

## **CONFIDENTIALITY POLICY**

Approved 7/9/08

The Great Falls Development Authority (GFDA) shall rely on the practices of the Montana Department of Commerce (MDOC) in regard to balancing the public's right to know and client confidentiality. GFDA shall use the MDOC's Confidentiality and Non-Disclosure Agreement in dealing with clients (ATTACHMENT 1).

GFDA has a contractual agreement with MDOC to operate a Small Business Development Center. That agreement requires the execution of the SBDC Confidentiality Agreement of the Small Business Development Center Network (ATTACHMENT 2).

## ATTACHMENT 1

### CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Agreement”) is made as of the (day) day of (month), (year), by and between (Name of Company) (“Company”) and its affiliates and the Great Falls Development Authority (GFDA) and its affiliates.

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

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

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

third party to review any confidential documents or information, the GFDA will notify the Company of the request in writing. The written notice provided by GFDA will enclose a copy of the third party request. The written notice and third party request will be sent by U.S. mail and by fax to the following addresses and fax numbers:

To (Name of Company): (Company Address)  
Attention: (Name of Company Contact)  
Fax #: (Fax Number)

with a copy to: (Address)  
(If required) Attention: (Name of Contact)  
Fax #: (Fax Number)

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

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

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

8. The GFDA operates loan and technical assistance programs funded by state and federal agencies and is subject to audit and monitoring reviews by state and federal officials. The GFDA is required by state and federal regulations and laws to provide access to state and federal audit and monitoring officials in order to document compliance with applicable state and federal regulations and laws. In the event and to the extent access to information provided to the GFDA by the Company requested by state or federal auditors, the Company agrees that the GFDA may disclose such information to such auditors, provided that (a) such information is used only by such auditors for the purposes set forth in the previous sentence, and for no other purposes whatsoever; and (b) such information in the possession of or otherwise disclosed to such auditors shall remain subject to the provisions of this Agreement.

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

(Name of Company)

By: \_\_\_\_\_

Name: (Name)

Title: (Title)

GREAT FALLS DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: (Name)

Title:

AFFIDAVIT

State of Montana)

: ss.

County of \_\_\_\_\_)

COMES NOW, (Company Official), being first duly sworn upon his oath, deposes and states as follows:

That he/she is the (Title) of (Company) and offers the following in support of (Company's) claim of confidentiality for information submitted to the Great falls Development Authority:

1. I am the (Title) of (Company) and offer the following in support of (Company's) claim of confidentiality for information submitted to the Great Falls Development Authority.

2. (Company) claims that the document titled (Business Plan) is confidential and should be withheld from public disclosure as it contains information developed by (Company) concerning its business forecasts and assessments. This information is consistently maintained by (Company) as confidential business information and if disclosed could prejudice (Company's) competitive position and could result in financial losses to (Company).

3. (Company) claims that the documents titled (Financial Statements), including (List Here), are confidential and should be withheld from public disclosure as they contain information developed by (Company) concerning its financial condition, including product revenues and cost of production information and other confidential pricing information. This information is consistently maintained by (Company) as confidential business information and if disclosed could prejudice (Company's) competitive position and could result in financial losses to (Company).

(Company Official)

\_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_ day of (Month), 200\_ by (Company Official).

(Seal)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Notary Public for the State of \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires: \_\_\_\_\_

**ATTACHMENT 2**

**MONTANA SMALL BUSINESS DEVELOPMENT CENTER NETWORK**

**SBDC Confidentiality Agreement**

This applies to all SBDC employees, volunteers, consultants and individuals with access to client information. We recognize the sensitive nature of the relationship of the Montana Small Business Development Center (hereafter called SBDC) with its clients and the public, and as part of my contract to provide products and services for the SBDC. We agree to the following standards of conduct:

1. Any information on specific attendees, businesses, and prospective business ideas will be handled with the strictest degree of confidence. Section 21(a) of the Small Business Act, [15 U.S.C. 648(a)]
2. Consultant will not accept or receive payment of any kind from any client for services provided on behalf of the SBDC.
3. The activity of the consultant is to provide information in relation to his/her field of expertise. That is to be done in an unbiased and professional manner. The Consultant shall not use an SBDC forum to promote his/her own business interest.
4. No Consultant shall take action that would adversely affect the confidence of the public in the integrity of the SBDC.

Any violation of this agreement will result in the cancellation of the agreement between the Consultant and the SBDC. We, the undersigned, understand and agree to abide by the above provisions. \*\*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Host Agency Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
SBDC Center Business Advisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Consultant

\*\* Note: Signed record for each presenter/consultant remains valid for 1-year from date of agreement.