

BOND PURCHASE AGREEMENT

Among

Local Government Commission,

Town of Apex, North Carolina

and

Pinnacle Financial Partners

concerning

\$ _____

Town of Apex, North Carolina
Combined Enterprise System Revenue Bond
Series 2019

BOND PURCHASE AGREEMENT

concerning

\$ _____

Town of Apex, North Carolina
Combined Enterprise System Revenue Bond
Series 2019

September 17, 2019

Local Government Commission
Raleigh, North Carolina

Town of Apex, North Carolina
Apex, North Carolina

Ladies and Gentlemen:

Pinnacle Financial Partners (the “Purchaser”) hereby offers to enter into this Bond Purchase Agreement with the Local Government Commission, a division of the Department of State Treasurer of the State of North Carolina (the “LGC”), and the Town of Apex, North Carolina (the “Town”), which, upon acceptance of this offer by the LGC and approval of this offer and of the LGC’s acceptance thereof by the Town, will be binding upon the LGC, the Town and the Purchaser.

1. Purchase and Sale of the Bond. Upon the terms and conditions hereof and upon the basis of the representations set forth herein, the Purchaser hereby agrees to purchase, and the LGC and the Town hereby agree to sell to the Purchaser the \$ _____ Town of Apex, North Carolina Combined Enterprise System Revenue Bond, Series 2019 (the “Bond”). The purchase price for the Bond shall be \$ _____, representing the par amount of the Bond. The delivery and payment for the Bond and other actions contemplated hereby shall take place at the time thereof being herein sometimes called the “Closing.”

The Bond shall consist of one fully registered bond certificate in the principal amount of \$ _____, shall be dated as of September 17, 2019, and shall bear interest from its date at a rate of 2.00% per annum. The Bond shall be issued and secured under the provisions of a bond order adopted by the Town Council of the Town (the “Town Council”) on September 3, 2019 (the “Order”), a Trust Agreement, dated as of May 1, 2009 (the “Trust Agreement”), between the Town and U.S. Bank National Association, as trustee (the “Trustee”), and a Second Supplemental Trust Agreement, dated as of September 1, 2019 (the “Second Supplemental Agreement”), between the Town and the Trustee. All capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Trust Agreement and the Second Supplemental Agreement.

The proceeds of the Bond are to be used to provide funds, together with any other available funds, to pay (a) the costs of acquiring, constructing and equipping an approximately 20,000 square

foot administration and operations warehouse facility for the Town's Electric Division, to provide the required space for personnel, vehicles, equipment and supplies, as well as a single secure location for inventory specific to electric operations (the "Series 2019 Project") and (b) the fees and expenses incurred in connection with the sale and issuance of the Bond.

2. Representations of the Purchaser; Purchase for Account. (a) The Purchaser hereby acknowledges and represents, in respect of the Bond, that:

(i) the Purchaser is familiar with the Town;

(ii) the Purchaser has been furnished with all financial and other information about the Town, the Bond and the Combined Enterprise System as requested by the Purchaser; and

(iii) the Town has made available to the Purchaser the opportunity to obtain additional information about the Town, the Bond and the Combined Enterprise System.

(b) The Purchaser further acknowledges and represents in respect of the Bond that a part of the Purchaser's business consists of the purchase, holding and sale of obligations of the same general character as the Bond, and the Purchaser has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks inherent in purchasing the Bond. The Purchaser has made such investigation of the Bond and of the financial condition and operations of the Town and the Combined Enterprise System as it deems necessary to evaluate the merits and risks inherent in purchasing the Bond. The Purchaser is aware that there may be no secondary market for the Bond and that it may be required to hold the Bond for an indefinite period. The Purchaser represents that it is purchasing the Bond for its own account with no present intention to resell or distribute the Bond or any interest therein; provided, however, that the Purchaser reserves the right at all times to control the disposition of its assets, including the Bond, and reserves the right to sell, assign and transfer the Bond or fractional interests in the Bond to other banks, insurance companies or similar financial institutions or any other purchaser if such sale, assignment or transfer is approved in writing by the LGC.

