



# NOTE

SBA Loan #	<b>6843437207</b>
SBA Loan Name	<b>BEAR YUBA LAND TRUST</b>
Date	May 6, 2020
Loan Amount	<b>\$ 64,400.00</b>
Interest Rate	1.00%
Borrower	<b>BEAR YUBA LAND TRUST</b>
Operating Company	N/A
Lender	Tri Counties Bank

1. PROMISE TO PAY:

In return for the Loan, Borrower promises to pay to the order of Lender the amount of  
\*\*\*\*\*Sixty Four Thousand Four Hundred & No/100ths\*\*\*\*\*  
Dollars, interest on the unpaid principal balance, and all other amounts required by this Note.

2. DEFINITIONS:

“Collateral” means any property taken as security for payment of this Note or any guarantee of this Note.

“Guarantor” means each person or entity that signs a guarantee of payment of this Note.

“Loan” means the loan evidenced by this Note.

“Loan Documents” means the documents related to this loan signed by Borrower, any Guarantor, or anyone who pledges collateral.

“SBA” means the Small Business Administration, an Agency of the United States of America.

3. PAYMENT TERMS:

Borrower must make all payments at the place Lender designates. The payment terms for this Note are:

**Initial Deferment Period:** No payments are due on this loan for 6 months from the date of first disbursement of this loan. Interest will continue to accrue during the deferment period.

**Loan Forgiveness:** Borrower may apply to Lender for forgiveness of the amount due on this loan in an amount equal to the sum of the following costs incurred by Borrower during the 8-week period beginning on the date of first disbursement of this loan:

- a. Payroll costs
- b. Any payment of interest on a covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation)
- c. Any payment on a covered rent obligation
- d. Any covered utility payment

The amount of loan forgiveness shall be calculated (and may be reduced) in accordance with the requirements of the Paycheck Protection Program, including the provisions of Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136). Not more than 25% of the amount forgiven can be attributable to non-payroll costs. Borrower acknowledges and agrees that (1) the information required to be submitted in support of an application for loan forgiveness will be prescribed by the SBA and not by Lender, and (2) the decision of whether loan forgiveness is available, and, if so, the amount to be forgiven, will be made by the SBA and not by Lender.

**Maturity:** This Note will mature two years from date of first disbursement of this loan.

**Repayment Terms:** The interest rate on this Note is one percent per year. The interest rate is fixed and will not be changed during the life of the loan. Commencing on the first day of the first calendar month following expiration of the deferment period, **December 1<sup>st</sup>, 2020**, Borrower shall make monthly payments of principal and interest in the amount of \$ **3,606.17**, which is the amount necessary to amortize all principal and interest to become due under this Note over the remaining term of the Loan.

Lender will apply each installment payment first to pay interest accrued to the day Lender received the payment, then to bring principal current, and will apply any remaining balance to reduce principal.

**Loan Prepayment:** Notwithstanding any provision in this Note to the contrary:

Borrower may prepay this Note at any time without penalty. Borrower may prepay 20 percent or less of the unpaid principal balance at any time without notice. If Borrower prepays more than 20 percent and the Loan has been sold on the secondary market, Borrower must: a. Give Lender written notice; b. Pay all accrued interest; and c. If the prepayment is received less than 21 days from the date Lender received the notice, pay an amount equal to 21 days interest from the date lender received the notice, less any interest accrued during the 21 days and paid under b. of this paragraph. If Borrower does not prepay within 30 days from the date Lender received the notice, Borrower must give Lender a new notice.

