

The Town Council of the Town of Apex, North Carolina met in a regular meeting in the Council Chambers of the Town Hall located at 73 Hunter Street in Apex, North Carolina, the regular place of meeting, at 7:00 p.m. on September 3, 2019.

Present: Mayor Lance Olive, presiding, and Council Members

Absent: Council Members

Also present: _____

* * * * *

_____ introduced the following order the title of which was read and a copy of which had been previously distributed to each Council Member:

ORDER AUTHORIZING THE SALE AND ISSUANCE BY THE TOWN OF APEX, NORTH CAROLINA OF A NOT TO EXCEED \$10,000,000 COMBINED ENTERPRISE SYSTEM REVENUE BOND, SERIES 2019 AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH

BE IT ORDERED by the Town Council (the “Town Council”) of the Town of Apex, North Carolina (the “Town”):

Section 1. The Town Council does hereby find and determine as follows:

(a) The Town has heretofore entered into a Trust Agreement, dated as of May 1, 2009 (the “Trust Agreement”), with U.S. Bank National Association, as trustee (the “Trustee”), authorizing the issuance of revenue bonds thereunder for the purpose of financing and refinancing the cost of improvements to the Town’s Combined Enterprise System created thereunder.

(b) At a meeting held on July 16, 2019, the Town Council authorized the filing of an application with the North Carolina Local Government Commission (the “Commission”)

requesting approval of the issuance of a not to exceed \$9,500,000 revenue bond of the Town for the purpose of providing funds, together with any other available funds, to pay the cost of acquiring, constructing and equipping an approximately 20,000 square foot administration and operations warehouse facility for the Town's Electric Division to provide space for personnel, vehicles, equipment and supplies, as well as a single secure location for inventory specific to electric operations (the "Project"), which Project will become part of the Combined Enterprise System.

(c) The Town, by resolution, also requested the Commission to sell such revenue bond at private sale without advertisement.

(d) Subsequent to the July 16, 2019 meeting of the Town Council, the Town has determined to increase the not to exceed principal amount of such revenue bond to \$10,000,000 to cover certain additional costs relating to the Project. In connection therewith, the Town Council hereby reaffirms the findings and determinations made by the Town Council at such July 16, 2019 meeting with respect to such revenue bond and the Project based on such increased principal amount.

(e) The Commission is expected to approve the application of the Town for the issuance of such revenue bond in the aggregate principal amount not to exceed \$10,000,000 in accordance with G.S. 159-86.

(f) The Town has determined to issue its Town of Apex, North Carolina Combined Enterprise System Revenue Bond, Series 2019 (the "Series 2019 Bond") in the aggregate principal amount not to exceed \$10,000,000 for the purpose of providing funds, together with any other available funds, to (i) pay the costs of the Project and (ii) pay the fees and expenses incurred in connection with the sale and issuance of the Series 2019 Bond.

(g) The Town proposes to sell the Series 2019 Bond to Pinnacle Financial Partners (the “Purchaser”) pursuant to the provisions of a Bond Purchase Agreement (hereinafter defined) at purchase price equal to the par amount of the Series 2019 Bond, subject to the approval of the Town.

(h) There have been presented to the Town Council at this meeting drafts of the following documents relating to the sale and issuance of the Series 2019 Bond:

(1) Second Supplemental Trust Agreement, to be dated as of September 1, 2019 (the “Second Supplemental Trust Agreement”), between the Town and the Trustee; and

(2) Bond Purchase Agreement, to be dated the date of delivery thereof (the “Bond Purchase Agreement”), among the Commission, the Town and the Purchaser.

(i) The Town has determined that the sale and issuance of the Series 2019 Bond in the manner provided in this order is in the best interests of the Town.

Section 2. Capitalized words and terms used in this order and not defined herein shall have the same meanings given such words and terms in the Trust Agreement and the Second Supplemental Trust Agreement.

Section 3. Pursuant to the provisions of The State and Local Government Revenue Bond Act, as amended (the “Act”), particularly G.S. 159-88, the Town hereby authorizes the issuance of the Series 2019 Bond in the aggregate principal amount not to exceed \$10,000,000 for the purposes set forth in this order. The amount of the Series 2019 Bond has been determined to be sufficient, together with any other available funds, to (a) pay the costs of the 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 mature at such times and in such amounts as shall be set forth in the Second Supplemental Trust Agreement, subject to the provisions of this order.