3. Representations and Warranties of the Town. The Town, by its acceptance hereof, represents and warrants to the Purchaser as follows:

(a) The Town is a municipal corporation duly organized and validly existing under the laws of the State of North Carolina, and is authorized and empowered to provide for the acquisition, construction and equipping of the Series 2019 Project by causing the Bond to be issued.

(b) The Town has the full legal right, power and authority to adopt the Order, to execute and deliver the Trust Agreement, the Second Supplemental Trust Agreement and this Bond Purchase Agreement and to perform its respective obligations hereunder and thereunder.

(c) The Order has been duly adopted by the Town Council, is in full force and effect and has not been modified or amended in any manner.

(d) The Town has duly authorized (i) the execution and delivery of the Trust Agreement, the Second Supplemental Agreement and this Bond Purchase Agreement, (ii) the issuance and

delivery of the Bond and (iii) such action as may be required on the part of the Town to consummate the transactions contemplated by such documents.

(e) This Bond Purchase Agreement, the Trust Agreement and the Second Supplemental Agreement, when executed and delivered by the Town, will constitute legal, valid and binding obligations of the Town enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles. The Owner of the Bond will be entitled to the security created by the Trust Agreement and the Second Supplemental Agreement as provided therein.

(f) The Town is not in violation of any applicable constitutional provision, law or administrative rule or regulation of the State of North Carolina or of the United States of America or in default under any agreement, resolution, indenture or instrument to which the Town is a party or by which the Town or its property is bound, the effect of which violation or default would materially affect the ability of the Town to perform its obligations under this Bond Purchase Agreement, the Trust Agreement or the Second Supplemental Agreement, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a violation or default hereunder or thereunder.

(g) The execution and delivery of this Bond Purchase Agreement, the Trust Agreement and the Second Supplemental Agreement, the adoption of the Order and performance of the obligations of the Town hereunder or thereunder do not and will not conflict with, result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the Town other than Net Receipts pursuant to the terms of, or constitute a default under, any agreement, indenture or instrument to which the Town is a party or by which the Town or its property is bound, or result in a violation of any applicable constitutional provision, law or administrative regulation or any order, rule or regulation of any court or governmental agency having jurisdiction over the Town or its property, except as provided and permitted by such documents.

(h) Except for any action that may be required by applicable federal or state securities laws, no consent, authorization or order of, or filing or registration with, any court or governmental agency not already obtained or made is required for the execution, delivery and performance of this Bond Purchase Agreement or the consummation of the transactions contemplated hereunder, and any such consent, authorization or order so obtained is in full force and effect.

(i) Any certificate signed by an authorized officer of the Town and delivered to the Purchaser shall be deemed a representation and warranty of the Town to the Purchaser as to the statements made therein.

(j) To the best knowledge of the Town, there is no litigation or any other proceeding before or by any court, public board, agency or body, pending or threatened against or affecting the Town or any of the members of the Town Council in their respective capacities as such (nor is there any basis therefor), wherein an unfavorable decision, ruling or finding would in any way materially adversely affect (i) the transactions contemplated by this Bond Purchase Agreement, (ii) the organization, existence or powers of the Town or the title to the office of any of the members of the Town Council, (iii) the properties or assets or the condition, financial or otherwise, of the Town

or the Combined Enterprise System, (iv) the validity or enforceability of this Bond Purchase Agreement, the Order, the Trust Agreement or the Second Supplemental Agreement (or any other agreement or instrument of which the Town is a party or used or contemplated for use in the consummation of the transactions contemplated hereby) or (v) the exemption from federal or State of North Carolina income taxation of the interest on the Bond.

(k) There has been no material adverse change in the financial condition of the Town or the Combined Enterprise System since June 30, 2018, except as otherwise specified to the Purchaser by the Town prior to the date hereof in writing.

4. Representations and Warranties of the LGC. The LGC, by its acceptance hereof, represents and warrants to the Purchaser that:

(a) The LGC is duly organized and validly existing as a division of the Department of the State Treasurer of the State of North Carolina, vested with the rights and powers conferred upon it pursuant to Chapter 159 of the General Statutes of North Carolina, as amended.

