SMITHFIELD
SPECIAL TOWN COUNCIL AGENDA
September 11th, 2020 at 4:00 p.m.
Held at Smithfield Center, 220 N. Church Street

A. UPCOMING MEETINGS AND ACTIVITES FOR THE REMAINDER OF SEPTEMBER:

September 15 - 6:30 p.m. – Board of Historic and Architectural Review
September 28 - 3:00 p.m. – Town Council Committee Meetings (Consecutive)
Public Safety Committee
Water and Sewer Committee
Finance Committee
September 29 - 3:00 p.m. – Town Council Committee Meetings (Consecutive)
Parks and Recreation Committee
Public Works Committee
Public Buildings and Welfare Committee

NOTE: All of the above public meetings will be held at the Smithfield Center, unless otherwise noted.

ACTION SECTION

1. Motion to Authorize the Execution of Contract Documents for the Refinancing of a 2017 Note to a General Obligation Bond for Various Capital Projects

2. Adjournment:

NOTICE OF INTENT TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT. Reasonable efforts will be made to provide assistance or special arrangements to qualified individuals with disabilities in order to participate in or attend Town Council Meetings. ADA compliant hearing devices are available for use upon request. Please call (757) 356-9939 at least 24 hours prior to the meeting date so that proper arrangements may be made.

CERTIFICATE OF THE CLERK OF THE
TOWN OF SMITHFIELD, VIRGINIA

The undersigned Clerk of the Town of Smithfield, Virginia (the "Town"), certifies that:

1. A meeting of the Council (the "Council") of the Town was held on September 11, 2020 (the "Meeting").

2 Attached hereto is a true, correct and complete copy of a resolution (the "Resolution") of the Council entitled "Resolution of the Town Council of the Town of Smithfield, Virginia, Authorizing the Issuance and Sale of its General Obligation Refunding Bond, Series 2020A-2 in a Maximum Principal Amount Not to Exceed $4,205,000, and the Execution and Delivery of Certain Documents Prepared in Connection Therewith," as recorded in full in the minutes of the Meeting and duly adopted by a majority of the members of the Council present and voting during the Meeting.

3. A summary of the members of the Council present or absent at the Meeting, and the recorded vote with respect to the Resolution, is set forth below:

			Voting		
Member Name	Present	Absent	Yes	No	Abstaining
T. Carter Williams, Mayor	_____	_____	_____	_____	_____
Michael G. Smith, Vice Mayor	_____	_____	_____	_____	_____
Valerie C. Butler	_____	_____	_____	_____	_____
Wayne Hall	_____	_____	_____	_____	_____
Elizabeth Haywood	_____	_____	_____	_____	_____
Randy Pack	_____	_____	_____	_____	_____
Renee Rountree	_____	_____	_____	_____	_____

4. The Resolution has not been repealed, revoked, rescinded or amended, and is in full force and effect on the date hereof.

WITNESS my signature and the seal of the Town, this 15th day of September, 2020.

(SEAL)

_____
Clerk of Town of Smithfield, Virginia

BOND PURCHASE AND LOAN AGREEMENT

Between: **JPMorgan Chase Bank, N.A. (the "Lender")**
Mail Code DC2-2513
875 15th St NW, Floor 05
Washington, DC, 20005-2221
Attention: Business Banking - Government and Nonprofit
Telephone: (571) 264-9200

And: **Town of Smithfield, Virginia (the "Issuer")**
911 S. Church Street
P.O. Box 246
Smithfield, VA 23431
Attention: Ellen Minga, Town Treasurer
Telephone: : (757) 365-4200

Dated: **As of September 1, 2020**

This Bond Purchase and Loan Agreement (the "Agreement") is entered into as of the date set forth above between the Town of Smithfield, Virginia (the "Issuer") and JPMorgan Chase Bank, N.A. (the "Lender"). For and in consideration of the premises hereinafter contained, Issuer hereby agrees to issue and sell to the Lender, and the Lender agrees to purchase and accept, the Bond, as defined below, and make the Loan on the terms set forth herein.

ARTICLE I. DEFINITIONS

As used in this Agreement, the following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Bond Purchase and Loan Agreement executed between Issuer and Lender, including all exhibits, schedules and attachments attached hereto.

"Authorizing Statute" means the Virginia Public Finance Act of 1991 in the Code of Virginia, as amended.

"Bond" means the Issuer's $4,201,000 General Obligation Refunding Bond, Series 2020A-2, in the form substantially as attached hereto as Attachment 1.

"**Bond Counsel**" means Estes Law & Consulting.

"Code" is defined in Section 3.1(c).

"Event of Default" is defined in Section 6.1.

"Issue Date" is September 15, 2020.

