

INSTALLMENT FINANCING CONTRACT

between

PNC BANK, NATIONAL ASSOCIATION
as the Bank

and

TOWN OF APEX, NORTH CAROLINA
as the Town

Dated: November 29, 2024

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INSTALLMENT FINANCING CONTRACT
EQUIPMENT AND VEHICLES

THIS INSTALLMENT FINANCING CONTRACT, dated as of November 29, 2024 (the “Contract”), is made by and between PNC BANK, NATIONAL ASSOCIATION, a national banking association (the “Bank”), and the TOWN OF APEX, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of North Carolina (the “Town”).

W I T N E S S E T H:

WHEREAS, the Town is a duly and validly created, organized and existing municipal corporation, duly created and existing under and by virtue of the Constitution and laws of the State of North Carolina; and

WHEREAS, the Town has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina (“NCGS 160A-20”), to enter into installment contracts to finance and refinance the purchase of personal property; and

WHEREAS, the Bank desires to advance certain funds to enable the Town to finance the costs of the acquisition of certain vehicles and equipment for use by its police and fire departments (the “Equipment”); and

WHEREAS, the Town desires to obtain such advance from the Bank pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, the obligation of the Town to make Installment Payments, as hereinafter defined, and other payments required under Section 3 hereof shall constitute a limited obligation payable solely from currently budgeted appropriations of the Town and shall not constitute a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation or as otherwise prohibited by the North Carolina Constitution; and

WHEREAS, in order to further secure the obligations of the Town hereunder, the Town will grant a security interest in the Equipment purchased with funds advanced by the Bank pursuant to this Contract; and

WHEREAS, no deficiency judgment may be rendered against the Town in any action for breach of a contractual obligation under this Contract, and the taxing power of the Town is not and may not be pledged in any way, directly or indirectly or contingently, to secure any moneys due under this Contract; and

WHEREAS, the Bank and the Town each has duly authorized the execution and delivery of this Contract;

NOW, THEREFORE, for and in consideration of the premises and of the covenants hereinafter contained, and other valuable consideration, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

For purposes of this Contract, the following definitions will apply:

1.1. “Business Day” means any day other than (i) a Saturday, (ii) a Sunday, or (iii) any other day on which banks are authorized or required to be closed in the State of North Carolina.

1.2. “Closing Date” means November 29, 2024.

1.3. “Cost of Prepayment” means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period, minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the end of the applicable interest period. The yield on any U.S. Treasury obligation shall be selected by reference to Federal Reserve Statistical Release H.15 (519) “Selected Interest Rates.” For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate. The Cost of Prepayment shall also apply to any payments made after acceleration of the Installment Payments, pursuant to Section 11 hereof or pursuant to the exercise of prepayment rights in Section 7.4 hereof.

1.4. “Town” means the Town of Apex, North Carolina, a municipal corporation of the State of North Carolina, acting through its Governing Body.

1.5. “Default Rate” means the greatest of (i) the sum of the Prime Rate plus 300 basis points (3.00%), (ii) the sum of the Overnight Bank Funding Rate plus 350 basis points (3.50%) and (iii) 9.00% per annum. If and when the Prime Rate or the Overnight Bank Funding Rate changes, the Default Rate will change automatically without notice to the Town, effective on the date of any such change; provided that in no event shall the Default Rate exceed the Maximum Interest Rate.

1.6. “Determination of Taxability” has the meaning assigned to such term in Section 14.2 hereof.

1.7. “Equipment” means certain vehicles and equipment acquired by the Town for use by its police and fire departments, including up to nineteen 2025 Ford Explorers (or, in lieu of a portion thereof, certain vehicles selected by the Town having an aggregate financed cost of \$250,000 or less) and a Spartan Star Series Fire Engine on a Metro Star Chassis.

1.8. “Event of Default” means an “Event of Default” as described in Section 11.1.

1.9. “Event of Taxability” has the meaning assigned to such term in Section 14.2.

1.10. “Governing Body” means the Town Council of the Town.

1.11. "Installment Payments" means those payments made by the Town to the Bank as described in Section 3 of this Contract and in the Payment Schedules.

1.12. "Interest Rate" means a rate per annum equal to [_____] %.

1.13. "Loan Amount" means \$1,890,000 as described in Exhibit A hereto, which the Bank will loan to the Town to enable the Town to finance the acquisition and installation of the Equipment.

1.14. "Net Proceeds," when used with respect to any proceeds from policies of insurance required hereunder or proceeds of any condemnation award arising out of the condemnation of all or any portion of the Equipment, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys' fees and costs) incurred in the collection of such proceeds.

1.15. "Overnight Bank Funding Rate" means for any day, the rate comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York ("NYFRB"), as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by the NYFRB (or by such other recognized electronic source (such as Bloomberg) selected by the Bank for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Bank at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Town.

1.16. "Payment Schedule" means the Payment Schedule shown on Exhibit A-1 hereto, attached to the document labeled "Payment Schedule" attached hereto as Exhibit A.