(b) The LGC has full power and authority to approve the issuance and provide for the sale of the Bond as provided in this Bond Purchase Agreement, and the LGC has taken or will take all action required by the Act or other applicable laws in connection therewith.

(c) The LGC has duly authorized the execution and delivery of this Bond Purchase Agreement and has taken or will take all action necessary or appropriate to carry out the sale and delivery of the Bond to the Purchaser.

(d) The execution and delivery of this Bond Purchase Agreement and the performance by the LGC of its obligations hereunder are within the powers of the LGC and, to the best of the LGC's knowledge, will not conflict with or constitute a breach or result in a violation of (i) any federal or North Carolina constitutional or statutory provision, (ii) any agreement or other instrument to which the LGC is a party or by which it is bound, or (iii) any order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the LGC.

(e) Except for any action required by applicable federal or state securities laws, no consent, approval, authorization or order of any governmental or regulatory authority, other than the approvals of the Town as herein required, is required to be obtained by the LGC as a condition precedent to the issuance or sale of the Bond or the execution and delivery of this Bond Purchase Agreement or the performance by the LGC of its obligations hereunder.

(f) There is no litigation or any other proceeding before any court or governmental body or agency pending or, to the knowledge of the LGC, threatened against or involving the LGC to restrain or enjoin the issuance or delivery of the Bond or the execution or delivery by the LGC of this Bond Purchase Agreement and the performance of its obligations hereunder.

5. Payment and Delivery. At 10:00 a.m., Charlotte, North Carolina time, on September 17, 2019, or at such other time or on such earlier or later date as mutually agreed upon, the Town and the LGC will deliver or cause to be delivered the Bond to the Purchaser. Upon such delivery of the Bond, the Purchaser shall pay the purchase price for the Bond as specified in Section 1

hereof to the Trustee in immediately available funds, and the Trustee shall deposit the full purchase price thereof in the manner specified in Section 204 of the Second Supplemental Agreement. The Closing on the Bond will be held at the offices of Womble Bond Dickinson (US) LLP in Raleigh, North Carolina, or at such other place as the Town, the Trustee and the Purchaser may mutually agree upon.

6. Conditions of Closing. The Purchaser has entered into this Bond Purchase Agreement in reliance upon the representations and warranties of the Town and the LGC contained herein and to be contained in the documents and instruments to be delivered at Closing and upon the performance by the Town and the LGC of their respective obligations hereunder, as of the date hereof. Accordingly, the Purchaser's obligation under this Bond Purchase Agreement to purchase and pay for the Bond shall be subject to the performance by the Town and the LGC of their respective obligations to be performed hereunder and under such documents and instruments at or prior to Closing, and shall also be subject to the following conditions:

(a) At the time of Closing (i) the representations and warranties of the Town and the LGC, respectively, contained herein shall be true, complete and correct, (ii) the Order, the Trust Agreement, the Second Supplemental Agreement and this Bond Purchase Agreement shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been agreed to by the Purchaser and (iii) the Town and the LGC shall have duly adopted and there shall be in full force and effect such resolutions as in the opinion of Womble Bond Dickinson (US) LLP, Raleigh, North Carolina ("Bond Counsel"), shall be necessary in connection with the transactions contemplated hereby, and such resolutions shall not have been amended, modified or supplemented, except as may have been agreed to by the Purchaser.

(b) On or prior to the date of Closing, the Purchaser shall have received the following documents in form and substance reasonably satisfactory to the Purchaser:

(1) opinion of Bond Counsel, dated as of the date of Closing, addressed to the Purchaser or together with a reliance letter to the Purchaser, in form and substance satisfactory to the Purchaser;

(2) opinion of the Town Attorney, dated as of the date of Closing, in form and substance satisfactory to the Purchaser;

(3) executed counterparts or copies of the Trust Agreement, the Second Supplemental Agreement and this Bond Purchase Agreement;

(4) certified copies all proceedings of the Town relating to approvals or authorizations for the Bond and the execution and delivery of this Bond Purchase Agreement, including the adoption of the Order;

(5) certified copy of approving resolution of the LGC;

(6) tax certificate of the Town and Internal Revenue Service Form 8038-G;

(7) certificate of an authorized officer of the Town to the effect that the fees of the LGC relating to the Bond have been paid;

(8) such other documents as may be required to be delivered pursuant to Section 208 of the Trust Agreement or Section 204 of the Second Supplemental Agreement; and

(9) such additional certificates (including appropriate incumbency and no-litigation certificates), instruments, opinions or other documents as the Purchaser may reasonably request.

