
SECOND SUPPLEMENTAL TRUST AGREEMENT

Dated as September 1, 2019

Between

TOWN OF APEX, NORTH CAROLINA

and

U.S. BANK NATIONAL ASSOCIATION
Trustee

Authorizing and Securing

\$ _____

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

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EXHIBIT A FORM OF SERIES 2019 BOND A-1
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This SECOND SUPPLEMENTAL TRUST AGREEMENT, dated as of September 1, 2019 (the “Second Supplemental Agreement”), between the TOWN OF APEX, NORTH CAROLINA, a municipal corporation duly organized and existing under the laws of the State of North Carolina (the “Town”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America and having its principal corporate trust office in Charlotte, North Carolina, which is authorized under such laws to exercise trust powers (the “Trustee”);

WITNESSETH:

WHEREAS, the Town has heretofore executed and delivered a Trust Agreement, dated as of May 1, 2009 (the “Trust Agreement”), between the Town and the Trustee, which authorizes the Town to issue revenue bonds in accordance with the terms thereof to finance and refinance, among other things, improvements to the Town’s Combined Enterprise System (as defined in the Trust Agreement);

WHEREAS, the Town has determined to provide for the issuance of the Series 2019 Bond (hereinafter defined) pursuant to the terms and provisions of the Trust Agreement to finance the cost of the Series 2019 Project (hereinafter defined), and that the issuance of the Series 2019 Bond for such purpose will benefit and be in the best interests of the Town; and

WHEREAS, on September 3, 2019, the Town Council of the Town adopted an order authorizing the sale and issuance of the Series 2019 Bond;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 101. Meaning of Words and Terms. Unless otherwise required by the context, capitalized words and terms used herein which are defined in the Trust Agreement shall have the meanings assigned to them therein, and the following words and terms shall have the following meanings:

“Closing” means the delivery of and payment for the Series 2019 Bond.

“Closing Date” means the date of the Closing.

“Interest Payment Date” means each August 1, beginning August 1, 2020.

“Principal Payment Date” means August 1, 2020 to August 1, 2039, inclusive.

“Purchaser” means Pinnacle Financial Partners, as the original purchaser of the Series 2019 Bond.

“Regular Record Date” means, with respect to the Series 2019 Bonds, the day immediately preceding each Interest Payment Date or Principal Payment Date, whether or not a Business Day.

“Second Supplemental Agreement” means this Second Supplemental Trust Agreement, dated as of September 1, 2019, between the Town and the Trustee, as supplemented and amended from time to time as permitted hereby.

“Series 2019 Bond” means the \$_____ Town of Apex, North Carolina Combined Enterprise System Revenue Bond, Series 2019, issued pursuant to the Trust Agreement and this Second Supplemental Agreement.

“Series 2019 Project” means the acquisition, construction and equipping of 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.

“Series 2019 Project Account” means the account created with the Purchaser and so designated by Section 401.

“Series 2019 Subaccount of the Interest Account” means the subaccount created and so designated by Section 401.

“Series 2019 Subaccount of the Principal Account” means the subaccount created and so designated by Section 401.

“Series 2019 Subaccount of the Redemption Account” means the subaccount created and so designated by Section 401.

“State” means the State of North Carolina.

“Trust Agreement” means the Trust Agreement, dated as of May 1, 2009, between the Town and the Trustee, as may be supplemented and amended from time to time as permitted thereby.

Section 102. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number. References herein to particular articles or sections are references to articles or sections of this Second Supplemental Agreement unless some other reference is indicated.

ARTICLE II

AUTHORIZATION, FORM, ISSUANCE AND DELIVERY OF THE SERIES 2019 BOND

Section 201. Authorization and Issuance of Series 2019 Bond. The Town hereby authorizes the issuance of a \$ _____ Town of Apex, North Carolina Combined Enterprise System Revenue Bond, Series 2019 for the purpose of providing funds, together with any other available funds, to (a) pay the costs of the Series 2019 Project and (b) pay the fees and expenses incurred in connection with the sale and issuance of the Series 2019 Bond. The Series 2019 Bond shall be issued under and pursuant to the Constitution and the laws of the State, including the Act, an order adopted by the Town Council of the Town on September 3, 2019, the Trust Agreement and this Second Supplemental Agreement, subject to the conditions set forth herein and therein.

