			
LOAN STATUS			
Outstanding principal balance of the loan	Loan APR: _____	Loan APR: _____	Loan APR: _____
Status of the loan (current, delinquent*, in default) enter # of days delinquent			
AUTHORIZATION			
This signature serves as initial representation that this collateral analysis is uniform with the Lender's collateral underwriting criteria.			
Lender Signature:	<i>By selecting the checkbox, you indicate that you agree with the terms and conditions of electronic signature.</i>		
Name:	Title:		
Date:			

Uniform Electronic Transactions Act: Montana Department of Commerce agrees to conduct this transaction by electronic means. By submitting this document electronically, you agree to conduct this transaction by electronic means and understand an electronic signature is the legal equivalent of a handwritten signature.