1.17. "Prime Rate" means the rate publicly announced by the Bank from time to time as its prime rate. The Prime Rate is determined from time to time by the Bank as a means of pricing some loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index, and does not necessarily reflect the lowest rate of interest actually charged by the Bank to any particular class or category of customers.

SECTION 2. ADVANCE OF LOAN AMOUNT

The Bank agrees to advance the Loan Amount to the Town and the Town agrees to borrow the Loan Amount from the Bank to be applied in accordance with the terms and conditions of this Contract. The proceeds of the Loan Amount shall be used to purchase and install the Equipment. The advance by the Bank shall be made by depositing the Loan Amount to an account designated by the Town. The Loan Amount may be invested pending disbursement, and shall be disbursed to acquire and install the Equipment. The Town shall pay any additional sums necessary to purchase

and install the Equipment and shall provide evidence of the payment of such additional sums to the Bank upon request.

SECTION 3. INSTALLMENT PAYMENTS AND OTHER PAYMENTS

3.1. Amounts and Times of Installment Payments and Other Payments. Subject to the provisions of Section 13 hereof entitled “Limited Obligation of the Town,” the Town shall repay the Loan Amount in installments as provided in Exhibit A to this Contract. Each installment shall be deemed to be an Installment Payment and shall be paid in the amounts and at the times set forth in the Payment Schedules (as such payments may be adjusted to reflect any change to the interest component of the Installment Payments based on the date upon which the Installment Payments are actually paid), except as provided herein. Installment Payments shall be sufficient to pay the Loan Amount together with interest thereon at a per annum rate equal to the Interest Rate (subject to adjustment as provided herein).

Interest on the Loan Amount shall accrue at the Interest Rate, calculated on the basis of twelve thirty day months in a 360 day year. Interest shall continue to accrue on any payment that is not paid when due until such payment is made.

From and after the occurrence, and during the continuance, of an Event of Default, the interest rate used to calculate Installment Payments hereunder shall be the Default Rate. From and after a Determination of Taxability, the interest rate used to calculate Installment Payments hereunder shall be calculated at the Alternative Rate of Interest as set forth in Section 14.2.

Should the Town fail to pay any Installment Payment, or any other sum required to be paid to the Bank within fifteen (15) days after the due date thereof, the Town shall pay a separate late payment charge equal to five percent (5%) of the delinquent payment.

3.2. Place of Payments. All payments required to be made to the Bank hereunder shall be made at the Bank’s principal office or as may be otherwise directed by the Bank or its assignee.

3.3. Abatement of Installment Payments. Subject to Section 13 hereof entitled “Limited Obligation of the Town,” there shall be no abatement or reduction of the Installment Payments or other payments by the Town for any reason, including but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or contingent) arising out of or related to the Equipment. The Town assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever, it being the intention of the parties that the Installment Payments and other payments shall be made in all events unless the obligation to make such Installment Payments and other payments is terminated as otherwise provided herein.

3.4. Prepayment of Installment Payments. Upon at least fifteen (15) days’ prior written notice to the Bank, the Town has the right to prepay the Loan Amount in whole or in part, at any time upon payment of (i) the principal component to be prepaid, plus (ii) the interest component of the Installment Payments being prepaid, that have accrued but not been paid, plus (iii) an amount equal to the Cost of Prepayment.

SECTION 4. NATURE OF CONTRACT

This Contract is an installment contract pursuant to NCGS 160A-20 and a security agreement pursuant to Article 9 of Chapter 25 (the “Uniform Commercial Code - Secured Transactions”) of the General Statutes of North Carolina.

SECTION 5. RESPONSIBILITIES AND COVENANTS OF THE TOWN

5.1. Care and Use. The Town shall use the Equipment, or cause the Equipment to be used, in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Equipment, or cause the Equipment to be serviced, repaired and maintained, so as to keep the Equipment in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace or restore, or cause to be replaced or restored, any part of the Equipment as may from time to time become worn out, unfit for use, destroyed or damaged. Any and all repairs or replacements of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Contract and included in the term “Equipment” as used in this Contract.

5.2. Inspection. The Bank has the right on reasonable prior notice to the Town to enter upon the real property upon which the components of the Equipment are located to inspect the Equipment and observe its use during normal business hours.

5.3. Alterations. Without the prior written consent of the Bank, which consent shall not be unreasonably withheld, the Town shall not make any alterations, modifications or attachments to the Equipment which cannot be removed without materially damaging the functional capabilities or economic value of the Equipment.

5.4. Utilities. The Town shall pay, when due, all charges for utility services used in connection with the Equipment. There shall be no abatement of any portion of the Installment Payments on account of interruption of any such services.

5.5. Taxes. The Town shall pay, or cause to be paid, when due any and all taxes relating to the Equipment and the Town’s obligations under this Contract including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licenses and charges imposed on the ownership, possession or use of the Equipment by any governmental body or agency, together with any interest and penalties.