**Non-Recourse.** Lender and SBA shall have no recourse against any individual shareholder, member or partner of Borrower for non-payment of the loan, except to the extent that such shareholder, member or partner uses the



4. DEFAULT:

Borrower is in default under this Note if Borrower does not make a payment when due under this Note, or if Borrower or Operating Company:

- A. Fails to do anything required by this Note and other Loan Documents;
- B. Defaults on any other loan with Lender;
- C. Does not preserve, or account to Lender's satisfaction for, any of the Collateral or its proceeds;
- D. Does not disclose, or anyone acting on their behalf does not disclose, any material fact to Lender or SBA;
- E. Makes, or anyone acting on their behalf makes, a materially false or misleading representation to Lender or SBA;
- F. Defaults on any loan or agreement with another creditor, if Lender believes the default may materially affect Borrower's ability to pay this Note;
- G. Fails to pay any taxes when due;
- H. Becomes the subject of a proceeding under any bankruptcy or insolvency law;
- I. Has a receiver or liquidator appointed for any part of their business or property;
- J. Makes an assignment for the benefit of creditors;
- K. Has any adverse change in financial condition or business operation that Lender believes may materially affect Borrower's ability to pay this Note;
- L. Reorganizes, merges, consolidates, or otherwise changes ownership or business structure without Lender's prior written consent; or
- M. Becomes the subject of a civil or criminal action that Lender believes may materially affect Borrower's ability to pay this Note.

5. LENDER'S RIGHTS IF THERE IS A DEFAULT:

Without notice or demand and without giving up any of its rights, Lender may:

- A. Require immediate payment of all amounts owing under this Note;
- B. Collect all amounts owing from any Borrower or Guarantor;
- C. File suit and obtain judgment;
- D. Take possession of any Collateral; or
- E. Sell, lease, or otherwise dispose of, any Collateral at public or private sale, with or without advertisement.

6. LENDER'S GENERAL POWERS:

Without notice and without Borrower's consent, Lender may:



- A. Bid on or buy the Collateral at its sale or the sale of another lienholder, at any price it chooses;
- B. Incur expenses to collect amounts due under this Note, enforce the terms of this Note or any other Loan Document, and preserve or dispose of the Collateral. Among other things, the expenses may include payments for property taxes, prior liens, insurance, appraisals, environmental remediation costs, and reasonable attorney's fees and costs. If Lender incurs such expenses, it may demand immediate repayment from Borrower or add the expenses to the principal balance;
- C. Release anyone obligated to pay this Note;
- D. Compromise, release, renew, extend or substitute any of the Collateral; and
- E. Take any action necessary to protect the Collateral or collect amounts owing on this Note.

7. WHEN FEDERAL LAW APPLIES:

When SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.

8. SUCCESSORS AND ASSIGNS:

Under this Note, Borrower and Operating Company include the successors of each, and Lender includes its successors and assigns.

9. GENERAL PROVISIONS:

- A. All individuals and entities signing this Note are jointly and severally liable.
- B. Borrower waives all suretyship defenses.
- C. Borrower must sign all documents necessary at any time to comply with the Loan Documents and to enable Lender to acquire, perfect, or maintain Lender's liens on Collateral.
- D. Lender may exercise any of its rights separately or together, as many times and in any order it chooses. Lender may delay or forgo enforcing any of its rights without giving up any of them.
- E. Borrower may not use an oral statement of Lender or SBA to contradict or alter the written terms of this Note.
- F. If any part of this Note is unenforceable, all other parts remain in effect.
- G. To the extent allowed by law, Borrower waives all demands and notices in connection with this Note, including presentment, demand, protest, and notice of dishonor. Borrower also waives any defenses based upon any claim that Lender did not obtain any guarantee; did not obtain, perfect, or maintain a lien upon Collateral; impaired Collateral; or did not obtain the fair market value of Collateral at a sale.



10. STATE-SPECIFIC PROVISIONS:

N/A



11. BORROWER'S NAME(S) AND SIGNATURE(S):

By signing below, each individual or entity becomes obligated under this Note as Borrower.

