

LOAN ADMINISTRATOR ACKNOWLEDGMENT AND AGREEMENT

1. Loan Administrator: North Carolina Rural Economic Development Center, Inc.
2. Funder: Wake County, a North Carolina body politic and corporate
3. Project Title: NC COVID-19 Rapid Recovery Loan Program
4. Purpose of Fund: The purpose of this Fund is to provide funding to the North Carolina Rural Economic Development Center, Inc. ("Rural Center") to capitalize a Rapid Recovery Loan Program. The program will enable access to capital for small businesses ("borrowers") within the corporate limits of Wake County suffering from losses resulting from the economic effects of Coronavirus (COVID-19). For purposes of this Agreement, eligible "small businesses" shall include any active, for-profit business entity registered or located in Wake County as of March 1, 2020, having less than one-hundred (100) employees, to include unincorporated business entities such as sole-proprietorships or partnerships, with demonstrable business disruption caused by COVID-19. These loans are intended to bridge the gap until the borrowers secure other resources, including revenue from revived operations, or longer-term loans from the Small Business Administration or through traditional bank lenders, CDFIs, and other economic development lenders. The Rural Center will serve as the fiduciary and fund recipient but will operate the program through its Loan Participation Program and select partner lenders. In order to manage the expected demand for this program and the geographic breadth of the Coronavirus (COVID-19) crisis, the Rural Center will collaborate with other lenders to implement the program. Partner lenders are nonprofit organizations and/or Community Development Financial Institutions (CDFIs).
5. Amount of Fund: \$5,000,000.00
6. Award Date: _____ May 19, 2020 _____ Start Date: _____ May 19, 2020 _____
7. Special Terms and Conditions Applicable to Fund:
 - a. The term of the Fund expires on December 30, 2020. FUNDER may extend the term of the Fund. All loans must be closed before the end of the term.. The provisions of this agreement that by their nature extend beyond the term of the Fund will survive the end of the term of the Fund.
 - b. The Fund shall be used exclusively for loan capital. Administrative expenses not to exceed five percent (5%) shall be paid separately by the FUNDER.
 - c. The Fund must be used as loan capital and for administrative expenses that are consistent with the types of loans and expenses described in the Wake County Board of Commissioner agenda item dated May 18, 2020 (see Appendix A) and subsequent requests for modification and that meet the other criteria set out in this Loan Administrator Acknowledgment and Agreement.
 - d. The Loan Administrator may establish a structure through which other lenders may participate in this loan program. Loan Administrator agrees to require each lender that participates in this program to comply with terms of this Loan Administrator Acknowledgment and Agreement which explicitly or by their nature apply to the lender.
 - e. Up to \$5,000,000 in funds may be used for loans to qualifying small businesses located in Wake County that have been declared by the Small Business Administration to be a disaster area as a result of the Coronavirus (COVID-19) and only for loans to businesses that are suffering economic injury as a result of the Coronavirus (COVID-19), and for related administrative expenses ("Coronavirus (COVID-19) Response Loans"). At least \$1,000,000 of the \$5,000,000 award shall be set aside for single owner business entities and sole proprietorships.
 - f. The Loan Administrator will restrict FUNDER loan capital for Coronavirus Response Loans to businesses in the corporate limits of Wake County who have not received a commitment or allocation of an SBA approved Coronavirus Response Loan from any other entity or funding source as of May 5, 2020.
 - g. The Loan Administrator and its partner lenders shall determine eligibility of borrowers for the loan

program, commensurate with program underwriting criteria and risk assessments.