5.6. Risk of Loss. Subject to the provisions of Section 13 hereof entitled “Limited Obligation of the Town,” the Town shall bear all risk of loss to and condemnation of the Equipment. In the event of loss or damage to the Equipment, the Town shall either (a) continue to make the Installment Payments due hereunder and repair, reconstruct and restore the applicable portion of the Equipment to the satisfaction of the Bank, or (b) prepay in full the principal components of the outstanding Installment Payments in accordance with Section 3.4 hereof.

5.7. Performance by the Bank of the Town’s Responsibilities. Any performance required of the Town or any payments required to be made by the Town may, if not timely

performed or paid, be performed or paid by the Bank, and, in that event, the Bank shall be immediately reimbursed by the Town for such payments and for any costs and expenses, legal or otherwise, associated with the payments or other performance by the Bank, with interest thereon at a per annum rate equal to the Prime Rate in effect on the last business day of the calendar month preceding the payment (but not exceeding the maximum rate, if any, permitted by applicable law).

5.8. Financial Statements. The Town agrees that it will furnish to the Bank current audited financial statements within 180 days of the end of each fiscal year of the Town, beginning with the fiscal year ending June 30, 2024, and the Town's annual budget as submitted or approved, and permit the Bank or its agents and representatives to inspect the Town's books and records and make extracts therefrom at its own expense during regular business hours and in a manner which will not disrupt the normal business routine of the Town. The Town shall furnish to the Bank current financial statements and other information at such reasonable times as the Bank may request. The Town represents and warrants to the Bank that all financial statements which have been delivered to the Bank in connection with this Contract fairly and accurately reflect the Town's financial condition and there has been no material adverse change in the Town's financial condition as reflected in the financial statements since the date thereof.

5.9. Other Responsibilities and Conditions. Simultaneously with the execution of this Contract and prior to the loan of any funds hereunder by the Bank, the Town shall cause to be provided to the Bank the following:

- (a) Internal Revenue Service Form 8038-G;
- (b) An Incumbency and Authorization Certificate in the form of Exhibit B attached hereto;
- (c) An Opinion Letter of counsel for the Town in the form satisfactory to the Bank;
- (d) Proof of insurance on the Equipment satisfactory to the Bank;
- (e) Certified copies of resolutions of the Governing Body authorizing the Town to enter into this Contract and carry out its terms;
- (f) Properly completed UCC financing statements as required by Section 6.1 hereof satisfactory to the Bank;
- (g) An opinion letter from special tax counsel which states that the interest on the Town's obligations under the Contract will not be included in the gross income of the Bank for Federal and North Carolina income tax purposes; and
- (h) Executed originals of any other documents and instruments required by Bank in connection with this Contract.

5.10. Special Tax Covenants. The Town covenants that: (a) it will make no use of the monies advanced by the Bank (the "proceeds") which would cause this Contract to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as

amended (the “Code”), or the Treasury Regulations promulgated thereunder; (b) so long as the Contract remains in effect, the Town will comply with the requirements of the Code and the applicable Treasury Regulations promulgated thereunder and will not take or omit to take any action which will cause the interest paid or payable under this Contract to be includible in the gross income of the registered owner hereof; (c) the Equipment shall be used exclusively for essential governmental purposes of the Town and no use shall be made of the proceeds or of the Equipment, directly or indirectly, which would cause this Contract to be a “private activity bond” within the meaning of Section 141 of the Code; (d) no part of the payment of principal or interest under this Contract is or shall be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof; (e) no portion of the proceeds shall be used, directly or indirectly, in making loans the payment of principal or interest with respect to which are to be guaranteed, in whole or in part, by the United States or any agency or any instrumentality thereof; and (f) the Town shall not lease or otherwise make any of the Equipment available to any entity if such lease or other availability would cause the interest portion of the Installment Payments to be included in the gross income of the Bank under the Code for income tax purposes.

The Town shall file IRS Form 8038-G on or before its due date. The Town shall not take or omit to take any action that may cause a loss of the federal or state tax-exempt status of this Contract or the interest thereon.

5.11. Appropriations of Payments. (a) The Town reasonably believes that funds sufficient to make all Installment Payments during the term of this Contract can be obtained. While recognizing that it is not empowered to make any binding commitment to make Installment Payments or any other payments beyond its current fiscal year, the Governing Body of the Town in authorizing the execution of this Contract has stated its intent to make annual appropriations sufficient to make the Installment Payments and has recommended that future governing bodies continue to do so during the term of this Contract.

(b) The Town Manager or Finance Director shall include in the initial proposal for each of the Town’s annual budgets the amount of all Installment Payments coming due during the fiscal year to which such budget is applicable. Notwithstanding that the Town Manager or Finance Director includes an appropriation for Installment Payments in a proposed budget, the Town may terminate all its obligations hereunder by not appropriating sufficient funds to make the scheduled Installment Payments. In the event the Governing Body determines not to appropriate in its budget an amount sufficient to pay all Installment Payments coming due in the applicable fiscal year, the Governing Body shall adopt a resolution specifically deleting such appropriation from the proposed budget for that fiscal year. Such resolution shall state the reasons for such deletion, shall be adopted by a vote identifying those voting for and against and abstaining from the resolution, and shall be recorded in the minutes of the Governing Body. A copy of such resolution shall be promptly sent to the Bank. Such failure to appropriate shall constitute an Event of Default.