Section 202. Form of Series 2019 Bond. The definitive Series 2019 Bond shall be initially issued as one fully registered bond without coupons numbered R-1 in the aggregate principal amount of \$ _____, and shall be initially registered in the name of the Purchaser. The definitive Series 2019 Bond shall be substantially in the form set forth in Exhibit A attached hereto and made a part hereof, with such appropriate variations, omissions and insertions as are permitted or required by the Trust Agreement or this Second Supplemental Agreement. Notwithstanding anything in the Trust Agreement to the contrary, the Series 2019 Bond may be transferred in the manner specified in the Trust Agreement, but may not be exchanged for any denomination other than the outstanding principal amount thereof.

Notwithstanding any other provisions of the Trust Agreement or this Second Supplemental Agreement to the contrary, the Trustee shall not register the transfer of the Series 2019 Bond to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Local Government Commission. The provisions of this paragraph may not be amended without the prior written consent of the Local Government Commission.

Section 203. Details of Series 2019 Bond. The Series 2019 Bond shall be dated the Closing Date, shall bear interest at a rate of 2.00% per annum (computed on the basis of a 360-day year consisting of twelve 30-day months), such interest being payable annually on each Interest Payment Date, and shall be payable in principal installments on each Principal Payment Date (subject to the right of prior redemption) as set forth in the Series 2019 Bond, with the final principal installment being due and payable on August 1, 2039.

Section 204. Terms and Condition for Issuance of Series 2019 Bond. The Series 2019 Bond shall be executed substantially in the form and in the manner herein and in the Trust Agreement set forth and shall be deposited with the Trustee for authentication, but before the Series 2019 Bond shall be authenticated and delivered to the State Treasurer for redelivery to the Purchaser, there shall be filed with the Trustee, in addition to the items required to be delivered to the Trustee pursuant to Section 208 of the Trust Agreement, the following:

- (a) fully executed copies of the Trust Agreement and this Second Supplemental Agreement;

(b) an opinion of the Town Attorney to the effect that (i) the bond order authorizing the issuance of the Series 2019 Bond has been duly adopted by the Town Council, and the Trust Agreement and this Second Supplemental Agreement have each been duly and validly authorized, executed and delivered by the Town, (ii) no provision of the Trust Agreement or this Second Supplemental Agreement violates any provisions of the Town's charter or, to the best of his knowledge, results in or constitutes a default under any agreement, indenture or other instrument to which the Town is a party or by which the Town may be bound, (iii) the execution and delivery of the Trust Agreement and this Second Supplemental Agreement by the Town and the issuance of the Series 2019 Bond by the Town are not subject to any authorization, consent, approval or review of any governmental body, public officer or regulatory authority not theretofore obtained or effected, (iv) the form, terms, execution, issuance and delivery of the Series 2019 Bond have been duly and validly authorized by the Town and (v) all approvals, consents, authorizations, certifications and other orders of any governmental authority, board, agency or commission having jurisdiction, or filings with any such entities, which would be necessary for the acquisition and construction of the Series 2019 Project, and which are required to have been obtained or to have been filed by the Closing Date, have been obtained or filed; provided, however, that such opinion may except matters pertaining to compliance with federal and State securities laws, The Local Government Finance Act of the State, including, without limitation, the Act, and federal and State taxation;

(c) an opinion of bond counsel to the effect that the Series 2019 Bond has been validly issued in accordance with the provisions of the Trust Agreement and this Second Supplemental Agreement;

(d) a certificate of the Finance Director of Finance of the City as to compliance with Section 716 of the Trust Agreement; and

(e) such other documentation as may reasonably be requested by the Trustee, the Purchaser or bond counsel.

When the documents mentioned in Section 208 of the Trust Agreement and subsections (a) through (e) of this Section shall have been filed with the Trustee, and when the Series 2019 Bond shall have been executed and authenticated as required by this Second Supplemental Agreement, the Series 2019 Bond shall be delivered to or upon the order of the State Treasurer for redelivery to or upon the order of the Purchaser, but only upon the payment by the Purchaser of the purchase price in the amount of \$_____ (representing the par amount of Series 2019 Bond). The Trustee shall cause the proceeds of the Series 2019 Bond to be deposited to the credit of the Series 2019 Project Account held by the Purchaser.

ARTICLE III

REDEMPTION OF SERIES 2019 BOND

Section 301. Redemption of Series 2019 Bond. (a) The principal installments of the Series 2019 Bond shall not be subject to prior redemption except as provided in this Article and in Article III of the Trust Agreement.

(b) The principal installments of the Series 2019 Bond are subject to redemption prior to their stated maturity dates, at the option of the Town, from any moneys that may be available for such purpose, in whole or in part (in whole multiples of \$1,000) on any date at a Redemption Price equal to 100% of the principal installments of the Series 2019 Bond to be redeemed, plus accrued interest to the redemption date.

