

# FORWARD DELIVERY BOND PURCHASE AGREEMENT

**Town of Purcellville, Virginia**

**\$[\_\_\_\_\_]**

## **General Obligation Refunding Bond, Series 2023**

This Forward Delivery Bond Purchase Agreement (this “Agreement”) is dated [\_\_\_\_\_, 2020], and is between [\_\_\_\_\_, a national banking association] (together with its successors and assigns, the “Purchaser”), and the Town of Purcellville, Virginia (the “Town”).

1. Purchase and Sale. Upon the terms and conditions and in reliance upon the representations, warranties, covenants and agreements set forth herein, the Purchaser hereby agrees to purchase the Town’s \$[\_\_\_\_\_] General Obligation Refunding Bond, Series 2023 (the “Bond”), dated the date of payment therefor and the delivery thereof (such payment and delivery being herein sometimes called the “Bond Closing”). The purchase price for the Bond shall be \$[\_\_\_\_\_] (the “Purchase Price”). The Purchaser shall pay the Purchase Price for the Bond on the day of the Bond Closing by wiring \$[\_\_\_\_\_] in same day funds, in accordance with the written instructions of the Town.

The Bond will be issued pursuant to Article VII of the Constitution of the Commonwealth of Virginia, the provisions of the Public Finance Act of 1991 (Chapter 26 of Title 15.2 of the Code of Virginia, 1950, as amended) (the “Public Finance Act”), and a resolution adopted by the Town Council (the “Council”) on March 24, 2020 (the “Bond Resolution”).

The Bond will be a general obligation of the Town secured by an irrevocable pledge of the Town’s full faith and credit and taxing power. The Town may elect to issue the Bond as a federally taxable bond or as a federally tax-exempt bond. The Bond will be dated the Bond Closing Date (as hereinafter defined), will mature in principal installments on the dates and in the amounts, will bear interest at the rate and will have the terms set forth in the form of the Bond attached hereto as Exhibit A-1, if it is issued on federally tax-exempt basis, or Exhibit A-2, if it is issued on a federally taxable basis.

Proceeds of the Bond will be used to redeem the Town’s \$[\_\_\_\_\_] General Obligation Refunding Bond, Series 2020B (Federally Taxable) (the “Taxable Bond”), on [\_\_\_\_\_, 2023], and to pay related costs of issuance and redemption.

2. Representations, Warranties and Agreements. (a) The Town represents and warrants to and agrees with the Purchaser that, as of the date hereof (i) the purchase and sale of the Bond pursuant to this Agreement is an arm’s-length commercial transaction between the Town and the Purchaser, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Purchaser is not a fiduciary of the Town, (iii) the Purchaser has not assumed an advisory or fiduciary responsibility in favor of the Town with respect to the transaction contemplated hereby or the discussions, undertakings and procedures leading thereto and the Purchaser has no obligation to the Town with respect to the transaction contemplated hereby except the obligations expressly set forth in this Agreement and (iv) the Town has consulted with its own legal, financial and other advisors to the extent it has

deemed appropriate. The Purchaser has financial and other interests that differ from those of the Town.

(b) Within [ ] days after the applicable fiscal year end, the Town will make available its audited annual financial statements for each fiscal year on the Town's website so long as any portion of the Bond is outstanding. Within [ ] days of adoption of the applicable annual budget, the Town will provide to the Purchaser or otherwise make available on the Town's website a copy of its annual budget for each fiscal year so long as any portion of the Bond is outstanding. In no event shall a failure of the Town to provide the financial information described above constitute an event of default under the Bond or the Resolution, and specific performance of the Town's reporting obligations shall be the only remedy available to the Purchaser in the event of such a failure by the Town.

3. The Bond Closing. The Town shall deliver the Bond to the Purchaser, duly executed, together with the other documents hereinafter mentioned, and, subject to the terms and conditions hereof, the Purchaser shall accept such delivery and pay the Purchase Price of the Bond in federal funds to or at the direction of the Town (such delivery of and payment for the Certificates herein called the "Bond Closing") at 10:00 a.m., local time, on [ ], 2023, or at such later time or on such later date as may be mutually agreed upon by the Town and the Purchaser (such date herein called the "Bond Closing Date"). The Bond Closing shall occur at the offices of Hunton Andrews Kurth LLP, Richmond, Virginia, the Town's bond counsel, or such other place as shall have been mutually agreed upon by the Town and the Purchaser. The Bond shall be prepared and delivered as a registered bond in the definitive form as described in the Bond Resolution.