(c) If the amount equal to the Installment Payments which will be due during the next fiscal year has not been appropriated by the Town in its budget, the Town Manager or Finance Director shall deliver to the Bank, within ten (10) days after the adoption of the Town’s budget for such fiscal year, but not later than fifteen (15) days after the start of such fiscal year, a certificate from the Finance Officer of the Town stating that the Town did not make such appropriation.

SECTION 6. SECURITY INTEREST; LIENS

6.1. Security Interest. In order to secure (i) the obligations of the Town to make Installment Payments and (ii) the payment and performance of all of the other liabilities and obligations, whether now existing or hereafter arising, of the Town to the Bank under this Contract, this Contract is hereby made and declared to be a security agreement in favor of the Bank encumbering the Equipment, which such items of property are intended to be personal property by the Town and the Bank and which shall constitute personal property regardless of their location or condition in, on, and under any real property, and the Town hereby grants a security interest to the Bank in and to the Equipment. On the Closing Date and from time to time thereafter, the Town shall cause to be filed a financing statement or statements describing such security interest of the Bank in accordance with the provisions of the Uniform Commercial Code enacted in the State applicable to the perfection of security interests by filing financing statements thereunder.

The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Contract shall be (i) as prescribed herein or (ii) as prescribed by general law, at the Bank's sole election.

6.2. Liens. The Town shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, security interest, charge, encumbrance or claim on or with respect to the Equipment or any interest therein except for (i) the lien and security interest of the Bank therein and (ii) such minor defects, irregularities and encumbrances as normally exist with respect to property of the general character of the Equipment. The Town shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time. The Town shall reimburse the Bank for any expense incurred by it (including reasonable attorneys' fees and reasonable expenses), after prior notice to the Town, in order to discharge or remove any such mortgage, pledge, lien, security interest, charge, encumbrance or claim. Upon payment in full of all of the Town's obligations hereunder, including the Loan Amount, interest accrued thereon and all other payments due hereunder, the Bank, at the Town's request, shall release and cancel its security interest in the Equipment.

SECTION 7. INSURANCE AND UNFORESEEN LOSSES

7.1. Insurance. The Town shall maintain, or cause to be maintained, except as hereinafter provided, insurance with respect to its property and business against such casualties and contingencies in amounts not less than is customary in similar activities and similarly situated. Without limiting the foregoing, the Town shall maintain, or cause to be maintained, except as hereinafter provided, the following insurance:

(a) Insurance against loss and/or damage to the Equipment under a policy or policies covering such risks as are ordinarily insured against for similar property. Such insurance shall be in an amount not less than the lesser of (i) the full replacement cost of the Equipment or (ii) the outstanding principal components of the Installment Payments, but any such policy may have a deductible amount of not more than \$50,000. No such policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding

sentence, by reason of co-insurance provisions or otherwise, without the prior written consent thereto by the Bank. The term “full replacement cost” shall mean the actual replacement cost of the Equipment, without deduction for physical depreciation, and shall be determined once every three years by an insurance consultant, in any case, selected and paid for by the Town. Each such policy shall contain a replacement cost endorsement.

(b) Comprehensive general liability insurance protecting the Town and the Bank as their interests may appear, against liability for injuries to persons and/or property, occurring on, in or about the Equipment, in the minimum amount of \$2,000,000 liability to any one person for property damage, \$2,000,000 liability for personal injury for any one occurrence and an aggregate annual liability limit of not less than \$2,000,000, with a deductible amount of not more than \$50,000.

(c) Workers’ compensation insurance respecting all employees of the Town working at the Equipment in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Town may be self-insured with respect to all or any part of its liability for workers’ compensation.

Each policy of insurance obtained pursuant to this Section shall (i) be issued by a generally recognized and responsible insurance company qualified under the laws of the State or the United States of America to assume the risks covered by such policy, (ii) name the Town and the Bank as insureds or loss payees, as their respective interests may appear; and (iii) unless unavailable from the insurer, provide that such policy shall not be cancelled or modified in any way adverse to any insured or loss payee without at least thirty (30) days’ prior written notice to each insured or loss payee named therein. The Town shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the provisions of this Section 7.

All such policies shall be deposited with the Bank, provided that in lieu of such policies there may be deposited with the Bank a certificate or certificates of the respective insurers or other evidence satisfactory to the Bank to the effect that the insurance required by this Section is in full force and effect. Prior to the expiration of any such policy, the Town shall furnish to the Bank evidence satisfactory to the latter that the policy has been renewed or replaced or is no longer required by this Contract.

In lieu of separate policies the Town may maintain or cause to be maintained blanket or umbrella policies or participate in group risk financing programs, risk pools, purchasing groups, captive insurance companies or state or federal programs if such policies or other insurance alternatives provide the same coverage as required by this Section with protection against each risk not reducible by claims for other risks to amounts less than that specified in this Section and the Town deposits with the Bank a certificate or certificates of the respective insurers evidencing such coverage and stating, as required, the amount of coverage with respect to the Equipment or any part thereof.