(c) In connection with any redemption in part of the principal installments of the Series 2019 Bond, such redemption shall be applied to the maturing principal installments in inverse order unless otherwise agreed to by the Owner of the Series 2019 Bond. In the event of such a prepayment in part, the Owner of the Series 2019 Bond shall provide the Town and the Trustee with a new debt service schedule for the Series 2019 Bond which reflects such redemption, which will replace the debt service schedule set forth in Schedule A to the Series 2019 Bond.

Section 302. Redemption Notice. At least ten (10) days but not more than sixty (60) days prior to the redemption date of any principal amount of the Series 2019 Bond to be redeemed, the Trustee shall cause a notice of any such redemption signed by the Trustee to be mailed, first class, postage prepaid, to the Owner of the Series 2019 Bond (unless otherwise waived by the Owner of the Series 2019 Bond). A copy of such notice shall also be given by first class mail, postage prepaid, to the Local Government Commission; provided, however, that failure to give such notice to the Local Government Commission or any defect therein shall not affect the sufficiency of the proceedings for redemption.

Each such notice shall set forth the designation and date of the Series 2019 Bond, the date fixed for redemption, the principal amounts of the Series 2019 Bond to be redeemed, the Redemption Price to be paid, the address and phone number of the Trustee and the date of the redemption notice. If the principal installments of the Series 2019 Bond are redeemed in part only, the notice of redemption shall state also that on or after the redemption date, a new Schedule A to the Bond will be provided to the Owner of the Series 2019 Bonds reflecting the principal installments so redeemed.

Any notice of redemption may state that the redemption to be effected is conditioned upon the receipt by the Trustee on or prior to the redemption date of moneys sufficient to pay the redemption price of and interest on the principal installments of the Series 2019 Bond to be redeemed and that if such moneys are not so received such notice shall be of no force or effect and such principal installments of the Series 2019 Bond shall not be required to be redeemed. In the event that such notice contains such a condition and moneys sufficient to pay the redemption price of and interest on such principal installments of the Series 2019 Bond to be redeemed are not received by the Trustee on or prior to the redemption date, the redemption shall not be made, and

the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

ARTICLE IV

ACCOUNT, SUBACCOUNTS, REVENUES AND FUNDS; OTHER COVENANTS

Section 401. Establishment of Account and Subaccounts. The following subaccounts of the Bond Fund are hereby established with the Trustee:

- (a) Series 2019 Project Account of the Construction Fund;
- (b) Series 2019 Subaccount of the Interest Account;
- (c) Series 2019 Subaccount of the Principal Account; and
- (d) Series 2019 Subaccount of the Redemption Account.

Such account and subaccounts shall be established with and held by the Trustee pursuant to the Trust Agreement and this Second Supplemental Agreement.

Section 402. Application of Money in the Series 2019 Project Account. Money deposited in the Series 2019 Project Account in accordance with Section 204 shall be applied to pay the Costs of the Series 2019 Project and the fees and expenses incurred in connection with the sale and issuance of the Series 2019 Bond, all in accordance with Article IV of the Trust Agreement. The form of requisition to be used to requisition funds from the Series 2019 Project Account in accordance with Article IV of the Trust Agreement is attached hereto as Exhibit B.

Section 403. Revenues Received by the Town. The Town shall, subject to the provisions of Section 502 of the Trust Agreement, deposit or cause to be deposited with the Trustee, from Receipts held in the Revenue Fund, the following amounts, and the Trustee shall apply such amounts to the various accounts and subaccounts specified herein in the following order:

- (a) into the Series 2019 Subaccount of the Interest Account, on the Business Day immediately preceding each Interest Payment Date, the amount required to pay the interest due on the Series 2019 Bond on such Interest Payment Date; and
- (b) into the Series 2019 Subaccount of the Principal Account, on the Business Day immediately preceding each Principal Payment Date, the amount required to pay the principal installment of the Series 2019 Bond coming due on such Principal Payment Date.

In addition, the Trustee shall deposit to the Series 2019 Subaccount of the Redemption Account all amounts as shall be delivered to the Trustee by the Town from time to time with instructions that such amounts be so deposited.

Section 404. Application of Money in the Series 2019 Subaccount of the Redemption Account. The Trustee shall apply money in the Series 2019 Subaccount of the Redemption Account to the redemption of Series 2019 Bond as provided in Article III of this Second Supplemental Agreement. The Trustee shall pay the accrued interest on the Series 2019 Bond or portions thereof to be redeemed to the date of redemption from the Series 2019 Subaccount of the

Interest Account or other available funds of the Town and the Redemption Price of such Series 2019 Bond or portions thereof from the Series 2019 Subaccount of the Redemption Account.