- h. All loan capital provided by FUNDER that has either not been loaned to borrowers or that has been repaid by borrowers or otherwise recovered by Loan Administrator as of December 1, 2020 must be paid to FUNDER no later than December 30, 2020, unless FUNDER extends the deadline(s). This provision shall not prevent repaid or returned capital from being re-loaned to eligible borrowers prior to December 1, 2020, or a later date if agreed by FUNDER. Loan Administrator and any other lender participating in this program must use reasonable efforts to collect amounts owed by borrowers in connection with loans the lender originated, taking into consideration the amount owed, the likelihood and cost of recovery, and other relevant factors. Loan Administrator and other participating lenders are not required to repay to FUNDER loan capital that they are unable to recover from borrowers after the lender either unsuccessfully pursues collection efforts or makes a commercially reasonable decision not to pursue collection. The obligation to pursue recovery of FUNDER loan capital and to repay FUNDER loan capital to FUNDER shall survive the expiration or termination of this Loan Administrator Acknowledgment and Agreement.
 - i. Until Loan Administrator has recovered and returned to FUNDER all FUNDER loan capital that Loan Administrator reasonably determines it and participating lenders will be able to recover from borrowers, on the first business day of each quarter, Loan Administrator will provide to FUNDER a list of loans made with FUNDER loan capital, including the original amount of the loan, the unpaid amount of the loan, and the status of any loans that are delinquent or out of compliance. If the lender that originated the loan has determined some or all of a loan to be uncollectible, Loan Administrator will provide a brief explanation of that determination in its report and a summary of any steps taken to collect the amounts owed.
 - j. FUNDER may release loan capital in tranches in an amount agreed to by FUNDER, with the initial tranche of each available as soon as the Loan Administrator has satisfied the conditions on release of funds in this Agreement. FUNDER may release subsequent tranches of loan capital after Loan Administrator demonstrates to FUNDER's satisfaction that Loan Administrator or other participating lenders have demand for the additional loan capital. FUNDER may release 100% of the funds prior to the end of the term and prior to approval of the Loan Administrator's final report. FUNDER will take into consideration factors such as the amount of demonstrated demand for loan capital from potential borrowers and the amount of time left in the program when determining how much additional loan capital to release in the second and subsequent tranches. If FUNDER determines in its reasonable judgment that a participating lender is not actively originating or attempting to originate loans, FUNDER may demand that lender return any uncommitted capital to the Loan Administrator.
 - k. Loan Administrator and participating lenders will gather and provide documentation that is reasonably necessary for FUNDER to determine that Loan Administrator and participating lenders have used FUNDER loan capital for purposes that meet the requirements of this Loan Administrator Acknowledgment and Agreement. Loan Administrator will also gather and provide, and require participating lenders to gather and provide, information and documentation from borrowers reasonably necessary to allow FUNDER to assess the impact and outcomes of this program, including without limitation jobs retained by borrowers. Loan Administrator and participating lenders will obtain necessary consents from borrowers to provide such information to FUNDER. Unless it requests otherwise in writing, FUNDER agrees to accept reporting documents in the format and templates developed by the Golden LEAF Foundation for this program.
8. Confirmation of Eligibility/Permissible use of Funds: The Loan Administrator confirms: (1) that the Internal Revenue Service has determined that the Loan Administrator is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and that such determination has not been revoked, or (2) that the Loan Administrator is a federal, state or local governmental unit. Loan Administrator agrees to notify the FUNDER promptly if the Loan Administrator's tax-exempt status is revoked or modified in any way. The Loan Administrator agrees that it will use the funds from this grant only for charitable, educational, or scientific purposes within the meaning of Section 501(c)(3) of the Code, and that it will not use the funds from this grant in any way that would result in or give rise to private inurement or impermissible private benefit. The Loan Administrator agrees that no funds from this Agreement will be used to carry on propaganda or otherwise to attempt to influence legislation, to influence the outcome of any public

election, or to carry on directly or indirectly any voter registration drive. The Loan Administrator agrees that it will not use any of these funds to make any expenditure or grant that does not comply with the requirements of Section 4945(d)(3) or (4) of the Code or to undertake any activity for any purpose other than one specified in Section 170(c)(1) or Section 170(c)(2)(B) of the Code. If funds are used to pay for sales tax for which the Loan Administrator receives a refund, Loan Administrator will use the refund for expenses that are consistent with the purpose of the fund and permissible under this Agreement. Unless otherwise agreed by the FUNDER in writing, no portion of the Loan Administrator's rights or obligations under this Agreement may be transferred or assigned to any other entity.