7.2. Damage, Destruction or Condemnation. If, during the term hereof, (i) the Equipment or any portion thereof is destroyed or is damaged by fire or other casualty, (ii) title to or the temporary or permanent use of the Equipment or any portion thereof or the estate of the Town, the Bank or its assignee in the Equipment or any portion thereof is taken under the power of eminent domain by any governmental authority other than the Town or (iii) a material defect

in the Equipment becomes apparent, then the Town shall continue to be obligated, subject to the provisions of Section 13, to pay the amounts specified in Section 3.

7.3. Use of Net Proceeds to Repair or Replace the Equipment. Subject to the provisions of Section 8.4, the Town shall cause the Net Proceeds of any insurance policies, condemnation awards or moneys otherwise made available by reason of any occurrence described in Section 7.2 relating to the Equipment to be applied to the prompt repair, restoration, modification, improvement or replacement of the Equipment and shall promptly report to the Bank regarding the use of such Net Proceeds. Any repair, restoration, modification, improvement or replacement of the Equipment paid for in whole or in part out of such Net Proceeds shall be the property of the Town and shall be included as part of the Equipment under this Contract.

7.4. Discharge of Obligation to Repair or Replace the Equipment. In the event of any loss or damage to or condemnation of the Equipment in an amount not less than \$100,000, the obligation of the Town to repair or replace the Equipment under Section 7.2 and Section 7.3 may, at the option of the Town, be discharged by causing the resulting Net Proceeds described in Section 7.3, together with any other available funds, to be applied to the prepayment of all or any part of the then outstanding principal components of the Installment Payments in accordance with Section 3.4. If such Net Proceeds and any other available funds exceed the then outstanding principal components of the Installment Payments to be prepaid in accordance with Section 3.4, such excess shall be paid to or retained by the Town.

Within one hundred twenty (120) days of the occurrence of an event specified in Section 7.2, the Town shall commence, or cause to be commenced, the repair, restoration, modification, improvement or replacement of the Equipment or shall elect, by notice to the Bank, to proceed under the provisions of this Section 7.4.

7.5. Cooperation of Bank. The Bank shall cooperate fully with the Town in filing any proof of loss with respect to any insurance policy covering the events described in Section 7.2. In no event shall the Bank or the Town voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Equipment without the written consent of the other.

SECTION 8. WARRANTIES AND REPRESENTATIONS OF THE TOWN

The Town warrants and represents to the Bank (all such representations and warranties being continuing) as follows:

(a) The Town is a municipal corporation duly created and existing under the laws of the State of North Carolina, and has all powers necessary to enter into the transactions contemplated by this Contract and to carry out its obligations hereunder;

(b) This Contract has been duly and validly authorized, approved, executed and delivered by the Town, and the performance by the Town of its obligations under such document has been approved and authorized under all laws, regulations and procedures applicable to the Town, including, but not limited to, compliance with all applicable public meeting and bidding requirements, and the transactions contemplated by this Contract constitute a public purpose for

which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina;

(c) No approval or consent is required from any governmental authority with respect to the entering into or performance by the Town of this Contract and the transactions contemplated hereby, or, if any such approval is required, it has been duly obtained;

(d) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of the Town's knowledge, threatened, against or affecting the Town challenging the validity or enforceability of this Contract, or the performance of the Town's obligations hereunder, and compliance with the provisions hereof, under the circumstances contemplated hereby, does not and will not in any material respect conflict with, constitute on the part of the Town a breach of or default under, or result in the creation of a lien or other encumbrance on any property of the Town (except as contemplated herein) pursuant to any agreement or other instrument to which the Town is a party, or any existing law, regulation, court order or consent decree to which the Town is subject;

(e) A resolution authorizing the execution, delivery and performance of the Contract has been duly adopted, is in full force and effect, and has not been in any respect amended, modified, revoked or rescinded;

(f) The Equipment is essential to the proper, efficient and economical operation of the Town and the delivery of its service and the Equipment will provide an essential use and permit the Town to carry out public functions that it is authorized by law to perform; and

(g) The security interest granted by the Town to the Bank in the Equipment shall have been duly perfected and shall constitute a first lien security interest in the Equipment subject to any encumbrances permitted by Section 5.3.

SECTION 9. INDEMNIFICATION

To the extent permitted by applicable law, the Town hereby agrees to indemnify, protect and save the Bank and any member, director, officer, agent and employee of the Bank harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Equipment, including without limitation, the possession, condition or use thereof. The indemnification arising under this section shall continue in full force and effect notwithstanding the payment in full of all obligations under this Contract.

SECTION 10. DISCLAIMER OF WARRANTIES

10.1. No Representations by the Bank. The Town acknowledges that it has inspected the Equipment and found the Equipment to be satisfactory and acknowledges and agrees that it has selected the Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by the Bank with respect thereto.