The expenses incurred by the Trustee in connection with the redemption of any portion of the principal installments of the Series 2019 Bond shall be paid by the Town from the Revenue Fund or from any other available moneys of the Town.

Section 405. Investment of Money. Money held for the credit of all accounts and subaccounts established hereunder on deposit with the Trustee or the Purchaser shall be continuously invested and reinvested by the Trustee or the Purchaser, as applicable, in Investment Obligations to the extent practicable. Any such Investment Obligations shall mature not later than the respective dates when the money held for the credit of such subaccounts will be required for the purposes intended. No Investment Obligations in any such account or subaccount may mature beyond the final maturity date of the Series 2019 Bond at the time such Investment Obligations are deposited.

Investment Obligations acquired with money in or credited to any account or subaccount established hereunder shall be deemed at all times to be part of such account or subaccount. Any loss realized upon the disposition or maturity of such Investment Obligations shall be charged against such account or subaccount. The interest accruing on any such Investment Obligations and any profit realized upon the disposition or maturity of such Investment Obligations shall be credited to such Accounts or subaccounts as follows:

<u>Funds, Accounts or Subaccounts</u>	<u>Credited to</u>
Series 2019 Subaccount of the Interest Account	Series 2019 Subaccount of the Interest Account
Series 2019 Subaccount of the Principal Account	Series 2019 Subaccount of the Principal Account
Series 2019 Subaccount of the Redemption Account	Series 2019 Subaccount of the Interest Account
Series 2019 Project Account	Series 2019 Project Account

Any such interest accruing and any such profit realized shall be transferred upon the receipt thereof by the Town or the Trustee, as the case may be, pursuant to the provisions of the Trust Agreement and this Second Supplemental Agreement.

An Authorized Officer shall give to the Trustee written directions respecting the investment of any money required to be invested hereunder, subject, however, to the provisions of this Section, and the Trustee shall then invest such money as so directed. The Trustee may request in writing additional direction or authorization from the Authorized Officer with respect to the proposed investment of money. Upon receipt of such directions, the Trustee shall invest, subject to the provisions of this Section, such money in accordance with such directions.

The Trustee shall sell or reduce to cash in a commercially reasonable manner a sufficient amount of such Investment Obligations whenever it is necessary to do so in order to provide money

to make any payment from any such subaccount. The Trustee shall not be liable or responsible for any loss resulting from any such investment.

Whenever a transfer of money between two or more of the subaccounts is permitted or required, such transfer may be made as a whole or in part by transfer of one or more Investment Obligations at a value determined at the time of such transfer in accordance with Article VI of the Trust Agreement, provided that the Investment Obligations transferred are those in which money of the receiving subaccount could be invested at the date of such transfer.

Section 406. Payment of Principal, Interest and Premium and Pledge of Net Receipts. The Town covenants that it shall promptly pay the principal of and the interest on the Series 2019 Bond issued under the provisions of this Second Supplemental Agreement at the place, on the dates and in the manner provided herein and in said Series 2019 Bond, and any premium required for the retirement of said Series 2019 Bond by purchase or redemption, according to the true intent and meaning thereof. The Town further covenants that it shall faithfully perform at all times all of its covenants, undertakings and agreements contained in this Second Supplemental Agreement and the Trust Agreement, or in the Series 2019 Bond executed, authenticated and delivered hereunder or in any proceedings of the Town pertaining thereto. The Town represents and covenants that it is duly authorized under the Constitution and laws of the State, particularly the Act, to issue the Series 2019 Bond authorized hereby and to pledge the Net Receipts in the manner and to the extent herein and in the Trust Agreement set forth; that all action on its part for the issuance of the Series 2019 Bond has been duly and effectively taken; and that such Series 2019 Bond in the hands of the Owners thereof are and will be valid and binding special obligations of the Town payable according to their terms. The Series 2019 Bond shall be secured pari passu as to the pledge of Net Receipts and shall be entitled to the same benefit and security under the Trust Agreement as all other Bonds and Parity Debt issued or incurred thereunder.

Section 407. Tax Covenants. (a) The Town covenants to do and perform all acts and things permitted by law in order to assure that interest paid on the Series 2019 Bond which was excludable from the gross income of their Owners for federal income taxes on the date of their issuance shall continue to be so excludable.

(b) The Town hereby represents that it reasonably expects that the Town, all entities issuing obligations on behalf of the Town and all subordinate entities of the Town will not issue in the aggregate more than \$10,000,000 of tax-exempt obligations (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined by the Code) during the calendar year 2019. The Town hereby designates the Series 2019 Bonds as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code.