9. Compliance with laws/liens: The Loan Administrator is in material compliance with all federal, state, county, and local laws, regulations, and orders that are applicable to the Loan Administrator, and the Loan Administrator has timely filed with the proper governmental authorities all statements and reports required by the laws, regulations, and orders to which the Loan Administrator is subject. There is no litigation, claim, action, suit, proceeding or governmental investigation pending against the Loan Administrator, and there is no pending or (to the Loan Administrator's knowledge) threatened litigation, claim, action, suit, proceeding or governmental investigation against the Loan Administrator that could reasonably be expected to have a material adverse effect upon the Loan Administrator's ability to carry out this Agreement in accordance with its terms. The Loan Administrator has timely paid all judgments, claims, and federal, state, and local taxes payable by the Loan Administrator the non-payment of which might result in a lien on any of the Loan Administrator's assets or might otherwise adversely affect the Loan Administrator's ability to carry out this grant in accordance with its terms.
10. Project and budget modification: The Loan Administrator agrees to immediately notify the FUNDER of anything that may materially affect the Loan Administrator's ability to perform the project funded. **If the Loan Administrator proposes to modify the budget, the objectives, or any other feature of the project funded, the Loan Administrator shall not encumber or expend any funds from this Agreement for such purposes unless and until the FUNDER has approved such proposed modifications in writing.** Moreover, no further payments shall be made to the Loan Administrator in connection with the project funded unless and until the FUNDER has approved such proposed modifications in writing.
11. Use of funds/rescission and termination: The Loan Administrator accepts and will retain full control of the disposition of funds awarded to the Loan Administrator by the FUNDER under this Agreement and accepts and will retain full responsibility for compliance with the terms and conditions stated herein. The funds shall be utilized exclusively for the purposes set forth above. If the Loan Administrator breaches any of the covenants or agreements contained in this Agreement, uses any funds for purposes other than those set out above, or any of the representations and warranties made by the Loan Administrator are untrue as to a material fact, the Loan Administrator agrees to repay to the FUNDER the full amount of the Fund. Any condition, purpose, term or provision in the FUNDER's resolution approving funding or in this Agreement shall take precedence over any conflicting provision in the Loan Administrator's application.

The Loan Administrator acknowledges receipt of the following policy regarding termination and rescission of grants, which is intended to supplement but not replace or limit the rights and remedies of the FUNDER set forth elsewhere in this Agreement. The Loan Administrator acknowledges that the FUNDER may, from time to time, amend its policy regarding termination and rescission of grants, and the Loan Administrator acknowledges that the Loan Administrator will be subject to the policy as amended.

Policy Regarding Rescission and Termination. Rescission of a fund revokes the award. When funds have been disbursed to a Loan Administrator by the FUNDER and a fund is rescinded, the Loan Administrator may be liable for repayment to the FUNDER for an amount up to the total funds received by the Loan Administrator. Termination of an award ends the fund on a going-forward basis, and the Loan Administrator is responsible for repayment to the FUNDER of only that portion of the fund that has been disbursed but not expended by the Loan Administrator in accordance with the terms of the Fund.

The Fund may be rescinded or terminated at any time in the discretion of the FUNDER or for the Loan

Administrator's failure to comply with its obligations under this Agreement or if any of the Loan Administrator's representations and warranties in this Agreement are or become untrue as to a material fact. Reasons for rescission or termination include but are not limited to the following:

- a. The Loan Administrator has not signed and delivered to the FUNDER the Loan Administrator Acknowledgment and Agreement within three (3) months of the Award Date set out in Section 5, above.
- b. The Loan Administrator has failed to complete the project within the term established by this Agreement or any extensions thereof.
- c. The Loan Administrator's tax-exempt status has been modified or revoked.
- d. The Loan Administrator is unable, or has failed or refused, to comply with a material term or condition of the Agreement.
- e. The Loan Administrator has experienced a change in circumstances that is likely to have a material adverse effect upon the Loan Administrator's ability to accomplish fully the purposes of the grant (e.g., loss of collateral funding, loss of key personnel, etc.).
- f. The Loan Administrator has failed or refused to submit a report, statement, accounting or return required by this Agreement or applicable law.
- g. The Loan Administrator has materially modified its budget for the project, and such material modification has not been approved by the FUNDER.
- h. The Loan Administrator commits a material violation of the Internal Revenue Code or uses funds for some purpose not permitted by the Internal Revenue Code or for some purpose not contemplated by the grant.
- i. The Loan Administrator breaches any of the covenants or agreements contained in this Loan Administrator Acknowledgment and Agreement.
- j. The Loan Administrator requests that the grant be rescinded or terminated.