10.2. Disclaimer By the Bank. THE BANK MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION,

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

SECTION 11. DEFAULT AND REMEDIES

11.1. Definition of Event of Default. The Town shall be deemed to be in default hereunder upon the happening of any of the following events of default (each, an “Event of Default”):

(a) The Town (i) shall fail to make any Installment Payment when due or (ii) shall fail to pay any other sum hereunder within ten (10) days after receipt of written notice of such failure; or

(b) The Town fails to budget and appropriate money sufficient to pay all Installment Payments coming due in any fiscal year; or

(c) The Town shall fail to perform or observe any term, condition or covenant of this Contract or shall breach any warranty by the Town herein or therein contained; or

(d) Proceedings under any bankruptcy, insolvency, reorganization or similar litigation shall be instituted by or against the Town, or a receiver, custodian or similar officer shall be appointed for the Town or any of its property, and such proceedings or appointments shall not be vacated or fully stayed after the institution or occurrence thereof; or

(e) Any warranty, representation or statement made by the Town herein or in any other document executed or delivered in connection herewith is found to be incorrect or misleading in any material respect on the date made; or

(f) An event of default shall occur and continue under any other loan agreement or other agreement for the loan of money between the Town and the Bank.

11.2. Remedies on Default. Subject to Section 13 hereof entitled “Limited Obligation of the Town,” upon the occurrence of any Event of Default, the Bank may exercise any one or more of the following remedies as the Bank in its sole discretion shall elect:

(a) Declare the entire principal amount of the Installment Payments and all accrued interest and other charges immediately due and payable without notice or demand to the Town;

(b) Proceed by appropriate court action to enforce performance by the Town of the applicable covenants of this Contract or to recover for the breach thereof;

(c) Exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code of the State of North Carolina and the general laws of the State of North Carolina with respect to the enforcement of the security interest granted or reserved hereunder, including, without limitation, to the extent permitted by law, take possession of any collateral without any court order or other process of law and without liability for entering the premises and sell, lease, sublease or make other disposition of the same in a commercially reasonable manner

for the account of the Town, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition costs, toward the balance due under this Contract and, thereafter, shall pay any remaining proceeds to the Town;

- (d) Take possession of any proceeds of the Equipment, including Net Proceeds; or
- (e) Pursue any other remedy available at law or equity to the Bank.

In addition to the foregoing, from and after the occurrence and during the continuance of an Event of Default, the Interest Rate used to calculate Installment Payments hereunder shall be the Default Rate.

11.3. Further Remedies. All remedies of the Bank are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. The Town agrees to pay to the Bank all court costs and reasonable attorney fees incurred by Bank in enforcing the Bank's rights and remedies under this Contract.

SECTION 12. ASSIGNMENT

12.1. Assignment by the Town. The Town agrees not to sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Contract or the Equipment (except for the lien and security interest of the Bank or as permitted by Section 5.3) without the Bank's prior written consent, which consent shall not be unreasonably delayed, conditioned or denied.

12.2. Assignment by the Bank. (a) The Bank may, at any time and from time to time, assign all or any part of its interest in the Equipment or this Contract, including, without limitation, Bank's rights to receive Installment Payments payable to Bank hereunder or thereunder, in accordance with this Section 12.2. Any assignment made by the Bank or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Bank pursuant to this Contract. The Bank or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract, or making this Contract part of a pool of obligations, so long as such assignment or reassignment is to (i) a bank, insurance company or similar institution or any other entity approved by the North Carolina Local Government Commission; or (ii) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in the Contract, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the North Carolina Local Government Commission. Notwithstanding the foregoing, unless to an affiliate controlling, controlled by or under common control with Bank, no assignment or reassignment of the Bank's interest in the Contract shall be effective unless and until the Town shall receive notice of such assignment or reassignment disclosing the name and address of each such assignee.

(b) The Town further agrees that the Bank's interest in this Contract may be assigned in whole or in part (subject to the limitations on assignment contained in Section 12.2(a)) upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the Town receives notice of such assignment and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.

(c) The Town agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Town and the Town shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the Town shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

(d) The Bank represents and warrants that it is familiar with federal and North Carolina legislation, rules and regulations as to limitations upon the public distribution of securities that have not been registered under the Securities Act of 1933, as amended, and that it is entering into this Contract for its own account and has no present intention of making any sale or other distribution of this Contract in violation of such legislation, rules or regulations. The Bank represents that it is familiar with the operations and financial condition of the Town, based upon information furnished to the Bank by the Town, and has made such inquiries as it deems appropriate in connection with the Loan Amount.

SECTION 13. LIMITED OBLIGATION OF THE TOWN

NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE TOWN WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE OF NORTH CAROLINA. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE TOWN FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; PROVIDED, HOWEVER, ANY FAILURE OR REFUSAL BY THE TOWN TO APPROPRIATE FUNDS, WHICH RESULTS IN THE FAILURE BY THE TOWN TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBLIVATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE TOWN IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS CONTRACT, AND THE TAXING POWER OF THE TOWN IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS CONTRACT.