Section 408. Financial Statements. The Town agrees that it will furnish the Owner of the Series 2019 Bond, when the same become available, but in no event later than 210 days after the end of each fiscal year, its annual audited financial statements.

ARTICLE V
THE TRUSTEE

Section 501. Acceptance of Duties by Trustee. The Trustee by execution hereof accepts and agrees to fulfill the trusts imposed upon it by this Second Supplemental Agreement.

ARTICLE VI

SUPPLEMENTAL TRUST AGREEMENTS

Section 601. Modification of Second Supplemental Agreement With Consent of Owner. Subject to the terms and provisions contained in this Section, and not otherwise, the Owner of the Series 2019 Bond shall have the right, from time to time, anything contained in this Second Supplemental Agreement to the contrary notwithstanding, to consent to and approve the execution and delivery by the Town and the Trustee of such supplemental trust agreement as shall be deemed necessary or desirable by the Town for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Second Supplemental Agreement or in any supplemental trust agreement, such consent not to be unreasonably withheld by such Owner.

The Trustee shall, at the expense of the Town, cause notice of the proposed supplemental trust agreement to be mailed, postage prepaid, to the Local Government Commission and the Owner of the Series 2019 Bond as of the date such notice is mailed. Such notice shall briefly set forth the nature of the proposed supplemental trust agreement and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by such Owner.

Whenever, at any time after the date of the mailing of such notice, the Town shall deliver to the Trustee an instrument in writing purporting to be executed by the Owner of the Series 2019 Bond, which instrument shall refer to the proposed supplemental trust agreement described in such notice and shall specifically consent to and approve the execution and delivery thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the Town and the Trustee may execute and deliver such supplemental trust agreement in substantially such form, without liability or responsibility to such Owner.

If the Owner of the Series 2019 Bond has consented to and approved the execution and delivery thereof as herein provided, to the extent permitted by law, the Owner shall have no right to object to the execution and delivery of such supplemental trust agreement, to object to any of the terms and provisions contained therein or the operation thereof, to question the propriety of the execution and delivery thereof, or enjoin or restrain the Town or the Trustee from executing and delivering the same or from taking any action pursuant to the provisions thereof.

Upon the execution and delivery of any supplemental trust agreement pursuant to the provisions of this Section, this Second Supplemental Agreement shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Second Supplemental Agreement of the Town, the Trustee and the Owner of the Series 2019 Bond shall thereafter be determined, exercised and enforced in all respects pursuant to the provisions of this Second Supplemental Agreement, as so modified and amended.

Section 602. Responsibilities of Trustee and Town Under this Article. The Trustee and the Town shall be entitled to exercise their discretion in determining whether or not any proposed supplemental trust agreement or any term or provision therein contained is desirable, after considering the purposes of such instrument, the needs of the Town, the rights and interests of the Owner of the Series 2019 Bond, and the rights, obligations and interests of the Trustee. The

Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of counsel approved by it, who may be bond counsel for the Town, as conclusive evidence that any such proposed supplemental trust agreement does or does not comply with the provisions of this Second Supplemental Agreement, and that it is or is not proper for it, under the provisions of this Article, to execute and deliver such supplemental trust agreement. The Trustee shall not be obligated to enter into any supplemental trust agreement pursuant to this Article that adversely affects the Trustee's own rights, duties or immunities under this Second Supplemental Agreement.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 701. Manner of Giving Notice. All notices, demands and requests to be given to or made hereunder by the Town, the Local Government Commission or the Trustee shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered or certified mail, return receipt requested postage prepaid, addressed as follows:

- (a) As to the Town --

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

- (b) As to the Trustee --

U.S. Bank National Association
EX-NC-WSTC
Hearst Tower
214 N. Tryon Street, 27th Floor
Charlotte, North Carolina 28202
Attention: Bond Administration/Corporate Trust Department

- (c) As to the Local Government Commission --

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

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered or certified mail, postage prepaid, to the other parties by the party effecting the change.

Section 702. Substitute Mailing. If, because of the temporary or permanent suspension of postal service, the Town, the Local Government Commission, the Trustee shall be unable to mail any notice required to be given by the provisions of this Second Supplemental Agreement, such party shall give notice in such other manner as in the judgment of such party shall most effectively approximate mailing, and the giving of notice in such manner shall for all purposes of this Second

Supplemental Agreement be deemed to be in compliance with the requirement for the mailing thereof.