BORROWER:

**BEAR YUBA LAND TRUST**

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

Name: Robert Smail

Title: President

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

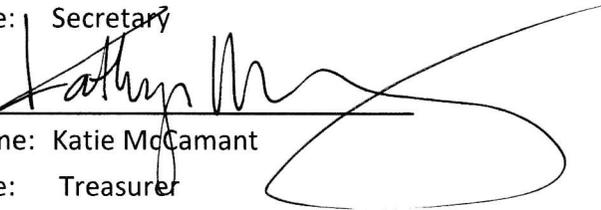
Name: Fred Holden

Title: Vice President

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

Name: Robin Milam

Title: Secretary

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

Name: Katie McCamant

Title: Treasurer



## LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement") is made May 6, 2020, between **BEAR YUBA LAND TRUST, 12183 AUBURN ROAD GRASS VALLEY, CA 95949** ("Borrower") and Tri Counties Bank ("Lender"), whereby the U.S. Small Business Administration ("SBA") has authorized a guaranty of a loan from Lender to Borrower (Loan Number **6843437207**, "Loan") for the amount and under the terms stated herein and in a Note signed by Borrower dated **May 6, 2020** ("Note"), which contemplates potential forgiveness of the Loan in accordance with Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") as well as any regulations promulgated by SBA pursuant to the CARES Act, each as amended from time to time (collectively, the "Paycheck Protection Program Rule").

In consideration of the promises in this Agreement and for other good and valuable consideration, Borrower and Lender agree as follows:

**1.** Subject to the terms and conditions of the Agreement and the Note, Lender agrees to make the Loan to Borrower if Borrower complies with the following "Borrower Requirements." Borrower must:

- a.** Provide Lender with all certifications, documents or other information Lender is required by this Agreement and the Paycheck Protection Program Rule to obtain from Borrower or any third party;
- b.** Execute a note and any other documents required by Lender;
- c.** Use the loan proceeds in accordance with Section 5 below; and
- d.** Do everything necessary for Lender to comply with the terms and conditions of this Agreement, the Note and the Payroll Protection Program Rule.

**2.** The terms and conditions of this Agreement:

- a.** Are binding on Borrower and Lender and their successors and assigns; and
- b.** Will remain in effect after the closing of the Loan.

**3.** Failure to abide by any of the Borrower Requirements will constitute an event of default under the note and other loan documents or could result in Borrower not being entitled to loan forgiveness as set forth in Section 6.

**4.** As set forth in Borrower's Payroll Protection Act Borrower Application Form ("Application"), Borrower certifies that:

- a.** Borrower is eligible to receive a loan under the Paycheck Protection Program Rule in effect at the time the Application was submitted.
- b.** Borrower (1) is an independent contractor, eligible self-employed individual, or sole proprietor, or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for Borrower's industry.
- c.** Borrower will comply, whenever applicable, with the civil rights and other limitations in this form.
- d.** All SBA loan proceeds will be used only for business-related purposes as specified in the Application and consistent with the Paycheck Protection Program Rule.
- e.** To the extent feasible, Borrower will purchase only American-made equipment and products.
- f.** Borrower is not engaged in any activity that is illegal under federal, state or local law.
- g.** Any loan received by Borrower under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses for loans under the Paycheck Protection Program Rule.
- h.** Borrower was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- i.** Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Borrower.
- j.** The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; Borrower understands that if the funds are knowingly used for unauthorized purposes, the federal government may hold Borrower legally liable, such as for charges of fraud.
- k.** Borrower will provide to the Lender documentation verifying the number of full-time equivalent employees on the Borrower's payroll as well as the dollar

amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following the Loan.

- l.** Borrower understands that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.
- m.** During the period beginning on February 15, 2020 and ending on December 31, 2020, Borrower has not and will not receive another loan under the Paycheck Protection Program.
- n.** The information provided in the Application and the information provided in all supporting documents and forms is true and accurate in all material respects. Borrower understands that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- o.** Borrower acknowledges that Lender will confirm the eligible loan amount using required documents submitted. Borrower understands, acknowledges and agrees that Lender can share any tax information that Borrower has provided with SBA's authorized representatives, including authorized representatives of SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.
- p.** Borrower shall supply any additional information required by Lender or SBA until such time as the Loan is repaid in full.

