

BOND PURCHASE AGREEMENT

among

Town of Apex, North Carolina,
Local Government Commission

and

Pinnacle Bank

concerning

\$5,000,000
Town of Apex, North Carolina
General Obligation Street and Sidewalk Improvement Bond
Series 2021

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Series 2021

May 20, 2021

Town of Apex, North Carolina
Apex, North Carolina

Local Government Commission
Raleigh, North Carolina

Ladies and Gentlemen:

Pinnacle Bank (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 General Obligation Street and Sidewalk Improvement Bond, Series 2021, dated the date hereof, in the aggregate principal amount of \$5,000,000 (the “Bond”). The purchase price for the Bond shall be \$5,000,000, representing the aggregate 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 aggregate principal amount of \$5,000,000, shall be dated as of May 20, 2021, and shall bear interest from its date at a rate of 1.05% per annum and shall mature, subject to prior redemption, in annual principal installments, all as more particularly described in Exhibit A attached hereto, with a final maturity on May 1, 2031. The Bond shall be issued under and pursuant to The Local Government Bond Act, as amended, Article 7, as amended, of Chapter 159 of the General Statutes of North Carolina (the “Act”), an order adopted by the Town Council of the Town on September 1, 2015 (the “Bond Order”), which Bond Order was approved by the vote of a majority of the qualified voters of the Town who voted thereon at a referendum duly called and held on November 3, 2015, and a resolution adopted by said Town Council on April 27, 2021 authorizing the sale and issuance of the Bond (the “Resolution”).

The proceeds of the Bond are to be used to provide funds, together with other available funds, to (a) construct, extend, widen, resurface and improve streets, sidewalks and multi-use paths inside and outside the corporate limits of said Town, including, without limitation, any related land, easements, rights of way and streetscape, traffic signal and utility improvements (the "Project") and (b) pay the fees and expenses incurred in connection with the sale and issuance of the Bond.

2. Representations of the Purchaser; Purchase for Own 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 Project and the Bond as requested by the Purchaser; and

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

(b) The Purchaser further acknowledges and represents in respect of the Bond that a part of the Purchaser's business consists of making loans as evidenced by 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 making the loan evidenced by the purchase of the Bond. The Purchaser has made such investigation of the Bond and of the financial condition and operations of the Town as it deems necessary to evaluate the merits and risks inherent in making the loan evidenced by the purchase of 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 entity approved by the LGC, including participating arrangements among such entities.

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 financing for the Project by causing the Bond to be issued.

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

(c) The Bond has been duly authorized pursuant to the Constitution and the laws of the State of North Carolina, including the Act.

(d) The Bond Order and the Resolution have been duly adopted by the Town Council, are in full force and effect and have not been modified or amended in any manner.

(e) The Town has duly authorized (i) the execution and delivery of this Bond Purchase Agreement, (ii) the issuance, sale and delivery of the Bond to the Purchaser and (iii) such action as may be required on the part of the Town to consummate the transactions contemplated by such documents.

(f) This Bond Purchase Agreement constitutes a legal, valid and binding obligation of the Town enforceable in accordance with its 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.

(g) 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 Bond Order, the Resolution or the Bond, 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.

(h) The execution and delivery of this Bond Purchase Agreement, the adoption of the Bond Order and the Resolution 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 as specified in the Bond and the Bond Order) 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.

(i) 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 thereunder, and any such consent, authorization or order so obtained is in full force and effect.

(j) 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.

(k) 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 said Town Council, (iii) the properties or assets or the condition, financial or otherwise, of the Town, (iv) the validity or enforceability of this Bond Purchase Agreement, the Bond Order, the Resolution or the Bond (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 federal or State of North Carolina tax treatment of interest on the Bond.