Section 703. Town, Trustee and Owner Alone Have Rights Under Second Supplemental Agreement. Except as herein otherwise expressly provided, including, without limitation, nothing in this Second Supplemental Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Town, the Trustee and the Owner of the Series 2019 Bond, any right, remedy or claim, legal or equitable, under or by reason of this Second Supplemental Agreement or any provision being intended to be and being for the sole and exclusive benefit of the Town, the Trustee and the Owner of the Series 2019 Bond.

Section 704. Effect of Partial Invalidity. In case any one or more of the provisions of this Second Supplemental Agreement or the Series 2019 Bond shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Second Supplemental Agreement or the Series 2019 Bond, but this Second Supplemental Agreement and the Series 2019 Bond shall be construed and enforced as if such illegal or invalid provisions had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in this Second Supplemental Agreement or the Series 2019 Bond shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Town to the full extent permitted by law.

Section 705. Effect of Covenants; Governing Law. All covenants, stipulations, obligations and agreements of the Town contained in this Second Supplemental Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the Town to the full extent permitted by the Constitution and laws of the State. This Second Supplemental Agreement is executed and delivered with the intent that the laws of the State shall govern this construction.

Section 706. Headings. Any heading preceding the text of the several articles hereof, any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Second Supplemental Agreement, nor shall they affect its meaning, construction or effect.

Section 707. Further Authority. The officers of the Town, attorneys and other agents or employees of the Town are hereby authorized to do all acts and things required of them by this Second Supplemental Agreement for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Series 2019 Bond and this Second Supplemental Agreement.

Section 708. Payment Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this Second Supplemental Agreement is not a Business Day, such payment may be made or act performed or right exercised on the next Business Day with the same force and effect as if done on the date provided in this Second Supplemental Agreement.

Section 709. Multiple Counterparts. This Second Supplemental Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

Section 710. E-Verify. The Trustee 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 Trustee 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 Trustee shall require that any subcontractor that it uses in connection with the performance of its obligations under this Second Supplemental Agreement to certify to such subcontractor’s compliance with E-Verify.

IN WITNESS WHEREOF, the Town and the Trustee have caused this Second Supplemental Agreement to be executed in their respective names by their respective duly authorized representatives all as of the date first written above.

TOWN OF APEX, NORTH CAROLINA

[SEAL]

By: _____
Mayor

Attest:

Town Clerk

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: _____
Vice President

FORM OF SERIES 2019 BOND

R-1

\$_____

United States of America
State of North Carolina

TOWN OF APEX, NORTH CAROLINA
COMBINED ENTERPRISE SYSTEM REVENUE BOND
SERIES 2019

The TOWN OF APEX, NORTH CAROLINA (the “Town”), a municipal corporation organized and validly existing in the State of North Carolina, for value received, hereby promises to pay, but solely from the sources and in the manner hereinafter provided, to PINNACLE FINANCIAL PARTNERS, or registered assigns or legal representative, the principal sum of _____ Dollars (\$_____) in annual installments of principal on the days and in the years and amount set forth in Schedule A attached hereto and made a part hereof (each, a “Principal Payment Date”), and to pay, but solely from said sources, interest from the date hereof on the unpaid portion of said principal sum until payment thereof (computed on the basis of a 360-day year consisting of twelve 30-day months) at the rate of 2.00% per annum, such interest being payable on August 1 of each year, beginning August 1, 2020, as set forth in Schedule A attached hereto (each, an “Interest Payment Date”).

The principal and interest so payable and punctually paid or duly provided for on any Principal Payment Date or Interest Payment Date shall be paid to the person in whose name this bond is registered at the close of business on the Regular Record Date for such payment, which shall be the day immediately preceding each Interest Payment Date or Principal Payment Date, whether or not a Business Day. Any such principal or interest not so punctually paid or duly provided for shall forthwith cease to be payable to the registered owner on such Regular Record Date, and may be paid to the person in whose name this bond is registered at the close of business on a Special Record Date for the payment of such defaulted principal or interest to be fixed by the Trustee (hereinafter mentioned), notice whereof being given to the registered owner not less than ten (10) days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which this bond may be listed and upon such notice as may be required by such exchange, or as more fully provided in the Trust Agreement. Payment of the final installment of principal shall be made only upon the presentation and surrender hereof at the principal corporate trust office of U.S. Bank National Association in Charlotte, North Carolina, or its successor (the “Trustee”). All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

This bond is a duly authorized revenue bond of the Town designated “Town of Apex, North Carolina Combined Enterprise System Revenue Bond, Series 2019” issued under and pursuant to the Constitution and laws of the State of North Carolina, including the Act, an order of the Town adopted on September 3, 2019, authorizing the issuance of this bond, a Trust Agreement, dated as

of May 1, 2009 (the “Trust Agreement”), between the Town and the Trustee, and a Second Supplemental Trust Agreement, dated as of September 1, 2019 (the “Second Supplemental Agreement”), between the Town and the Trustee. This bond is being issued for the purpose of providing funds, together with any other available funds, to (a) pay 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 and (b) pay the fees and expenses incurred in connection with the sale and issuance of this bond. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Trust Agreement and the Second Supplemental Agreement.