"Issuer" means the entity identified as such in the first paragraph of this Agreement, and its permitted successors and assigns.

"Lender" means the entity identified as such in the first paragraph of this Agreement, and its successors and assigns.

"Loan" means the lending of proceeds of the Bond by the Lender, in exchange for the security of the Issuer's Bond and its execution of this Agreement, to the Issuer of funds to pay for the costs of the Project and the payment of related costs incurred in issuing the Bond.

"Owner" means, when used with reference to the Bond, any person who shall be the registered owner of the Bond as provided in the registration books of the Issuer.

"Project" means the refinancing of the Issuer's Taxable Note of 2017 and the related permanent financing of various capital projects, including recreational facilities comprised of the renovation, rehabilitation and equipping facilities located at Windsor Castle Park; acquisition and outfitting of the Town's ball fields; renovations to the police evidence building and the Clontz Park boat ramp; and various utility system repairs and improvements, together with related engineering, administrative and financing costs incurred in issuing the Bond.

"Resolution" means the resolution of the Council of Issuer adopted September 11, 2020, authorizing the execution and delivery of this Agreement and the issuance of the Bond.

"State" means the Commonwealth of Virginia.

ARTICLE II. PURCHASE OF BOND

Section 2.1 **Purchase and Form of Bond**. On the terms, and subject to the conditions set forth in this Agreement, Lender hereby agrees to extend credit as evidenced through its purchase of the Bond, at a price of 100 percent of the par amount thereof. The principal amount of the Bond shall be $4,201,000. The form of the Bond is attached hereto as Attachment 1. The Bond is issued pursuant to the Authorizing Statute and the Resolution.

Section 2.2 **Interest; Installments**. The Bond shall bear interest at the rate of 1.526% per annum, calculated on a 30/360-day basis. Issuer will repay the Bond by wire transfer to the Owner in accordance with written instructions delivered by the Owner, or by such other medium acceptable to the Issuer and to the Owner, in semi-annual installments, including principal on April 1 and October 1, beginning April 1, 2021, and interest on the outstanding principal balance on each April 1 and October 1, beginning October 1, 2020 and with all such payments ending October 1, 2032. Payments of principal and interest shall be made consistent with the Schedule I affixed to the Bond, which such Schedule is incorporated herein and made a part of this Agreement by this reference.

Section 2.3 **Application**. Any payments by Issuer to the Owner of the Bond shall be applied first to pay accrued interest, and second to pay principal.

Section 2.4 **Option to Prepay**. After October 1, 2027, the Issuer may prepay, in whole or in part, the outstanding principal balance, plus any additional sums due under this Agreement and interest accrued to such prepayment date. Partial redemption of the Bond shall be applied to installments of principal in inverse order of their respective due dates. The Issuer shall provide written notice to the Owner of its intention to prepay at least fifteen (15) days in advance of such prepayment date.

ARTICLE III. COVENANTS AND CONDITIONS

Section 3.1 **Covenants of the Issuer**. As of the Issue Date, Issuer represents, covenants and warrants for the benefit of Lender as follows:

(a) Issuer is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority to issue the Bond, and to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations thereunder.

(b) Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a public body corporate and politic. To the extent Issuer should merge with another entity under the laws of the State, Issuer agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Issuer's rights and shall assume Issuer's obligations under the Bond and this Agreement.

(c) Issuer has been duly authorized to issue the Bond and to execute and deliver this Agreement by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of the Bond and this Agreement. On the Issue Date, Issuer shall cause to be delivered an opinion of Bond Counsel as to the due authorization, validity and enforceability of the Bond, with such changes therein as may be approved by Lender.

(d) Issuer will provide Lender with current financial statements and budgets and such financial or other information of Issuer as Lender may request, in such form and containing such information as may be requested by Lender. Within 270 days of the close of each fiscal year of the Issuer, the Issuer shall provide Lender the complete audited financial statements of the Issuer.

(e) The issuance of the Bond and the execution, delivery and performance of this Agreement and compliance with the provisions thereof by Issuer does not conflict with or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease or other instrument to which Issuer is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Issuer or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of Issuer or to which it is subject.