4. Bond Closing Conditions. The Purchaser is entering into this Agreement in reliance upon the representations, warranties and agreements of the Town contained herein, and in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Bond Closing, and upon the performance of the covenants and agreements herein, as of the date hereof and as of the date of the Bond Closing. Accordingly, the Purchaser's obligation under this Agreement to purchase, to accept delivery of and to pay for the Bond shall be conditioned upon the performance of the covenants and agreements to be performed hereunder and under such other documents and instruments to be delivered at or prior to the Bond Closing, and shall also be subject to the following additional conditions:

(a) At the date of execution hereof and at the Bond Closing, the Bond Resolution shall have been duly approved and adopted by the Council, shall be in full force and effect and shall not have been amended, modified or supplemented, except to the extent to which the Purchaser shall have given its prior written consent.

(b) At the Bond Closing, there will be no litigation at law or in equity or any proceeding before any governmental agency pending or, to the best of the Town's knowledge, threatened against the Town with respect to (i) the existence of the Town, (ii) the authority of the Town to execute and deliver the Bond and the related documents, (iii) if the Bond is issued as a federally tax-exempt bond, the federal tax-exempt status of interest on the Bond, (iv) the validity or enforceability of this Agreement, the Bond and any other agreement or instrument to which the Town is a party and that is used or

contemplated for use in the consummation of the transactions contemplated hereby, (v) the issuance or delivery of the Bond, (vi) the title of the officers who have executed or will execute the Bond and the related documents, (vii) any authority or proceedings relating to the execution and delivery of the Bond and the related documents by the Town or the application of the proceeds of the Bond or (viii) the ability of the Town to levy and collect an annual ad valorem tax, over and above all other taxes authorized or limited by law and without limitation as to rate or amount, on all taxable property in the Town sufficient to pay when due the principal of and interest on the Bond.

(c) At the Bond Closing, the Purchaser shall receive the following:

(i) A certified copy of the Bond Resolution, including a certification that the Bond Resolution remains in full force and effect as of the Bond Closing Date, and certified copies of any additional proceedings taken by the Town with respect to the authorization and issuance of the Bond;

(ii) An opinion of Hunton Andrews Kurth LLP, Bond Counsel, dated the Bond Closing Date, in substantially the form attached hereto as Exhibit B;

(iii) An executed certificate of the Town Attorney, dated the Bond Closing Date, in substantially the form attached hereto as Exhibit C;

(iv) An executed certificate of the Town, dated the Bond Closing Date and signed by the Town Manager or other appropriate officials satisfactory to the Purchaser, in substantially the form attached hereto as Exhibit D;

(v) The executed Bond;

(vi) If the Bond is issued as a federally tax-exempt bond, an executed Non-Arbitrage and Tax Compliance Certificate, dated the Bond Closing Date, in substantially the form attached hereto as Exhibit E; and

(vii) If the Bond is issued as a federally tax-exempt bond, a copy of Internal Revenue Service Form 8038-G prepared with respect to the Bond and ready for filing.

All of the evidence, opinions, letters, certificates, instruments and other documents, mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are fully completed and executed by all required parties in the form specified herein or are otherwise in form and substance satisfactory to the Purchaser and its counsel.

If the conditions to the obligations of the Purchaser to purchase, to accept delivery of and to pay for the Bond contained in this Agreement are not satisfied, or if the obligations of the Purchaser to purchase, to accept delivery of and to pay for the Bond shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Purchaser nor the Town shall be under any further obligation hereunder, except that the respective obligations of the Town and the Purchaser set forth in Paragraph 5 hereof shall continue in full force and effect.

5. Expenses. The Purchaser shall be under no obligation to pay, and the Town shall pay, such expenses incident to the issuance of the Bond and the performance of the Town's obligations hereunder, including, but not limited to the following expenses: (a) the cost of preparing this Agreement and the Bond, and all related documentation, (b) the fees and disbursements of the Bond Counsel and the Town Attorney, (c) the fees and disbursements of the financial advisor to the Town and (d) the fees and disbursements of any experts, accountants, consultants or advisors retained by the Town. The Town shall pay the fee of counsel to the Purchaser in the amount of \$[ ] on the Bond Closing Date.

6. Waiver of Jury Trial. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or any other document executed in connection herewith or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver, (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and the other documents contemplated hereby by, among other things, the mutual waivers and certifications in this Paragraph and (c) certifies that this waiver is knowingly, willingly and voluntarily made.