This bond is a special obligation of the Town secured by a pledge, charge and lien upon Net Receipts on a pari passu basis with the Outstanding Bonds and Parity Debt heretofore or hereafter issued or incurred pursuant to the Trust Agreement. The Town is not obligated to pay the principal of or the interest on this bond except as provided in the Trust Agreement from Net Receipts or certain other monies made available therefor under the Trust Agreement, and neither the faith and credit nor the taxing power of the State of North Carolina or any political subdivision thereof or the Town is pledged to the payment of the principal of and the interest on this bond.

The Trust Agreement provides for the issuance or incurrence from time to time under the conditions, limitations and restrictions set forth therein of additional bonds and Parity Debt secured pari passu as to the pledge of Net Receipts with this bond and any additional bonds or Parity Debt hereafter issued or incurred pursuant to the Trust Agreement.

Reference is made to the Trust Agreement and the Second Supplemental Agreement for a more complete statement of the provisions thereof and of the rights of the Town, the Trustee and the registered owner of this bond. Copies of the Trust Agreement and the Second Supplemental Agreement are available for inspection by the registered owner of this bond at all reasonable times at the principal corporate trust office of the Trustee. By the purchase and acceptance of this bond, the registered owner hereof signifies assent to all of the provisions of the Trust Agreement and the Second Supplemental Agreement.

The Trust Agreement provides for the creation of a special fund designated “Town of Apex Combined Enterprise System Bond Fund” (the “Bond Fund”). Pursuant to the Second Supplemental Agreement, special subaccounts have been created within the various accounts of the Bond Fund with respect to this bond (the “Subaccounts”), which Subaccounts are pledged and charged with the payment of the principal of and the interest on this bond. The Second Supplemental Agreement provides for the deposit of Net Receipts to the credit of the Subaccounts to the extent and in the manner provided in the Trust Agreement and the Second Supplemental Agreement.

The Trustee shall keep at its principal corporate trust office books for the registration of transfer of this bond. The transfer of this bond may be registered only upon such books and as otherwise provided in the Trust Agreement upon the surrender hereof to the Trustee together with an assignment duly executed by the registered owner hereof or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such registration of transfer, the Trustee shall deliver in exchange for this bond a new bond registered in the name of the transferee

in an aggregate principal amount equal to the principal amount of this bond, containing the same principal installments and bearing interest at the same rate. This bond may not be exchanged for any denomination other than the outstanding principal amount thereof.

Notwithstanding any other provisions of the Trust Agreement or the Second Supplemental Agreement to the contrary, the Trustee shall not register the transfer of this bond to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Local Government Commission.

The principal installments of this bond are subject to redemption prior to their stated payment dates, at the option of the Town, from any moneys that may be available for such purpose, in whole or in part (in whole multiples of \$1,000) on any date at a Redemption Price equal to 100% of the principal installments of this bond to be redeemed, plus accrued interest to the redemption date.

At least ten (10) days but not more than sixty (60) days prior to the redemption date of any principal amount of the Series 2019 Bond to be redeemed, the Trustee shall cause a notice of any such redemption signed by the Trustee to be mailed, first class, postage prepaid, to the Owner of this bond.

Any notice of redemption may state that the redemption to be effected is conditioned upon the receipt by the Trustee on or prior to the redemption date of moneys sufficient to pay the redemption price of and interest on the principal installments of the Series 2019 Bond to be redeemed and that if such moneys are not so received such notice shall be of no force or effect and such principal installments of the Series 2019 Bond shall not be required to be redeemed. In the event that such notice contains such a condition and moneys sufficient to pay the redemption price of and interest on such principal installments of the Series 2019 Bond to be redeemed are not received by the Trustee on or prior to the redemption date, the redemption shall not be made, and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

On the date designated for redemption, notice having been given as aforesaid, this bond shall become due and payable at the Redemption Price therefor plus accrued interest to such date.

The registered owner of this bond shall have no right to enforce the provisions of the Trust Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Trust Agreement, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Agreement.