Section 3.2 **Representations and Covenants of Lender**. The Lender, as the initial registered Owner of the Bond, makes the following representations as the basis for its undertakings hereunder:

(a) The Lender acknowledges that the Bond is being sold to the Lender as evidence of a commercial loan and in reliance on the registration exemption contained in Section 3(a)(2) of the Securities Act of 1933 and, as such, is not being registered with the Securities Exchange Commission. The Lender acknowledges that it has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of making a commercial loan as evidenced by the Bond. The Lender is making the Loan to the Issuer, which is evidenced by the Bond, as a commercial loan for the Lender's own account with the present intent to hold the loan to maturity and not with a present view toward resale or distribution; provided, however, the Lender acting as agent, and, further, acting on its own, without any expense or any liability to the Issuer, may sell the Bond, or any portion thereof representing beneficial ownership interests therein, with qualified investors or other institutions similar to the Lender. In such event, notwithstanding anything to the contrary contained herein, the Lender shall be fully responsible for compliance with the Securities Act of 1933, including rules and regulations promulgated by the Securities and Exchange Commission thereunder, and any other applicable federal or state laws, in connection with dividing its participation with others or any resale or any distribution of all or any portion of the Bond, including any expenses, costs or other liabilities, and shall indemnify the Issuer for any losses incurred by it, including reasonable attorneys' fees, as a result of such placement. The Lender acknowledges and agrees that the Issuer shall not be responsible for, or have any liability or other expense in connection with any adverse effect in connection with the Lender's dividing its participation with others or any resale or any distribution of all or any portion of the Bond. Furthermore, the Issuer makes no representations as to the tax-exempt status of any "stripped" securities or other marketing by the Lender of the respective components of the Bond, and the Lender, as the initial registered Owner of the Bond, shall be responsible and liable therefor.

(b) The Lender agrees that any future offer, sale, assignment or transfer of the Bond, if any, including any participation therein, that may occur in the future, would be undertaken only after notice to the Issuer and pursuant to applicable federal and state securities and tax laws.

(c) The Lender agrees that before any future sale, assignment or transfer of the Bond, it shall indicate in writing upon the Bond the principal amount of all principal payments, if any, which have been made thereon and the last day to which interest has been paid. Nothing contained herein shall operate to postpone the date on which, or change the form in which, principal, premium, if any, or interest is payable under the terms of the Bond, or shall impair the obligation of the Issuer to make payments as required by the Bond, all in accordance with the terms and provisions thereof.

Section 3.3 **Conditions.** Lender's obligation to purchase the Bond on the Issue Date is subject to satisfaction of the following conditions:

(a) Lender shall have received a certified copy of the duly authorized Resolution;

(b) Lender shall have received an original of this Agreement and the Bond, duly executed by Issuer in accordance with the Resolution;

(c) Lender shall have received an opinion of Bond Counsel, in form and substance satisfactory to Lender's counsel, to the effect that:

i. The Bond has been authorized and issued in accordance with the Constitution and laws of the State; and

ii. the Resolution, this Agreement, and the Bond are valid and legally binding obligations of Issuer, enforceable against Issuer in accordance with their terms, except to the extent that enforceability may be limited by or rendered ineffective by (A) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights generally; (B) the application of equitable principles and the exercise of judicial discretion in appropriate cases; (C) common law and statutes affecting the enforceability of contractual obligations generally; and (D) principles of public policy concerning, affecting or limiting the enforcement of rights or remedies against governmental entities such as Issuer.

(d) Lender shall have received a certificate from its local counsel that the Issuer is not subject to any litigation that could have a material adverse impact on Issuer's financial condition, the validity and enforceability of the Bond, this Agreement or any of the transactions contemplated thereby.

(e) Lender shall have received the certificate of a duly authorized representative of Issuer to the effect that:

i. there is no action, suit, proceeding, or investigation at law or in equity before or by any court or government, city or body pending or, to the best of the knowledge of Issuer, threatened against Issuer to restrain or enjoin the adoption of the Resolution or the execution and delivery of this Agreement or the issuance of the Bond, or the collection and application of funds as contemplated by this Agreement and the Bond, which in the reasonable judgment of Issuer, would have a material and adverse effect on the ability of Issuer to pay amounts due under the Bond, and

ii. the adoption of the Resolution and the execution and delivery of this Agreement and the Bond do not and will not conflict in any material respect with or constitute on the part of Issuer a breach of or default under any law, charter provision, court decree, administrative regulation, resolution, ordinance, or other agreement or instrument to which Issuer is a party or by which it is bound;

(f) Lender shall have received such additional legal opinions, certificates, proceedings, instruments, or other documents as Lender or Bond Counsel may reasonably request to evidence compliance by Issuer with the legal requirements for adoption of the Resolution, execution and delivery of this Agreement, issuance of the Bond and the due performance or satisfaction by Issuer of all agreements then to be performed and all conditions then to be satisfied by Issuer.

(g) Issuer shall have satisfied all of Lender's required conditions precedent to closing.

ARTICLE IV. PAYMENT AND SECURITY

Section 4.1 **Payment of Bond.** Issuer shall promptly pay the principal of, and interest and premium, if any, on the Bond in lawful money of the United States of America, in such amounts and on such dates as described in this Agreement and the Bond, without presentation or surrender. Issuer shall pay the Owner a charge on any delinquent payments in an amount sufficient to cover all additional costs and expenses incurred by Lender from such delinquent payment. In addition, Issuer shall pay a late charge of five percent (5.00%) on all delinquent payments of principal of and interest and premium, if any, on the Bond.