To the extent of any conflict between this Section and any other provision of this Contract, this Section shall take priority.

SECTION 14. TAX-EXEMPT INTEREST

14.1. Intent of Parties. It is the intention of the parties hereto that the interest portion of the Installment Payments paid by the Town to the Bank under this Contract shall be tax-exempt under Section 103 of the Code.

14.2. Determination or Event of Taxability. If at any time there is a Determination of Taxability or Event of Taxability, as such terms are hereinafter defined, the principal portion of the indebtedness of the Town to the Bank which is represented by the Installment Payments shall, from and after the Date of Taxability, as hereinafter defined, bear interest at the rate which will provide to the Bank the effective yield which it would have received if there had not been a Determination of Taxability or an Event of Taxability, such rate to be determined by the Bank (the "Alternative Rate of Interest"), payable from the Date of Taxability to such time. In such event, the Town also shall be required to pay to the Bank all amounts, if any, which may be necessary to reimburse the Bank for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against the Bank by reason of the Bank's failure to include the interest portion of the Installment Payments (hereinafter called "Interest") in its gross income for income tax purposes. Installment Payment amounts under this Contract shall be increased as a result of the increased interest rate and additional interest as a result of said rate increase on all previous payments shall be paid to the Bank upon demand therefor. The Town shall pay to the Bank the Interest calculated at the above-mentioned Alternative Rate of Interest notwithstanding any transfer by the Bank or payment or prepayment by the Town prior to the date such Determination of Taxability was made.

An "Event of Taxability" shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the Town, the effect of which is to cause the interest portion of the Installment Payments to be includible in the gross income of the Bank for federal income tax purposes. A Determination of Taxability shall mean a determination that the Interest is included in gross income of the Bank for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the Bank is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an action, or failure to act, by the Town, the Interest is included in the gross income of the Bank for federal income tax purposes; (b) the date on which the Town receives notice from the Bank that the Bank has been advised (i) in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Bank which asserts, in effect, that Interest received by the Bank is included in the gross income of the Bank for federal income tax purposes, as a result of an action, or failure to act, by the Town, or (ii) by an opinion of counsel received by the Bank which concludes, in effect, that Interest is included in the gross income of the Bank for federal income tax purposes as a result of an action, or failure to act, by the Town; (c) the day on which the Town is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the Interest is included in the gross income of the Bank for federal income tax purposes as a result of an action, or failure to act, by the Town; or (d) the day on which the Town is advised in writing by counsel to the Bank that a final determination, from which no further right of appeal exists,

has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Town has been given written notice and an opportunity to participate and defend that the Interest is included in the gross income of the Bank for federal income tax purposes, as a result of an action, or failure to act, by the Town.

The “Date of Taxability” shall mean the first date upon which Interest is included in the gross income of the Bank for federal income tax purposes as a result of an Event of Taxability or a Determination of Taxability.

14.3. Duty to Notify the Bank. The Town agrees to give prompt written notice to the Bank upon the Town’s receipt of any oral or written notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability has occurred.

SECTION 15. MISCELLANEOUS

15.1. Waiver. No covenant or condition of this Contract can be waived except by the written consent of the Bank. Any failure of the Bank to require strict performance by the Town or any waiver by the Bank of any terms, covenants or conditions herein shall not be construed as a waiver of any other breach of the same or any other term, covenant or condition herein.

15.2. Severability. In the event any portion of this Contract shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Contract shall continue in full force and effect.

15.3. Governing Law. This Contract shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina.

15.4. Notices. Any and all notices, requests, demands, and other communications given under or in connection with this Contract shall be effective only if in writing and either personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the address of the recipient as described below, and shall be deemed to be received on the third day after the day it was deposited in the United States mail or on the day it was actually received, whichever is earlier.

Town: Town of Apex, North Carolina
 74 Hunter Street
 Apex, North Carolina 27502
 Attn: Finance Director

Bank’s Address: PNC Bank, National Association
 301 Fayetteville Street, Suite 2100
 Raleigh, North Carolina 27601
 Attn: Kyle Huber, Senior Vice President

15.5. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

15.6. Entire Contract. This Contract, together with the Exhibits and attachments hereto, constitutes the entire Contract between the parties and this Contract shall not be modified, amended, altered or changed except by written agreement signed by the parties.

15.7. Binding Effect. Subject to the specific provisions of this Contract, this Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

15.8. Time. Time is of the essence of this Contract and each and all of its provisions.

15.9. Execution in Counterparts. This Contract may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

15.10. Contract. The Bank is entering into this Contract as evidence of a privately negotiated loan and in that connection the Contract shall not be (i) assigned a separate rating by any municipal securities rating agency; (ii) registered with The Depository Trust Company or any other securities depository; (iii) issued pursuant to any type of offering document or official statement, or (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service.