All representations and warranties of the Town and the LGC set forth in this Bond Purchase Agreement shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Purchaser or any person controlling the Purchaser and (ii) acceptance of and payment for the Bond.

7. Limitation of Liability of the Commission. The members, officers and employees of the Commission shall not be personally liable under this Agreement.

8. Counterparts. This Bond Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

9. Notices. Any notice or other communication to be given under this Bond Purchase Agreement may be given by delivering the same in writing by first-class mail, postage prepaid, to the following addresses:

To the Town:

Town of Apex, North Carolina
73 Hunter Street
Apex, North Carolina 27502
Attention: Finance Director

To the LGC:

Local Government Commission
Longleaf Building
3200 Atlantic Avenue
Raleigh, North Carolina 27604
Attention: Secretary

To the Purchaser:

Pinnacle Financial Partners
3515 Glenwood Avenue
Raleigh, North Carolina 27611
Attention: James R. Graham, Senior Vice President

10. Governing Law. This Bond Purchase Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

11. Severability. In the event any provision of this Bond Purchase Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12. E-Verify. The Purchaser 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 Purchaser 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 Purchaser shall require that any subcontractor that it uses in connection with the performance of its obligations under this Bond Purchase Agreement to certify to such subcontractor’s compliance with E-Verify.

13. Role of Purchaser. The Purchaser and its representatives are not registered municipal advisors and do not provide advice to municipal entities or obligated persons with respect to municipal financial products or the issuance of municipal securities (including regarding the structure, timing, terms and similar matters concerning municipal financial products or municipal securities issuances) or engage in the solicitation of municipal entities or obligated persons for the provision by non-affiliated persons of municipal advisory services and/or investment advisory services. With respect to the Order, the Trust Agreement, the Second Supplemental Agreement and this Bond Purchase Agreement (collectively, the “Bond Documents”) or the matters related to the sale and issuance of the Bond and any other information, materials or communications provided by the Purchaser: (a) the Purchaser and its representatives are not recommending an action to any municipal entity or obligated person; (b) the Purchaser and its representatives are not acting as an advisor to any municipal entity or obligated person and do not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to any municipal entity or obligated person with respect to the Bond Documents or the matters related to the sale and issuance of the Bond, information, materials or communications; (c) the Purchaser and its representatives are acting for their own interests; and (d) the Town has been informed that the Town should discuss the Bond Documents and matters related to the sale and issuance of the Bond, and any such other information, materials or communications with its own legal, tax, financial and other advisors that the Town deems appropriate before executing and delivering this Bond Purchase Agreement or acting on such other matters related to the sale and issuance of the Bond or any such other information, materials or communications.

14. Privately Negotiated Loan. The Purchaser hereby acknowledges and agrees that it is purchasing the Bond in evidence of a privately negotiated financing and in that connection the Bond shall not be (a) assigned a separate rating by any municipal securities rating agency, (b) registered with The Depository Trust Company or any other securities depository, (c) issued pursuant to any type of offering document or official statement or (d) assigned a CUSIP number by Standard & Poor's CUSIP Service.

This Bond Purchase Agreement shall become effective upon the execution of the acceptance hereof by a duly authorized member of the LGC and the Town and shall be valid and enforceable as of the time of such acceptance.

PINNACLE FINANCIAL PARTNERS

By: _____
Senior Vice President

[Counterpart signature page to Bond Purchase Agreement, dated September 17, 2019, among the Town of Apex, North Carolina, the Local Government Commission and Pinnacle Financial Partners]

Accepted:

LOCAL GOVERNMENT COMMISSION

By: _____
Secretary

[Counterpart signature page to Bond Purchase Agreement, dated September 17, 2019, among the Town of Apex, North Carolina, the Local Government Commission and Pinnacle Financial Partners]

Approved:

TOWN OF APEX, NORTH CAROLINA

By: _____
Mayor