Section 4.2 **Tax Collection**. Until full payment and performance of all obligations of Issuer under the Bond and this Agreement, the Issuer will take all action necessary to ensure that a sufficient portion of its tax and other revenues collected during the current year are set aside or otherwise made available for payment of the Bond in accordance with its terms. Issuer certifies that the principal amount of the Bond does not exceed the anticipated taxes and revenues of Issuer for the current year.

Section 4.3 **Use of Proceeds**. Unless otherwise waived by the Lender, the Issuer shall only use proceeds for the purposes of the Loan.

Section 4.4 **Full Faith and Credit.** The full faith and credit of Issuer is irrevocably pledged for the payment of the principal of, and premium, if any, and interest on the Bond and all other payment obligations under this Agreement. Unless other funds are lawfully available and appropriated for timely payment of the Bond and all other payment obligations under this Agreement, Issuer 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 locally taxable property in Issuer sufficient to pay when due the principal of and premium, if any, and interest on the Bond and all other payment obligations under this Agreement.

Section 4.5 **Obligations Absolute**. To the extent permitted by law, the obligations of Issuer to make the payments required under the Bond and this Agreement and to perform and observe the other agreements on its part contained in the Bond and this Agreement shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever while any portion of the Bond remains unpaid regardless of any contingency, act of God, event or cause whatsoever. Issuer shall pay absolutely the amounts required to be paid hereunder and under the Bond, regardless of any rights of set-off, recoupment, abatement or counterclaim that Issuer might otherwise have against Lender, its successors or assigns or any other party or parties.

Section 4.6 **Agreement to Survive**. The provisions of this Agreement will survive the issuance of the Bond and the payment of the purchase price therefor. This Agreement will terminate upon the payment in full of all amounts due under the Bond and this Agreement, provided that any prepayment is undertaken in accordance with Section 4.5 of this Agreement and further provided that Section 5.3 of this Agreement will survive its termination.

ARTICLE V. ASSIGNMENT; RISK OF LOSS

Section 5.1 **Assignment by Owner**. The Issuer expressly acknowledges that this Agreement and the Bond, including (without limitation) the right to receive payments required to be made by the Issuer hereunder and to compel or otherwise enforce performance by the Issuer of its other obligations hereunder, may be transferred, assigned and reassigned in whole or in part to one or more assignees or subassignees by the Lender at any time subsequent to their execution without the necessity of obtaining the consent of the Issuer to (i) an affiliate of the Owner or (ii) banks, insurance companies or other financial institutions and their affiliates. Nothing herein shall limit the right of the Owner or its assignees to sell or assign participation interests in the Bond to one or more entities listed in (i) or (ii) of this paragraph. Any assignment by the Owner shall be deemed, without any further action, to assign the Owner's interest in this Agreement. Issuer agrees to execute all documents, including notices of assignment that may be reasonably requested by the Owner or any further assignee to evidence any such assignment or reassignment, including without limitation the issuance of a new Bond of like tenor registered in the name of the assignee upon surrender of the old Bond. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to Issuer, and Issuer shall execute and deliver a new Bond of like tenor in lieu of and in substitution for the Bond so lost,

destroyed or stolen, upon receipt of a written request from the Owner reasonably satisfactory to Issuer.

Section 5.2 **Assignment by Issuer**. NONE OF ISSUER'S OBLIGATIONS UNDER THE BOND OR THIS AGREEMENT MAY BE ASSIGNED BY ISSUER FOR ANY REASON, WITHOUT THE PRIOR WRITTEN CONSENT OF THE OWNER.

Section 5.3 **Risk of Loss Covenants**. To the extent permitted by law, Issuer shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Bond or this Agreement, except that Issuer shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from the gross negligence or willful misconduct of the Lender.