**5.** Borrower certifies all Loan proceeds will be used for the following purposes as set forth in the Payroll Protection Program Rule:

<b>\$ 64,400.00</b>	for Payroll Costs and Payments on qualifying Cost Related to the Continuation of Certain Group Health Care Benefits, Mortgage Interest, Rent, Utilities and Interest on Other Debt Obligations (At least 75% of this amount shall be used for Payroll Costs as defined in the Payroll Protection Program Rule)
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**6.** Forgiveness is not automatic. Borrower may request forgiveness of some or all of the principal balance of the Loan. Forgiveness is only available if Borrower uses the funds for certain purposes as permitted by SBA. If Borrower requests forgiveness, Borrower must provide documentation discussed herein, and must certify that the Loan funds were used for SBA-qualifying purposes. If Borrower fails to provide the required documentation and/or such documentation is not acceptable to SBA, the loan forgiveness will be denied. SBA may limit the timeframe by which Borrower will need to ask for forgiveness. The amount forgiven may be subject to certain limitations and reductions in certain circumstances; for example, if Borrower has reductions in number of employees or employee compensation, and only 25% of the forgiven amount may be for non-payroll purposes as set forth in the Payroll Protection Program Rule.

Borrower's request for loan forgiveness must include the following:

- a.** Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the required periods, including payroll tax filings reported to the IRS and state income, payroll and unemployment insurance filings.
- b.** Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments.
- c.** A certification from an authorized representative of Borrower that the documentation presented is true and correct, and the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation or make covered utility payments.
- d.** Any other documentation Lender or SBA determines necessary.

Borrower agrees to begin submitting to Lender the required documentation within six (6) weeks of funding of the Loan and agrees to submit all required documentation within ten (10) weeks of funding of the Loan.

Lender shall calculate the amount of any proposed loan forgiveness in accordance with the CARES Act as well as any regulations promulgated by SBA pursuant to the CARES Act. Not more than 25% of the forgiveness amount can be attributable to non-payroll costs.

Upon receipt of the documentation, Lender will, on a best efforts basis, submit the Borrower's request for forgiveness to SBA. As soon as practicable after receiving SBA's decision on the loan forgiveness application, Lender shall communicate SBA's decision to Borrower.

If Borrower received an EIDL advance, the amount of the EIDL advance shall be deducted

from the loan forgiveness amount. This EIDL advance may be eligible for forgiveness, but subject to SBA requirements.

Borrower will be responsible under the Loan for any amounts not forgiven. Borrower acknowledges and agrees that only SBA, and not Lender, is empowered to approve or deny loan forgiveness.

**7.** Borrower further certifies that:

- a.** If Borrower defaults on the Loan, SBA may be required to pay Lender under SBA guarantee, and SBA may then seek recovery on the Loan (to the extent any balance remains after loan forgiveness).
- b.** Borrower will keep books and records in a manner satisfactory to Lender, furnish financial statements as requested by Lender, and allow Lender and SBA to inspect and audit books, records and papers relating to the Loan and/or Borrower's financial or business condition.

**8.** Borrower has carefully read the Application, and knows and understands what is in it. In connection with preparing the Application, Borrower has consulted experts, legal counsel or other sources of its own selection and has been provided sufficient data and advice so that it is able to exercise their judgment intelligently in executing the Note, this Agreement and the Application. Borrower further represents that its decision to execute this Loan Agreement, the Note and the Application is not predicated on or influenced by any declarations or representations of Lender or any other persons affiliated with Lender. Borrower agrees to indemnify and hold harmless Lender, its employees, directors and affiliates for any incorrect statement in the Application.

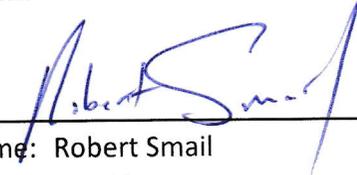
**9.** This Agreement may be executed in a number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. The signatures to this Agreement may be evidenced by facsimile or PDF copies reflecting one or more parties' signatures hereto, and any such facsimile or PDF copy shall be sufficient to evidence the signature of such party or parties as if it were an original signature.