It is anticipated that an award will be rescinded in situations in which no funds have been disbursed. Where funds have been disbursed, it is anticipated that an award will be rescinded in the case of more serious violations (including, without limitation, use of funds for some purpose not contemplated by the grant or in violation of the Internal Revenue Code, or upon other affirmative misconduct of the Loan Administrator), and that termination of an award will occur in the case of the less serious instances of non-compliance or where the circumstance giving rise to termination is not the result of misconduct of the Loan Administrator.

If the Board of Commissioners of the FUNDER determines that an award should be rescinded or terminated, the FUNDER will notify the Loan Administrator of that decision. The FUNDER may choose to notify the Loan Administrator that the award is subject to rescission or termination unless the Loan Administrator remedies the noncompliance and establish deadlines or other limitations on the Loan Administrator's opportunity to remedy the noncompliance. If the FUNDER allows the Loan Administrator the opportunity to correct the noncompliance, no further funds shall be advanced until the noncompliance is remedied.

12. Release of Funds: \$5,000,000 million will be transferred to the Rural Center within three business days of the execution of this Agreement and exchange of funds transfer information.
13. Reporting: The Loan Administrator agrees to submit a Final Report for receipt by the FUNDER within sixty (60) days after the completion of all obligations for the project funded or the end date, whichever comes first. The Loan Administrator will furnish additional or further reports if so requested by the FUNDER.
14. Records: The Loan Administrator agrees to maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data for the project funded in such a manner so as to identify and document clearly the activities and outcomes of the project funded and the expenditure of FUNDER funds. Financial records regarding the FUNDER's grant shall be kept separate from accounts for other awards, monetary contributions, or other revenue sources for the project funded. The Loan Administrator agrees to retain all financial and programmatic records, supporting documents, and all other pertinent records related to the project funded for a period of five (5) years from the end of the grant funding period. The Loan Administrator shall provide to the

FUNDER copies of all financial and other records requested by the FUNDER and shall make available to the FUNDER, or the FUNDER's designated representative, all of the Loan Administrator's records that relate to the project funded, and shall allow the FUNDER or the FUNDER's representative to examine and copy any data, documents, proceedings, records and notes of activity relating to the project. Access to these records shall be allowed upon request at any time during normal business hours and as often as the FUNDER or its representative may deem necessary.

15. Independent entity: The Loan Administrator acknowledges and agrees that the Loan Administrator is an entity independent from the FUNDER, is not an agent of the FUNDER, and is not authorized to bind the FUNDER to any agreement of payment for goods or services. The Loan Administrator is responsible for payment of all its expenses, including rent, office expenses and all forms of compensation to employees. It shall provide workers compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment compensation, social security, income taxes and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees. All expenses incurred by the Loan Administrator are the sole responsibility of the Loan Administrator, and the FUNDER shall not be liable for the payment of any obligations incurred in the performance of the project funded.
16. Non-discrimination: The Loan Administrator shall not discriminate by reason of age, race, ethnicity, religion, color, sex, national origin, or handicap related to the activities of a project funded by the FUNDER.
17. Authority to execute/Necessary Approvals Obtained: The individual signing below certifies his or her authority to execute this Agreement on behalf of the Loan Administrator and that the Loan Administrator has received any third-party approval that may be required prior to entering this Agreement. By executing this Agreement, the Loan Administrator, to induce the FUNDER to make this award, makes each of the representations set forth hereinabove and certifies that each of such representations is true, accurate and complete as of the date hereof.

[SIGNATURE PAGE FOLLOW]

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IN WITNESS WHEREOF, the Loan Administrator and the FUNDER have executed this Agreement as of the date below:

Loan Administrator: Rural Economic Development Center, Inc.

Signature: _____

Name of Person Signing (print): _____

Title of Person Signing (print): _____

Date: _____

FUNDER: **Wake County**

Signature: _____

Name of Person Signing (print): David Ellis

Title of Person Signing (print): County Manager

Date: _____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director