ARTICLE VI. DEFAULT

Section 6.1 **Events of Default Defined**. Any of the following shall constitute an "Event of Default" under this Agreement:

(a) Failure by Issuer to make any payment of principal of, or interest or premium on, the Bond, or other payment required to be paid under this Agreement, at the time specified therein;

(b) Failure by Issuer to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Bond or this Agreement, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Issuer by the Owner, unless the Owner shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, the Owner will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Issuer within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Issuer in this Agreement or the Bond shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Issuer shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Issuer, or of all or a substantial part of the assets of Issuer, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Issuer in any bankruptcy, reorganization or insolvency proceeding;

(e) Issuer shall default on any of its indebtedness issued (including any leases, liens, loans or other obligations subject to the annual appropriation of funds) whether or not on a parity basis with the Bond, which indebtedness remains uncured after any applicable cure period permitted by such indebtedness; or

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Issuer or of all or a substantial part of the assets of Issuer, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

Section 6.2 **Remedies on Default**. If an Event of Default shall have occurred, the Owner may proceed against Issuer and its agents, officers and employees to protect and enforce the rights of the Owner under the Bond and this Agreement by mandamus or by other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained in the Bond or in this Agreement, or in an award of execution of any power herein granted for the enforcement of any proper, legal or equitable remedy as the Owner may deem most effectual to protect and to enforce its rights under the Bond or this Agreement, or to enjoin any act or thing which may be unlawful or in violation of any

right of the Owner under the Bond or this Agreement, or to require Issuer to act as if it were the trustee of an express trust, or any combination of such remedies.

Section 6.3 **No Remedy Exclusive.** No remedy conferred upon or reserved to the Owner in this Agreement or the Bond is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or the Bond now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Owner to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article.

Section 6.4 **Costs and Attorney Fees.** Upon the occurrence of an Event of Default by Issuer in the performance of any term of this Agreement or the Bond, Issuer agrees to pay to the Owner or reimburse the Owner for, in addition to all other amounts due hereunder, all of Lender's costs of collection, including reasonable attorney fees, whether or not suit or action is filed thereon. In the event suit or action is instituted to enforce any of the terms of this Agreement or the Bond, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

ARTICLE VII. MISCELLANEOUS

Section 7.1 **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, or by overnight courier to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee at its address as it appears on the registration books maintained by Issuer.

Section 7.2 **Anti-Money, Laundering, Bank Secrecy and Patriot Act Compliance.** The Issuer and its Registrar agrees to observe and comply, to the extent applicable, with all anti-money laundering laws, rules and regulations including, without limitation, regulations issued by the Office of Foreign Assets Control of the United States Department of Treasury and the Financial Crimes Enforcement Network of the U.S. Department of Treasury. The Issuer and its Registrar shall provide to the Owner such information as the Owner may require to enable the Owner to comply with its obligations under the Bank Secrecy Act of 1970, as amended ("BSA"), or any regulations enacted pursuant to the BSA or any regulations, guidance, supervisory directive or order of the New York State Department of Financial Services or Federal Deposit Insurance Corporation. To help the United States government fight funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account or enters into a loan/lease transaction. When an account is opened and from time to time as be required by the Owner's internal policies and procedures, the Owner shall be entitled to ask for such information that will allow it to identify relevant parties. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Owner may ask for documentation to verify its formation and existence as a legal entity. The Owner may also ask to see financial statements, licenses, identification, and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Parties acknowledge that a portion of the identifying information set forth herein is being requested by the Owner in connection with Title III of the USA Patriot Act, Pub.L. 107-56 (the "Act"), and the Issuer and its Registrar agree to provide any additional information requested by the Lender in its sole discretion in connection with the Act or any other legislation, regulation, regulatory order or published guidance to which the Owner is subject, in a timely manner.

Section 7.3 **Further Assurances.** Issuer agrees to execute such other and further documents and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of the Owner, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement.

Section 7.4 **Binding Effect**. This Agreement and the Bond shall inure to the benefit of and shall be binding upon the Owner and Issuer and their respective successors and permitted assigns.

Section 7.5 **Severability**. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.6 **Waiver of Jury Trials**. Issuer and Lender hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to the Bond or this Agreement or the actions of Lender or Issuer in the negotiation, administration, performance or enforcement hereof.

Section 7.7 **Amendments, Changes and Modifications**. This Agreement may only be amended in writing by the Owner and Issuer.

Section 7.8 **Execution in Counterparts**. This Agreement hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.9 **Applicable Law**. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 7.10 **Captions**. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 7.11 **No Fiduciary Relationship**. The Issuer acknowledges and agrees that: (i) the transaction contemplated by this Agreement is an arm's length, commercial transaction between the Issuer and the Lender in which the Lender is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the Issuer; (ii) the Lender has not assumed any advisory or fiduciary responsibility to the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto; (iii) the only obligations the Lender has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this Agreement; and (iv) the Issuer has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lender and Issuer have caused the Bond Purchase and Loan Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

Lender: JPMorgan Chase Bank, N.A.
By:
Name: Tasnim Segal
Title: Vice President

Address for Notice:
Mail Code DC2-2513
875 15th St NW, Floor 05
Washington, DC, 20005-2221
Attention: Business Banking –
Government and Nonprofit
Telephone: (571) 264-9200