[signature page follows]

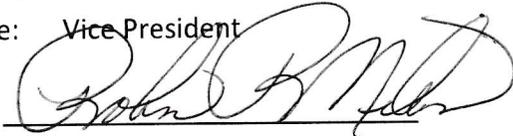
IN WITNESS WHEREOF, each of the parties hereto have caused this Agreement to be duly executed on its behalf to be effective as of the date set forth above.

BORROWER:

**BEAR YUBA LAND TRUST**

By:   
Name: Robert Smail  
Title: President

By:   
Name: Fred Holden  
Title: Vice President

By:   
Name: Robin Milam  
Title: Secretary

By:   
Name: Katie McCamant  
Title: Treasurer

LENDER:

Tri Counties Bank

By:   
Aaron J. Beckman  
VP, GGL Program Manager  
Government Guaranteed Lending

TCB 2020-0411

## Tri Counties Bank FAQ – PPP Loan Disbursement & Forgiveness (Updated 05/06/20)

*Disclaimer: Lenders are still awaiting additional guidance on Payroll Protection (PPP) loan forgiveness from the US Treasury and SBA. The following FAQ is provided for your general informational purposes only, and not as legal, tax, or accounting advice, in the hope it will assist borrowers in understanding how PPP loan forgiveness will likely work based on guidance released to date. This FAQ and the ultimate forgiveness process may change as additional guidance is provided by the US Treasury and the SBA. Borrowers are urged to consult their own advisors to determine how the PPP loan forgiveness analysis will impact their individual situations.*

You have already received loan proceeds or will be receiving them shortly. The disbursement date for your PPP loan is significant, as the amount of forgiveness for a PPP loan is based on the borrower's payroll cost over an eight-week period that begins on the date the lender makes the first disbursement to the borrower.

Determining how to properly spend the loan proceeds in order to maximize benefits under the program is a challenge. Please make sure you consult your counsel and other consultants to make sure you are maximizing your chances to receive full forgiveness on your PPP Loan. This is a crucial issue, as your business must adhere to rules governing the use of PPP loan proceeds, particularly in order to qualify for maximum loan forgiveness.

The PPP loan and forgiveness rules can be best understood by considering the objective of the program: to create a source of funds to allow businesses to keep their workforce employed and paid at a substantially similar level as before the COVID-19 crisis began. To incentivize employers to keep their historic level of employees and their salaries, the CARES Act allows loan forgiveness of up to 100% of the loan proceeds that are used for those purposes within a prescribed timeframe.

Based on the CARES Act, the interim final rules, and guidance from the SBA and U.S. Treasury to date (which, as noted above, remain subject to the issuance of additional guidance), below is an FAQ for you to consider as you seek to deploy your PPP funds most effectively.

**Q #1: Do we have to accept the full loan amount?**

A: The loan will fully disburse at closing, but you can repay any portion of the loan that you don't need/use any time after funding without penalty. Please refer to the "Loan Prepayment" section of your Promissory Note for information on when you need to notify the Bank of your intent to prepay the loan.

**Q #2: I heard that we have to use all loan proceeds within 8 weeks of loan funding. Is that correct?**

A: No. The loan fully disburses at closing and proceeds are available to cover eligible expenses (qualifying payroll, interest, utilities and rent) as needed up to the earlier of loan proceeds being exhausted or loan maturity. However, loan forgiveness will only be available for eligible costs paid during the 8-week period beginning on the date the loan disburses (the "8-Week Covered Period") and not more than 25% of the amount forgiven can be for non-payroll costs.