7. Counterparts. This Agreement may be executed in several counterparts, which together shall constitute one and the same instrument.

8. Virginia Law Governs. The validity, interpretation and performance of this Agreement shall be governed by the laws of the Commonwealth of Virginia without giving effect to principles of conflict of laws.

9. Assignability. This Agreement may not be assigned by either party hereto; provided, however, that notwithstanding the foregoing, with the prior consent of the Town (which consent will not be unreasonably withheld, but which may be conditioned upon a determination that the assignee is at least as credit-worthy as the Purchaser), the Purchaser may assign this Agreement to any affiliate of the Purchaser.

10. Notices. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to the Town or the Purchaser shall be sent by United States certified mail, first-class postage prepaid, return receipt requested, or by overnight common courier, addressed as follows (unless changed as hereinafter provided):

Town: Town of Purcellville, Virginia  
221 South Nursery Avenue  
Purcellville, Virginia 20132  
Attn: Town Manager  
Telephone: [ ]

Purchaser: [ ]  
[ ]  
[ ]  
Attn: [ ]  
Telephone: [ ]

Upon written notice to the respective parties mentioned above given in the manner provided above, any of the above or subsequent addresses may be changed.

11. Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior agreements and understandings related to such subject matter.

[Remainder of Page Intentionally Left Blank]

[\_\_\_\_\_]

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

**TOWN OF PURCELLVILLE,  
VIRGINIA**

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

**FORM OF FEDERALLY TAX-EXEMPT BOND**

**REGISTERED**

**REGISTERED**

**No. R-1**

**[\_\_\_\_\_, 2023]**

**UNITED STATES OF AMERICA**

**COMMONWEALTH OF VIRGINIA**

**TOWN OF PURCELLVILLE**

**General Obligation Refunding Bond, Series 2023**

The Town of Purcellville, Virginia (the “Town”), for value received, promises to pay, to \_\_\_\_\_ (the “Bank”), or its registered assigns or legal representative, the principal sum of [\_\_\_\_\_] **DOLLARS (\$\_\_\_\_\_)**], together with interest from the date of this bond on the unpaid principal, at the Interest Rate (as hereinafter defined), calculated on the basis of a 360-day year of twelve 30-day months. Interest shall be payable semi-annually on each \_\_\_\_\_ and \_\_\_\_\_, commencing \_\_\_\_\_, and principal shall be payable annually on \_\_\_\_\_ in the amounts and years as set forth on Schedule I attached hereto, except for the final installments of interest and principal which shall be payable at final maturity on \_\_\_\_\_. Principal and interest are payable in lawful money of the United States of America by the Town Treasurer, who has been appointed paying agent and registrar for this bond, or by such bank or trust company as may be appointed by the Town as successor paying agent and registrar (the “Registrar”).

This bond is issued pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991. This bond is issued pursuant to a resolution adopted by the Town Council on March 24, 2020 (the “Resolution”), and a Forward Delivery Bond Purchase Agreement dated [\_\_\_\_\_, 2020], between the Town and the Bank, to redeem the outstanding principal amount of the Town’s General Obligation Refunding Bond, Series 2020B (Federally Taxable), and to pay related costs of issuance and refunding.

The full faith and credit of the Town are irrevocably pledged for the payment of principal of and interest on this bond. Unless other funds are lawfully available and appropriated for timely payment of this bond, the Council shall levy and collect an annual ad valorem tax, over and above all other taxes authorized or limited by law and without limitation as to rate or amount, on all taxable property in the Town sufficient to pay when due the principal of and interest on this bond.

**Definitions**

The following defined terms shall have the following meanings in this bond:

“Business Day” means a day on which banking business is transacted, but not including a Saturday, Sunday, legal holiday or any other day on which banking institutions are authorized or required by law to close in the Commonwealth of Virginia.

“Code” means the Internal Revenue Code of 1986, as amended.

“Default Rate” means a per annum rate equal to \_\_\_\_%, but in no event shall such the Default Rate exceed the maximum rate permitted by law.

“Determination of Taxability” means the occurrence, after the date hereof, of (a) a final ruling or judgment entered by a state or federal court of competent jurisdiction or (b) an official and final action taken or announced by the Internal Revenue Service or by a federal or state official, in each case determining that interest paid or payable on all or a portion of this bond is or was includable in the gross income of the Bank for federal or state income tax purposes under the Code; provided, however, that no such ruling or judgment or official action of the Internal Revenue Service or state official will be considered final for this purpose unless the Town or the Bank has been given written notice and, if it is so desired and is legally allowed, the Town and the Bank, as applicable, have been afforded the opportunity to contest the same, and until the conclusion of any appellate review, if sought.