Issuer: Town of Smithfield, Virginia
By:
Name: T. Carter Williams
Title: Mayor

Attest:
By:
Name: Michael R. Stallings, Jr.
Title: Town Manager

Address for Notice:
911 S. Church Street
P.O. Box 246
Smithfield, VA 23431
Telephone: (757) 365-4200
Attention: Town Manager

ATTACHMENT 1

Form of Bond

[See Transcript Tab 3]

Prepared by: Howard P. Estes, Jr.
Estes Law & Consulting
13207 Broncroft Ct.
Midlothian, VA 23113

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SMITHFIELD, VIRGINIA, AUTHORIZING THE ISSUANCE AND SALE OF ITS GENERAL OBLIGATION REFUNDING BOND, SERIES 2020A-2 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $4,205,000, AND THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS PREPARED IN CONNECTION THEREWITH

WHEREAS, the Town of Smithfield, Virginia (the "Town"), has determined that it is advisable and in the interest of the Town to refinance the Town's Taxable Note of 2017 and the related permanent financing of various capital projects, including recreational facilities comprised of the renovation, rehabilitation and equipping facilities located at Windsor Castle Park; acquisition and outfitting of the Town's ball fields; renovations to the police evidence building and the Clontz Park boat ramp; and various utility system repairs and improvements, together with related engineering, administrative and financing costs ("the Project"); and

WHEREAS, the Town intends to finance the Project through the issuance of its general obligation bond under such terms, limitations and conditions as set forth in this Resolution; and

WHEREAS, the Council has previously received a proposal from Davenport Public Finance to solicit proposals from banking institutions and received a proposal from JPMorgan Chase Bank, N.A. (the "Purchaser") to purchase the Bond (as defined below); and

WHEREAS, after such solicitation, staff recommends the proposal from the Purchaser for the loan and the sale of the Town's general obligation bond to the Purchaser in accordance with the terms of a Bond Purchase and Loan Agreement between the Purchaser and the Town (the "Agreement"), the form of which has been presented to this meeting;

BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF SMITHFIELD, VIRGINIA:

1. Issuance of Bond and Use of Proceeds. Pursuant to the Constitution of the Commonwealth of Virginia and the Public Finance Act of 1991, as amended (the "Public Finance Act"), Title 15.2, Chapter 26 of the Code of Virginia of 1950, as amended (the "Virginia Code") and without regard to any requirements or restrictions contained in any charter or special act of the Town, the Council hereby authorizes the issuance and sale of a general obligation bond of the Town in an aggregate principal amount set forth below, together with other monies of the Town, to provide funds to finance the Project.

2. Authorization of Bond Purchase and Loan Agreement. The form of the Bond Purchase and Loan Agreement submitted to this meeting is hereby approved. The Mayor and the Town Manager, either of whom may act (each an "Authorized Signatory"), are authorized to execute the Agreement in substantially such form, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by such official, whose approval shall be evidenced conclusively by the execution and delivery thereof. The issuance and

sale of the bond to the Purchaser shall be upon the terms and conditions of the Agreement. The proceeds of such bond shall be applied in the manner set forth in the Agreement. All capitalized terms used but not otherwise defined herein shall have the same meaning as set forth in the Agreement.

3. Bond Details. The bond shall be issued as a single, fully registered bond, shall be designated "General Obligation Refunding Bond, Series 2020A-2" (the "Bond"), shall be numbered R-1, and shall be in substantially the form of Exhibit A to this Resolution as hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officers signing such Bond. The Council authorizes the issuance and sale of the Bond on such terms as shall be satisfactory to the Authorized Signatory; provided however, that the Bond (a) shall be in a principal amount not to exceed $4,205,000; (b) shall mature no later than October 1, 2032; and (c) shall bear interest on the outstanding principal balance thereof at a rate of interest approved by the Authorized Signatory, with such rate to not exceed 1.526% (provided that default interest may be payable at a rate in excess thereof as provided in the Agreement and the rate may adjust as provided in the Bond and the Agreement), shall accrue certain other ongoing costs and expenses upon the terms and conditions described in the Agreement. As set forth in the Agreement, the Town agrees to pay any applicable late payment or similar costs and expenses described therein. Subject to the preceding terms, the Council further authorizes the Authorized Signatory to determine the final terms, purchase price, initial interest rate, interest rate adjustment provisions, maturity date, and amortization schedule of the Bond. No further action shall be necessary on the part of the Town so long as such provisions are within the limits prescribed in this Resolution.

4. Payment and Redemption Provisions. The principal of and premium, if any, and interest on the Bond shall be payable as set forth in the Bond and the Agreement. The Bond shall be subject to redemption on the terms set forth in the related Agreement. The principal of and premium, if any, and interest on the Bond shall be payable via wire transfer in lawful money of the United States of America, without presentation or surrender.