**Q #3: What does it mean when you say that “not more than 25% of the amount forgiven can be for non-payroll costs?”**

A: Consider the following example:

- Borrower obtains a \$100,000 PPP loan and uses \$90,000 of loan proceeds on eligible expenses over the 8-Week Covered Period (“8-Week Proceeds”). Borrower uses the remaining \$10,000 of loan proceeds on eligible expenses after the 8-Week Covered Period.
- Since only \$90,000 of the loan was spent during the 8-Week Covered Period, only the \$90,000 can be considered for forgiveness.
- The \$90,000 of 8-Week Proceeds were spent as follows:
  - o Payroll: \$60,000
  - o Non-payroll (Rent, Interest & Utilities): \$30,000
- In this example, payroll amounts to 66.7% of total eligible uses and non-payroll accounts for 33.3% of total eligible uses. Since “not more than 25% of the amount forgiven can be for non-payroll costs,” forgiveness for this Borrower would be calculated as follows:
  - o Payroll Forgiveness (75% of total forgiveness): \$60,000
  - o Non-payroll Forgiveness (25% of total forgiveness): \$20,000
  - o Gross Eligible Forgiveness:\* \$80,000
    - \*This amount may be further reduced if the Borrower’s employee headcount and/or wage rates aren’t maintained during the 8-Week Covered Period. See Question #4 below for additional details.
- In this example, the Borrower’s residual (unforgiven) loan balance would be \$20,000 as follows:
  - o Non-payroll exceeding 25% of 8-Week Proceeds: \$10,000
  - o Proceeds used to cover eligible expenses after 8-week period: \$10,000
  - o Total Residual (unforgiven) Loan Balance: \$20,000\*\*
    - \*\*This amount must be repaid in accordance with the repayment schedule in the promissory note.

**Q #4: I understand that loan forgiveness will depend, in part, on my ability to retain employees during the 8-Week Covered Period and to pay them wages that are comparable to historical rates. Can you explain how those benchmarks are calculated?**

A: Loan forgiveness is determined by three factors, including:

1. Eligible Use of Proceeds – Amount of loan proceeds used to cover eligible expenses during the 8-Week Covered Period following loan disbursement and not more than 25% of loan forgiveness will be for non-payroll expenses (see Question #3 above). This is the first step in the calculation and is used to determine Gross Eligible Forgiveness.
2. Employee Retention – Degree to which the Borrower maintained full-time equivalent employee levels (FTE’s) during the 8-Week Covered Period when compared to a historical baseline period. The amount of loan forgiveness is reduced by the same percentage that employee headcount is reduced. This is the second step in the calculation. Using the same example from Question #3 above, here’s how the employee retention calculation works:
  - o Average FTE Headcount During 8-Week Period: 11
  - o Average FTE Headcount from Baseline Period. For seasonal employers, the baseline period should be 02/15/19 to 06/30/19. For non-seasonal employers like the company in this example, the baseline can be the lesser of the following two periods at the borrower’s choice:
    - Average FTE Headcount from 02/15/19 to 06/30/19: 14
    - Average FTE Headcount from 01/01/20 to 02/29/20: 12
      - Final Baseline FTE Headcount (lesser of 14 and 12): 12

- o Employee Reduction %:  $(12-11)/12$ , or  $1/12$ , or: 8.33%
- o X Gross Forgiveness Amount (from Question 3 above): \$80,000
- o = Amount Ineligible based on Employee Reduction: (\$6,667)
- o = Resulting Forgiveness Amount \$73,333

In this example, the average FTE Headcount for this non-seasonal employer during the 8-Week Covered Period was 8.33% less than the average FTE Headcount during the Baseline Period. Per the PPP Act, gross loan forgiveness is reduced by this same percentage of 8.33%.

NOTE: In the context of PPP, FTE means “full-time equivalent” employees. See Question #6 for information on calculating FTE’s.