The Series 2019 Bond shall be initially issued as one fully-registered bond in the principal amount not to exceed \$10,000,000 with payments of principal and interest thereon being due and payable annually on each August 1, beginning August 1, 2020, as set forth in the Second Supplemental Trust Agreement. The final installment payments of the Series 2019 Bond shall be no later than August 1, 2039.

Section 4. The Series 2019 Bond shall be subject to optional redemption at the times, upon the terms and conditions, and at the prices as shall be set forth in the Trust Agreement and the Second Supplemental Trust Agreement.

Section 5. The proceeds of the Series 2019 Bond shall be applied as provided in Section 204 of the Second Supplemental Trust Agreement.

Section 6. The Series 2019 Bond and any other obligations secured on a parity therewith pursuant to the provisions of the Trust Agreement, shall be secured on a parity basis by a pledge, charge and lien upon the Net Receipts and the money and Investment Obligations held in the accounts and subaccounts of the Bond Fund in the manner and to the extent provided in the Trust Agreement and the Second Supplemental Trust Agreement.

Section 7. The proposal submitted by the Purchaser offering to purchase the Series 2019 Bond bearing interest at the rate of 2.00% per annum at a purchase price equal to 100% of the aggregate principal amount of the Series 2019 Bond, subject to the approval thereof by the Commission, is hereby approved. The Local Government Commission is hereby requested to sell and award the Series 2019 Bond to the Purchaser on behalf of the Town, subject to the approval of the Town.

Section 8. The terms and provisions of the Second Supplemental Trust Agreement are hereby approved in substantially the form presented at this meeting, and the Mayor, the Town

Manager and the Finance Director of the Town are each hereby authorized to execute and deliver the Second Supplemental Trust Agreement in substantially the form presented at this meeting, together with such modifications as the Mayor, the Town Manager or the Finance Director, with the advice of counsel, may deem necessary and appropriate, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof. The Town Clerk or any assistant or deputy Town Clerk is hereby authorized and directed to attach the official seal of the Town to the Second Supplemental Trust Agreement and to attest the same to the extent required thereby.

Section 9. The terms and provisions of the Bond Purchase Agreement are hereby approved in substantially the form presented at this meeting, and the Mayor, the Town Manager and the Finance Director of the Town are each hereby authorized to execute and deliver the Bond Purchase Agreement in substantially the form presented at this meeting, together with such modifications as the Mayor, the Town Manager or the Finance Director, with the advice of counsel, may deem necessary and appropriate, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 10. The Mayor, the Town Manager, the Finance Director, the Town Clerk and the Town Attorney of the Town, or any of them or their deputies, are each hereby authorized and directed (without limitation except as may be expressly set forth in this order) to take such action and to execute and deliver such certificates, agreements, instruments, opinions or other documents as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by this order, the Trust Agreement, the Second Supplemental Trust Agreement or the Bond Purchase Agreement.

The officers of the Town and the agents and employees of the Town are hereby authorized and directed to do all acts and things required of them by the provisions of this order, the Series 2019 Bond, the Trust Agreement, the Second Supplemental Trust Agreement or the Bond Purchase Agreement for the full, punctual and complete performance of the terms, covenants, provisions and agreements of the same.

Section 11. The sale and issuance of the Series 2019 Bond are hereby approved subject to the terms and conditions set forth in this order.

Section 12. The Town hereby represents that it reasonably expects that it, all subordinate entities thereof and all issuers issuing obligations on behalf 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 in the Code and certain refunding obligations) during calendar year 2019. In addition, the Town hereby designates the Series 2019 Bond as a “qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 13. This order shall take effect immediately upon its adoption.

Upon motion of Council Member _____, the foregoing order entitled “ORDER AUTHORIZING THE SALE AND ISSUANCE BY THE TOWN OF APEX, NORTH CAROLINA OF A NOT TO EXCEED \$10,000,000 COMBINED ENTERPRISE SYSTEM REVENUE BOND, SERIES 2019 AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH” was adopted by the following vote:

Ayes: _____

Noes: _____

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I, Donna B. Hosch, MMC, NCMCC, Town Clerk of the Town of Apex, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of so much of the proceedings of the Town Council of said Town at a regular meeting held on September 3, 2019, as relates in any way to the adoption of the foregoing order and that said proceedings are to be recorded in the minute books of said Town Council.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and the official seal of the Town this 3rd day of September, 2019.

Town Clerk

[SEAL]