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., North Carolina time, on May 20, 2021, 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. Simultaneously with such delivery of the Bond, the Purchaser shall pay the purchase price for the Bond as specified in Section 1 hereof to the Town in immediately available funds to the account with the Purchaser specified by the Town. 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 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 Bond Order, the Resolution 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 other orders and 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 orders and 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) an 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) an executed copy of this Bond Purchase Agreement;

(3) certified copies of 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 Bond Order and the Resolution;

(4) certified copy of the approving resolutions of the LGC authorizing the sale and issuance of the Bond; and

(5) executed copies of the Tax Certificate of the Town and Internal Revenue Service Form 8038-G; and

(6) 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. Financial Reporting. The Town hereby agrees to provide to the Purchaser (or any permitted assignee of the Bond) within 210 days of the end of each fiscal year of the Town, the audited financial statements of the Town for the fiscal year then ended. This requirement may be satisfied by posting such audited financial statements of the Town to the Electronic Municipal Market Access website operated by the Municipal Securities Rulemaking Board or any successor thereto. The Town also hereby agrees to provide to the Purchaser (or any permitted assignee of the Bond) upon request any other reasonable financial information relating to the Town or the Bond (excluding any privileged or confidential information required or permitted by law to be withheld). The provisions in this Section shall survive the sale and delivery of the Bond and the termination of this Bond Purchase Agreement.

8. Limitation of Liability of the LGC. The members, officers and employees of the LGC shall not be personally liable under this Bond Purchase Agreement.

9. 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.

10. 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 Bank
3515 Glenwood Avenue, Suite 100
Raleigh, NC 27612
Attention: Jim Graham

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

12. 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.

13. Role of Purchaser. The Town acknowledges and agrees that (a) the Purchaser's purchase of the Bond is in an arm's length commercial transaction with the Town in which the Purchaser is acting solely as a principal and not as a municipal advisor, financial advisor or fiduciary to the Town or any other person or entity regardless of whether the Purchaser or an affiliate has or is currently acting as such on a separate transaction; (b) the Purchaser 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 the Purchaser or its affiliates have provided other services or are currently providing other services to the Town on other matters); (c) the only obligations the Purchaser has to the Town with respect to the transaction contemplated hereby expressly are set forth herein and in the related financing documents; and (d) the Town has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

14. Privately Negotiated Loan. The Town acknowledges and agrees that the Purchaser 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.

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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 BANK

By: _____
Senior Vice President

[Counterpart signature page to Bond Purchase Agreement, dated May 20, 2021, among the Town of Apex, North Carolina, the Local Government Commission and Pinnacle Bank]

Accepted:

LOCAL GOVERNMENT COMMISSION

By: _____
Secretary

[Counterpart signature page to Bond Purchase Agreement, dated May 20, 2021, among the Town of Apex, North Carolina, the Local Government Commission and Pinnacle Bank]

Approved:

TOWN OF APEX, NORTH CAROLINA

By: _____
Finance Director

EXHIBIT A

\$5,000,000
 Town of Apex, North Carolina
 General Obligation Street and Sidewalk Improvement Bond
 Series 2021

DEBT SERVICE SCHEDULE

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
November 1, 2021		\$23,479.17	\$ 23,479.17
May 1, 2022	\$500,000.00	26,250.00	526,250.00
November 1, 2022		23,625.00	23,625.00
May 1, 2023	500,000.00	23,625.00	523,625.00
November 1, 2023		21,000.00	21,000.00
May 1, 2024	500,000.00	21,000.00	521,000.00
November 1, 2024		18,375.00	18,375.00
May 1, 2025	500,000.00	18,375.00	518,375.00
November 1, 2025		15,750.00	15,750.00
May 1, 2026	500,000.00	15,750.00	515,750.00
November 1, 2026		13,125.00	13,125.00
May 1, 2027	500,000.00	13,125.00	513,125.00
November 1, 2027		10,500.00	10,500.00
May 1, 2028	500,000.00	10,500.00	510,500.00
November 1, 2028		7,875.00	7,875.00
May 1, 2029	500,000.00	7,875.00	507,875.00
November 1, 2029		5,250.00	5,250.00
May 1, 2030	500,000.00	5,250.00	505,250.00
November 1, 2030		2,625.00	2,625.00
May 1, 2031	500,000.00	2,625.00	502,625.00