“Event of Default” means failure of the Town to pay principal of or interest on this bond when the same becomes due and payable and the continuation of such failure for \_\_\_\_ Business Days after written notice is received from the Bank.

“Interest Rate” means a per annum rate equal to (a) prior to a Determination of Taxability, \_\_\_\_%, (b) after a Determination of Taxability, the Taxable Rate and (c) so long as an Event of Default is continuing, the Default Rate.

“Taxable Rate” means a per annum rate equal to \_\_\_\_%.

## **Terms**

Upon a Determination of Taxability and for as long as this bond remains outstanding, the Interest Rate on this bond shall be converted to the Taxable Rate. Upon the occurrence of an Event of Default and for so long as the Event of Default is continuing, the Interest Rate on this bond shall be converted to the Default Rate.

If the date on which any payment is due with respect to this bond is not a Business Day, the payment shall be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of payment.

If any payment of principal of or interest on this bond is more than 15 calendar days past due, the Town shall be assessed a late payment charge equal to 6.00% of such past due payment.

[Insert Prepayment Provisions]

The Registrar shall treat the registered owner of this bond as the person exclusively entitled to payment of principal of and interest on this bond and the exercise of all rights and powers of the



owner, except that interest payments shall be made to the person shown as the registered owner on the registration books on the first day of the month in which each interest payment date occurs.

All acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia to happen, exist or be performed precedent to and in connection with the issuance of this bond have happened, exist and have been performed, and this bond, together with all other indebtedness of the Town, is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

**IN WITNESS WHEREOF**, the Town of Purcellville, Virginia, has caused this bond to be to be signed by its [Mayor or Vice Mayor], its seal to be affixed hereto and attested by the [Town Clerk or Deputy Clerk], and this bond to be dated the date first written above.

(SEAL)

Virginia

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[Vice] Mayor, Town of Purcellville,

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[Deputy] Town Clerk, Town of Purcellville, Virginia

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned sell(s), assign(s) and transfer(s) unto

\_\_\_\_\_  
(Please print or type name and address, including postal zip code, of Transferee)

PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF TRANSFeree:

\_\_\_\_\_  
: :  
: :  
: :  
\_\_\_\_\_

the within bond and all rights thereunder, hereby irrevocably constituting and appointing

\_\_\_\_\_,  
Attorney, to transfer said bond on the books kept for the registration thereof, with full power of  
substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed  
by an Eligible Guarantor Institution such  
as a Commercial Bank, Trust Company,  
Securities Broker/Dealer, Credit Union  
or Savings Association who is a member  
of a medallion program approved by The  
Securities Transfer Association, Inc.

\_\_\_\_\_  
(Signature of Registered Owner)

NOTICE: The signature above must  
correspond with the name of the  
registered owner as it appears on the  
front of this bond in every particular,  
without alteration or enlargement or any  
change whatsoever.

## **SCHEDULE I**

[DEBT SERVICE SCHEDULE TO BE ATTACHED]

**FORM OF FEDERALLY TAXABLE BOND**

**REGISTERED**

**REGISTERED**

**No. R-1**

**[\_\_\_\_\_, 2023]**

**UNITED STATES OF AMERICA**

**COMMONWEALTH OF VIRGINIA**

**TOWN OF PURCELLVILLE**

**General Obligation Refunding Bond, Series 2023**

The Town of Purcellville, Virginia (the “Town”), for value received, promises to pay, to \_\_\_\_\_ (the “Bank”), or its registered assigns or legal representative, the principal sum of [\_\_\_\_\_ **DOLLARS (\$\_\_\_\_\_)**], together with interest from the date of this bond on the unpaid principal, at the Interest Rate (as hereinafter defined), calculated on the basis of a 360-day year of twelve 30-day months. Interest shall be payable semi-annually on each \_\_\_\_\_ and \_\_\_\_\_, commencing \_\_\_\_\_, and principal shall be payable annually on \_\_\_\_\_ in the amounts and years as set forth on Schedule I attached hereto, except for the final installments of interest and principal which shall be payable at final maturity on \_\_\_\_\_. Principal and interest are payable in lawful money of the United States of America by the Town Treasurer, who has been appointed paying agent and registrar for this bond, or by such bank or trust company as may be appointed by the Town as successor paying agent and registrar (the “Registrar”).