5. Execution and Form of Bond. The Bond shall be signed by the Mayor or Vice-Mayor and the Town's seal shall be affixed thereon and attested by the Clerk or Assistant Clerk of the Town. The Bond shall be issued as a typewritten bond in substantially the form of Exhibit A, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the Authorized Signatory, whose approval shall be evidenced conclusively by the execution and delivery of the Bond.

6. Pledge of Full Faith and Credit. The full faith and credit of the Town are hereby irrevocably pledged for the payment of principal of and premium, if any, and interest on the Bond. Unless other funds are lawfully available and appropriated for timely payment of the 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 locally taxable property in the Town sufficient to pay when due the principal of and premium, if any, and interest on the Bond.

7. Preparation of Printed Bond; Mutilated or Destroyed Bond. The printed Bond may be executed by manual or facsimile signature of the Mayor or Vice-Mayor, the Town's seal affixed thereto and attested by the Clerk or Deputy Clerk of the Town; provided, however, that if

both such signatures are facsimiles, the bond shall not be valid until it has been authenticated by the manual signature of the Registrar and the date of authentication noted thereon. If the Bond has been mutilated, lost or destroyed, the Town shall execute and deliver a new bond of like date and tenor in exchange and substitution for, and upon cancellation of, such mutilated Bond or in lieu of and in substitution for such lost or destroyed Bond; provided, however, that the Town shall so execute and deliver only if the registered owner has paid the reasonable expenses and charges of the Town in connection therewith and, in the case of a lost or destroyed Bond has filed with the Town an affidavit reasonably satisfactory to the Town that such Bond was lost or destroyed. The Bond surrendered in any such exchange shall be canceled.

8. Registration and Transfer of the Bond. The Town appoints the Town Treasurer as registrar (the "Registrar") and paying agent for the Bond and shall maintain registration books for the registration and registration of any transfer of the Bond. Upon surrender of the Bond at the office of the Registrar, together with an assignment duly executed by the registered owner or its duly authorized attorney or legal representative in such form as shall be reasonably satisfactory to the Registrar, the Town shall execute, and the Registrar shall authenticate and deliver in exchange, a new Bond or bonds having an equal aggregate principal amount, of the same form and maturity, bearing interest at the same rates and registered in such name as requested by the then registered owner or its duly authorized attorney or legal representative. Any such exchange shall be at the expense of the Town, except that the Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The Registrar shall treat the registered owner as the person or entity exclusively entitled to payment of principal, interest and premium, if any, and the exercise of all other rights and powers of the owner, except that regular installments shall be paid to the person or entity shown as owner on the registration books on the fifteenth day of the month preceding each payment date.

9. Delivery of Bond. The Mayor or Vice-Mayor and Clerk of the Town are authorized and directed to take all proper steps to have the Bond prepared and executed in accordance with its terms and to deliver it to the Purchaser thereof as set forth in the Agreement.

10. Election to Apply Public Finance Act. Pursuant to Section 15.2-2601 of the Virginia Code, it is hereby elected to have the Public Finance Act apply to the Bond exclusively without regard to any charter or local act that might otherwise apply.

11. Limitation of Liability of Officials of Town. No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of an officer, employee, member of Council, or agent of the Town in his or her individual capacity, and no officer of the Town or member of Council executing the Bond shall be liable personally on the Bond or be subject to any personal liability or accountability by reason of the issuance thereof. No officer, employee or agent of the Town shall incur any personal liability with respect to any other action taken by him or her pursuant to this resolution provided he or she acts in good faith.

12. Other Actions. All other actions of officials of the Town in conformity with the purposes and intent of this Resolution and the Agreement and in furtherance of the issuance and sale of the Bond are ratified, approved and confirmed. The officials of the Town are authorized and directed to execute and deliver on behalf of the Town such agreements and other instruments,

documents or certificates, and to do and perform such things and acts, as they shall deem necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Bond or the Agreement, and all of the foregoing, previously done or performed by such officers of the Town, are in all respects approved, ratified and confirmed.

13. Headings. Any headings in this resolution are solely for convenience of reference and shall not constitute a part of the resolution nor shall they affect its meaning, construction or effect.

14. Constitutional Authority and Severability. The Bond shall be issued under the provisions of Article VII, Section 10(a) of the Constitution of Virginia. The principal of and interest on the Bond shall be payable from ad valorem taxes to be levied without limitation as to rate or amount on all property in the Town subject to taxation, to the extent other funds of the Town are not lawfully available and appropriated for such purpose. If any court of competent jurisdiction shall hold any provision of this Resolution to be invalid and unenforceable, such holding shall not invalidate any other provision hereof.