15.11. No Advisory Services. The Town acknowledges and agrees that: (i) the transaction contemplated by this Contract is an arm's length, commercial transaction between the Town and the Bank in which the Bank is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the Town; (ii) Bank has not assumed any advisory or fiduciary responsibility to the Town with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Bank has provided other services or is currently providing other services to the Town on other matters); (iii) the only obligations Bank has to the Town with respect to the transaction contemplated hereby expressly are set forth in this Contract; and (iv) the Town has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

15.12. E-Verify. The Bank understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Bank uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Bank will not use any subcontractor in connection with the transactions contemplated by this Contract.

15.13. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the day and year first above written.

TOWN OF APEX, NORTH CAROLINA

By: _____
Randy Vosburg
Town Manager

(SEAL)

Attest: _____
Allen Coleman, Town Clerk

PNC BANK, NATIONAL ASSOCIATION

By: _____
Kyle Huber
Senior Vice President

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.

Antwan Morrison
Town Finance Director

EXHIBIT A

PAYMENT SCHEDULE

Installment Financing Contract Date: November 29, 2024

Town: Town of Apex, North Carolina

Loan Amount: \$1,890,000

The Interest Rate is []% per annum. Interest on the Loan Amount is calculated and imposed on the unpaid balance of the Loan Amount based on the payment schedule set forth on Exhibit A-1 attached hereto. The Loan Amount plus interest shall be repaid by the Town to the Bank in semi-annual installments of principal and interest on each [] and [], commencing [], 202[5], all as set forth on Exhibit A-1 attached hereto.

From and after the occurrence, and during the continuance, of an Event of Default, the interest rate used to calculate Installment Payments hereunder shall be the Default Rate.

TOWN OF APEX, NORTH CAROLINA

By: _____
Randy Vosburg
Town Manager

Date: November 29, 2024

EXHIBIT A-1

PAYMENT SCHEDULE

Date	Outstanding Balance	Installment Payment Principal Component	Installment Payment Interest Component	Total Installment Payment
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EXHIBIT B

INCUMBENCY AND AUTHORIZATION CERTIFICATE

In connection with the execution and delivery by the Town of Apex, North Carolina (the “Town”) of an Installment Financing Contract dated November 29, 2024 (the “Contract”) with PNC Bank, National Association, the undersigned officers of the Town hereby certify as follows:

(1) They are duly appointed, qualified and acting incumbents of their respective offices of the Town and as such are familiar with its books and corporate records. As of the date of this certificate, the persons named below are duly elected, qualified and acting incumbents of their respective offices of the Town and as such are familiar with its books and corporate records.

(2) Randy Vosburg is presently the duly appointed Town Manager. Antwan Morrison is presently the duly appointed Town Finance Director. Allen Coleman is presently the duly appointed Clerk to the Town. Such appointments are in full force and effect on the date hereof.

(3) The persons named below were on the date or dates of the execution of the Contract and are on the date hereof the duly appointed and qualified incumbents of the offices of the Town appearing at the left of their respective names and the signatures appearing at the right of their respective names are their genuine signatures:

<u>Title</u>	<u>Name</u>	<u>Signature</u>
Randy Vosburg	Town Manager	_____
Antwan Morrison	Finance Director	_____
Allen Coleman	Town Clerk	_____

(4) The persons named below were authorized, together and individually, by a resolution of the governing body of Town passed in a regular meeting held on November 12, 2024 to execute and deliver on behalf of the Town the Contract to evidence the obligation of the Town in connection with the financing of the Equipment (as defined in the Contract), together with all other documents and instruments required and contemplated by the Contract, and to carry out the terms of all of the foregoing, all under and pursuant to the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended. Such resolution was adopted at a meeting duly called and held on such date, at which meeting a quorum was present and acting throughout. Such resolution has not been amended, rescinded, terminated or otherwise revoked and is in full force and effect.

(5) The seal of the Town is the same seal of which an impression appears below and on the Contract.

(6) No litigation of any kind is now pending or, to the best of my information, knowledge and belief, threatened to restrain or enjoin the execution or delivery of the Contract, or in any manner questioning the proceedings and authority under which the Contract has been executed and delivered, or affecting the validity of such documents.

(7) The Town has obtained the proper authorization to execute and deliver the Contract and all related documents necessary to complete the transaction contemplated thereby.

(8) The Contract has been duly authorized, executed and delivered by the Town. Assuming the due authorization, execution and delivery of such agreement by the Bank, such agreement constitutes a legal, valid and binding agreement of the Town enforceable against the Town in accordance with its terms. Such obligation does not constitute a pledge of the faith and credit of the State of North Carolina or of any town, city or other political subdivision of the State, including the Town. The rights and enforceability of the obligations of the Town under such agreement may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and (b) principles of equity, whether considered at law or in equity.

(9) There has been no material adverse change in the financial condition of the Town since the date of the last annual financial statement of the Town provided to the Bank.

IN WITNESS WHEREOF, we have duly executed this certificate and have affixed to it the official seal of the Town of Apex, North Carolina on this 29th day of November, 2024.

Randy Vosburg
Town Manager

Antwan Morrison
Finance Director

Allen Coleman
Town Clerk

(SEAL)