3. Salary/Wage Reduction – Degree to which the Borrower maintained wage levels during the 8-week period following loan disbursement when compared to a historical baseline period. This calculation is more involved and works as follows:
  - o Identify all employees who did not receive during any single pay period in 2019, wages or salary at an annualized rate of pay of more than \$100,000 (each referred to herein as a “covered employee” for the purpose of this calculation).
  - o Compare each covered employee’s wages or salary during the 8-week period to his/her wages or salary during the first quarter of 2020.
  - o For any covered employee whose wages or salary during the covered period decreased by more than 25%, the amount of decrease over 25% is deducted from the loan forgiveness amount. Here’s how to calculate this:

**Assumption as to Wages:**

- Using the same example as above, assume that all 11 of the company’s 11 existing employees are covered employees (i.e. employees who did not receive during a single pay period in 2019 wages or salary at an annualized rate of pay of more than \$100,000).
- Additionally, assume covered employees were collectively paid an 8-week equivalent rate of \$74,000 during Q1, 2020 ( $Q1, 2020 \text{ wages} / 13 \text{ weeks} \times 8 \text{ weeks}$ ) and are paid a rate of \$54,000 for the 8-Week Covered Period due to pay reductions implemented by management.
- Calculated as follows:
  - $Q1, 2012 \text{ Wages} / 13 \text{ weeks} \times 8 \text{ weeks}$ : \$74,000
  - $\times 0.75 = \text{Wage Reduction Allowance}$ : \$55,500
  - (-) 8-Week Covered Period Wages: (\$54,000)
  - = Amount Ineligible based on Pay Reduction: \$1,500
  - Final Forgiveness Amount ( $\$73,333^* - \$1,500$ ): \$71,833
  - o \*Maximum forgiveness amount from A.2 above

**Q#5: We reduced staff and/or wages during the 8-week period, which may affect the amount of loan forgiveness we qualify for. Can we re-hire employees and/or restore previous wage rates in order to qualify for more forgiveness after the loan is obtained?**

A: Yes. In the event you had a reduction of employees during the period from February 15, 2020, through April 26, 2020, as long as you rehire those employees no later than June 30, 2020, the FTE calculation for the number in the fraction will treat those rehired employees as if they were included in the FTE for the entire 8-week period. Please note that while a delayed rehire date won’t cause issues with the employee retention fraction, it may cause you to spend less than the required 75% threshold on payroll costs during the 8-week covered period, and therefore could result in a reduction in the amount of loan forgiveness.

Both the average reduction in FTE and reduction in pay must be restored to eliminate the reduction in loan forgiveness.

**Q #6: The above examples require me to determine average full-time equivalent employees (aka FTE) for certain periods. How should I calculate average FTE for loan forgiveness purposes?**

A: Guidance is still forthcoming on this. For now, it would be reasonable to calculate FTE's in accordance with the Internal Revenue Code's method as follows:

- Employees working 30 hours per week or more are considered full-time employees.
- Employees working less than 30 hours per week are considered part-time employees. Here, add the hours of part-time employees on a monthly basis and divide by 120 to determine average FTE equivalents.
- Combined full-time employees and FTE equivalents to determine total FTE's.

**Q #7: If I have an employee making over \$100,000 per year, do I have to limit my paycheck to them to \$8,333.33/month (\$100,000 annualized) or can I pay them their regular paycheck amount?**

A: You can pay them their regular paycheck amount. The \$100,000 threshold is the maximum amount per employee that will be forgiven, not the maximum amount of payroll that you can pay your employees. For example, if you pay an employee \$10,000 per month (\$120,000 annualized), PPP loan forgiveness will only be available for an amount equal to \$8,333.33 per month during the 8-week covered period.

**Q #8: Our PPP loan disbursement date is 04/24/20 and runs 8 weeks to 06/23/20. I understand that payroll within that period is eligible for forgiveness. Are we looking at any/all pay dates that fall within that range (aka "cash-basis wages") or only the actual daily payroll incurred within that range (aka "accrual-basis wages")?**

A: Guidance doesn't elaborate on this question. However, the intent of the program is to cover eligible expenses (including payroll) within the 8 week period following loan disbursement. Since forgiveness covers actual expenses paid during the 8-week period, Borrowers should use the loan to cover payroll costs as they are normally incurred/processed over the 8-week period. Start these payments from the very date you receive the money, or as close to that as possible, and make sure your pay periods fall within the 8 week window. Using your particular situation as an example, if your loan funded on 04/24/20 and you normally process payroll on 04/28/20, you could use proceeds to cover the 04/28/20 payroll expense even though it largely related to payroll costs accrued prior to the loan disbursing on 04/24/20. This is a cash payroll expense that was paid during the 8-week period following loan disbursement and therefore meets the intent of the PPP loan.