This bond is issued pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991. This bond is issued pursuant to a resolution adopted by the Town Council on March 24, 2020 (the “Resolution”), and a Forward Delivery Bond Purchase Agreement dated [\_\_\_\_\_, 2020], between the Town and the Bank, to redeem the outstanding principal amount of the Town’s General Obligation Refunding Bond, Series 2020B (Federally Taxable), and to pay related costs of issuance and refunding.

The full faith and credit of the Town are irrevocably pledged for the payment of principal of and interest on this bond. Unless other funds are lawfully available and appropriated for timely payment of this bond, the Council shall levy and collect an annual ad valorem tax, over and above all other taxes authorized or limited by law and without limitation as to rate or amount, on all taxable property in the Town sufficient to pay when due the principal of and interest on this bond.

**Definitions**

The following defined terms shall have the following meanings in this bond:

“Business Day” means a day on which banking business is transacted, but not including a Saturday, Sunday, legal holiday or any other day on which banking institutions are authorized or required by law to close in the Commonwealth of Virginia.

“Default Rate” means a per annum rate equal to \_\_\_\_%, but in no event shall such the Default Rate exceed the maximum rate permitted by law.

“Event of Default” means failure of the Town to pay principal of or interest on this bond when the same becomes due and payable and the continuation of such failure for \_\_\_\_ Business Days after written notice is received from the Bank.

“Interest Rate” means a per annum rate equal to [\_\_\_\_]%, unless an Event of Default has occurred and is continuing, in which case the Interest Rate shall equal the Default Rate.

### **Terms**

Upon the occurrence of an Event of Default and for so long as the Event of Default is continuing, the Interest Rate on this bond shall be converted to the Default Rate.

If the date on which any payment is due with respect to this bond is not a Business Day, the payment shall be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of payment.

[Insert Prepayment Provisions]

The Registrar shall treat the registered owner of this bond as the person exclusively entitled to payment of principal of and interest on this bond and the exercise of all rights and powers of the owner, except that interest payments shall be made to the person shown as the registered owner on the registration books on the first day of the month in which each interest payment date occurs.

All acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia to happen, exist or be performed precedent to and in connection with the issuance of this bond have happened, exist and have been performed, and this bond, together with all other indebtedness of the Town, is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

**IN WITNESS WHEREOF**, the Town of Purcellville, Virginia, has caused this bond to be to be signed by its [Mayor or Vice Mayor], its seal to be affixed hereto and attested by the [Town Clerk or Deputy Clerk], and this bond to be dated the date first written above.

(SEAL)

Virginia

\_\_\_\_\_  
[Vice] Mayor, Town of Purcellville,

\_\_\_\_\_  
[Deputy] Town Clerk, Town of Purcellville, Virginia

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned sell(s), assign(s) and transfer(s) unto

\_\_\_\_\_  
(Please print or type name and address, including postal zip code, of Transferee)

PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF TRANSFeree:

\_\_\_\_\_  
: :  
: :  
: :  
\_\_\_\_\_

the within bond and all rights thereunder, hereby irrevocably constituting and appointing

\_\_\_\_\_,  
Attorney, to transfer said bond on the books kept for the registration thereof, with full power of  
substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed  
by an Eligible Guarantor Institution such  
as a Commercial Bank, Trust Company,  
Securities Broker/Dealer, Credit Union  
or Savings Association who is a member  
of a medallion program approved by The  
Securities Transfer Association, Inc.

\_\_\_\_\_  
(Signature of Registered Owner)

NOTICE: The signature above must  
correspond with the name of the  
registered owner as it appears on the  
front of this bond in every particular,  
without alteration or enlargement or any  
change whatsoever.

**SCHEDULE I**

[DEBT SERVICE SCHEDULE TO BE ATTACHED AT CLOSING]

**EXHIBIT B**

**FORM OF OPINION OF BOND COUNSEL**

[To be Attached]



**EXHIBIT C**

**FORM OF CERTIFICATE OF TOWN ATTORNEY**

[To be Attached]

**EXHIBIT D**

**FORM OF CERTIFICATE OF TOWN**

[To be Attached]

**EXHIBIT E**

**FORM OF NON-ARBITRAGE AND TAX COMPLIANCE CERTIFICATE**

[To be Attached]