Modifications or alterations of the Trust Agreement and the Second Supplemental Agreement or in any supplement trust agreement thereto may be made only to the extent and in the circumstances permitted by the Trust Agreement and the Second Supplemental Agreement, as the case may be.

This bond, notwithstanding the provisions for registration of transfer stated herein and contained in the Trust Agreement and the Second Supplemental Agreement, at all times shall be, and shall be understood to be, an investment security within the meaning of and for all the purposes

of Article 8 of the Uniform Commercial Code of North Carolina. This bond is issued with the intent that the laws of the State of North Carolina shall govern its construction.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this bond and the execution and delivery of the Trust Agreement and the Second Supplemental Agreement have happened, exist and have been performed as so required.

This bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Trust Agreement or the Second Supplemental Agreement until it shall have been authenticated by the execution by the Trustee of the certificate of authentication endorsed hereon.

IN WITNESS WHEREOF, the Town of Apex, North Carolina, by order duly adopted by its Town Council, has caused this bond to be manually signed by the Mayor and the Town Clerk and its official seal to be impressed hereon, all as of the ____ day of September, 2019.

Mayor

[SEAL]

Town Clerk

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The issuance of the within bond has been approved under the provisions of The State and Local Government Revenue Bond Act.

Secretary, Local Government Commission

CERTIFICATE OF AUTHENTICATION

This bond is a bond of the series designated therein and issued under the provisions of the within mentioned Trust Agreement and Supplemental Agreement.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

Date of authentication: _____

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____

PLEASE INSERT SOCIAL SECURITY NUMBER
OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE

the within bond and all right thereunder, and hereby irrevocably constitutes and appoints _____
_____, attorney, to transfer the within bond on the books
kept for registration thereof, with full power of substitution in the premises.

Dated: _____

In the presence of:

NOTICE: Signature must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

The signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

DEBT SERVICE SCHEDULE

[Debt Service Schedule to be Attached]

FORM OF REQUISITION

REQUISITION NO. _____

REQUISITION

U.S. Bank National Association
EX-NC-WSTC
Hearst Tower
214 N. Tryon Street, 27th Floor
Charlotte, North Carolina 28202
Attention: Bond Administration/Corporate Trust Department

Re: Disbursement from the Series 2019 Project Account of the Construction Fund pursuant to Section 404 of the Trust Agreement, dated as of May 1, 2009 (the “Trust Agreement”), between the Town of Apex, North Carolina (the “Town”) and U.S. Bank National Association, as trustee (the “Trustee”), and Section 402 of the Second Supplemental Trust Agreement, dated as of September 1, 2019 (the “Second Supplemental Trust Agreement”), between the City and the Trustee.

1. The City hereby requests payment in the amount of \$_____ to be paid to _____ [by wire transfer][by check]. Delivery instructions are as follows:

2. The purpose for which the obligation to be paid was incurred was for _____
Said costs constitutes a Cost of the Series 2019 Project within the meaning of the Trust Agreement and the Second Supplemental Trust Agreement.

3. The obligation set forth above has been incurred by the City, is presently due and payable and is a proper charge against the Series 2019 Project Account of the Construction Fund that has not been paid.

4. No notice of any lien, right to lien or attachment upon, or claim affecting the right of any such person to receive payment of, the amount stated in this Requisition has been filed or attached or, if any of the foregoing has been filed or attached, the same either has been or will be satisfied or discharged or that provisions have been made as specified below to protect adequately the Trustee and the Owners from incurring any loss as a result of the same.

[Explain, as applicable, any provisions made for protecting Trustee and Owners from incurring any loss as a result of such payment.]

5. This Requisition does not contain any item representing payment on account of any retainage to which the City is entitled as of the date hereof.

6. This Requisition does not contain any item representing payment of the purchase price or cost of any lands, property, property rights, rights-of-way, easements, franchises or interests in or relating to lands, other than lands, property, property rights, rights-of-way, easements, franchises or interests in or relating to lands, other than lands, property, property rights, rights-of-way, easements, franchises or interests already constituting a part of the Combined Enterprise System.

[Note: If the Requisition covers land or rights therein as described in paragraph 6 above, the following certification should be made instead of the certification required by the above paragraph. In addition, the City should provide the opinion of the City Attorney required by Section 405(b) of the Trust Agreement.]

[6. Such lands, property, property rights, rights-of-way, easements, franchises or interests in or relating to lands, other than lands, property, property rights, rights-of-way, easements, franchises or interests in or relating to lands are being acquired by the City in further of the construction or acquisition of the Series 2019 Project.]

Very truly yours,

Authorized Officer