**Q #9 Many of our furloughed employees have already filed and are receiving unemployment benefits and have indicated that they may stay there making \$26.25/hr until the Fed supplement runs out 7/31. Since I cannot force them to return, if we hire somebody other than our original furloughed employee to fill needed positions does this new employee get counted as it relates to payroll and FTE requirements for forgiveness or are only our past employees eligible?**

A: We are awaiting guidance from the Treasury and SBA on this.

**Q #10 Do you have any suggestions on what I should do to ensure compliance and maximize loan forgiveness?**

A: Guidance is constantly evolving and we encourage you to consider the following to increase your ability to maximize forgiveness:

- **Check for Changes.** Periodically check SBA and US Treasury websites for additional guidance:
  - o SBA: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>
  - o US Treasury: <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
- **Open a Separate Bank Account or Segregate the PPP Funds.** Borrowers may only spend the PPP loan proceeds on specified business expenses, and they will be required to substantiate the proper use of their PPP loan proceeds to their lenders in order to qualify for loan forgiveness. Segregating your PPP funds will make it easier for you to trace the proceeds and avoid comingling. We will be required to substantiate your request for forgiveness.

- **Maintain Records to Substantiate Expenses.** For example, if you have an employee with a salary over \$100,000 – do you pay only up to the cap from the fund or do you pay all and then reimburse the fund for the excess? There is no guidance on this – but it will be important that your records support your decision.
- **Use the Loan Proceeds Only for Permissible Purposes.** If you use PPP loan proceeds for any purpose other than those permitted under the PPP, the SBA will direct you to repay those misused amounts. If you knowingly use the PPP loan proceeds for an unauthorized purpose, you may be subject to additional criminal liability, such as charges for fraud. If one of your shareholders, members, or partners uses PPP loan proceeds for unauthorized purposes, the SBA will have recourse against such shareholder, member, or partner for the unauthorized use.
- **Re-review the Certifications You Made Regarding Qualifying for a PPP Loan.** The SBA has indicated that there may be misunderstandings by borrowers of a certification they made in their PPP loan application, notably the economic need for the loan. Loans under the PPP are intended to keep struggling businesses afloat during the COVID-19 crisis. The PPP application thus requires a certification that the “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” On April 23, SBA updated its FAQ - urging borrowers to “review carefully the required certification” regarding necessity of the loan to support ongoing operations. See Question 31 in the SBA FAQ: <https://www.sba.gov/document/support-faq-lenders-borrowers>. Companies with alternative access to capital need to justify their determination that the loan was in fact necessary. SBA’s interim final rule gave borrowers that applied for a loan prior to the issuance of the rule a “limited safe harbor” window of opportunity, until May 14, 2020, to return funds that in retrospect they should not have received. See “5. Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request” in the Interim Final Rule regarding this matter, which can be found here: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Requirements-for-Promissory-Notes-Authorizations-Affiliation-and-Eligibility.pdf>. You should consider documenting your thought process behind your determination of economic uncertainty. Since this is a legal question, we urge you to consult counsel if you have any questions on this rule and its potential impact.

**Q #11 What if my loan is not able to be completely forgiven?**

A: In the case that you don’t meet all requirements for complete loan forgiveness, you’ll have specific terms to pay back the required portion of the loan, and these terms are the same for every business:

- 1% interest rate
- Maturity of 2 years (meaning the full amount of non-forgiven principal and any interest is due in 2 years)
- 6-month deferment (you don’t have to start paying back the loan for 6 months—however, interest still accrues during this period)
- No collateral is required
- No borrower or lender fees need to be paid to the SBA
- No personal guarantees