15. Filing of Resolution. The Authorized Signatory and Clerk to the Town are authorized and directed to see to the prompt filing of a certified copy of this Resolution in the Circuit Court having jurisdiction over the Town, in accordance with Sections 15.2-2607 and 15.2-2627 of the Public Finance Act.

16. Effective Date. This Resolution shall take effect immediately.

Adopted: September 11, 2020.

_____
Mayor of the Town of Smithfield, Virginia

ATTEST:

_____
Clerk of the Town of Smithfield, Virginia

EXHIBIT A

(Form of Bond)

REGISTERED **DATED DATE: September 15, 2020**

R-1 **MATURITY DATE: October 1, 2032**

UNITED STATES OF AMERICA

COMMONWEALTH OF VIRGINIA

TOWN OF SMITHFIELD

$_____,000
GENERAL OBLIGATION REFUNDING BOND
SERIES 2020A-2

THE TOWN OF SMITHFIELD, VIRGINIA (the "Town"), for value received, acknowledges itself indebted and promises to pay to **JPMORGAN CHASE BANK, N.A.** (the "Lender"), its registered assigns or legal representative, the principal amount of:

THOUSAND DOLLARS ($_____,000)

on or before October 1, 2032, together with interest on the outstanding principal amount of this Bond at a rate of 1.526% per year, calculated on the basis of a 360-day year of twelve 30-day months, subject to adjustment as provided herein and in the Bond Purchase and Loan Agreement dated as of September 1, 2020 (the "Agreement"). Principal and interest on this Bond shall be payable in semi-annual installments. Principal and interest shall be payable in the amounts and on the dates set forth in Schedule I attached hereto which is incorporated herein by this reference.

If any installment of principal of and interest on this Bond is not paid to the registered owner of this Bond on its due date, the Town shall pay to the registered owner a late payment charge in an amount equal to five percent (5.00%) of the overdue installment. Principal and other sums hereunder are payable in lawful money of the United States.

Subject to the provisions of the Agreement, between the Lender and the Town, so long as this Bond is held by the Lender or its registered assigns or legal representative, principal and interest are payable (without presentation or surrender) by wire transfer, automated clearing house, check or draft sent to the registered owner of this Bond at the address that appears on the registration books kept by the Treasurer of the Town, who has been appointed registrar and paying agent, or any successor Lender or trust company (the "Registrar"). Principal of and premium, if any, and interest on this Bond shall be payable in lawful money of the United States of America. In case any payment date on this Bond shall not be a Business Day (as defined below), then payment of principal, premium, if any, and interest need not be made on such date, but may be

made on the next succeeding Business Day, and, if made on such next succeeding Business Day, no additional interest shall accrue for the period after such payment date. "Business Day" means any Monday, Tuesday, Wednesday, Thursday or Friday on which commercial banking institutions generally are open for business in New York and Virginia. If an Event of Default has occurred and is continuing under the Agreement, the unpaid principal amount of this Bond shall bear interest at the rate of nine percent (9.00%) per annum or the maximum rate permitted under applicable law, whichever is less.

This Bond has been authorized by a public hearing held on September 1, 2020 and a resolution adopted by the Council of the Town on September 11, 2020 (the "Bond Resolution") and is issued pursuant to the Constitution and the Public Finance Act of 1991 of the Commonwealth of Virginia, and the Agreement. Proceeds of this Bond will be used to provide funds to refinance the Issuer's Taxable Note of 2017 and the related permanent financing of various capital projects, including recreational facilities comprised of the renovation, rehabilitation and equipping facilities located at Windsor Castle Park; acquisition and outfitting of the Town's ball fields; renovations to the police evidence building and the Clontz Park boat ramp; and various utility system repairs and improvements, together with related engineering, administrative and financing costs incurred in issuing this Bond.

The full faith and credit of the Town are irrevocably pledged for the payment of principal of and interest and premium, if any, on this Bond and the performance of the Town's obligations under the Agreement. Unless other funds are lawfully available and appropriated for timely payment of this Bond, the Council of the Town 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 locally taxable property in the Town sufficient to pay when due the principal of and interest and premium, if any, on this Bond.

Notwithstanding anything in this Bond to the contrary, in addition to the payments of the principal, premium, if any, and interest provided for by this Bond, the Town shall also pay such additional amounts, if any, which may be necessary to provide for payment in full of all amounts due under the Agreement.

This Bond may not be prepaid and may be redeemed only upon the terms and conditions set forth in the Agreement. Capitalized terms used herein and not defined shall have the meaning as set forth in the Agreement.

Transfer of this Bond may be registered upon the registration books of the Bond Registrar. The Registrar shall treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest on this Bond and the exercise of all other rights and powers of the owner; provided that the regular installment payments of principal and interest shall be made to the person shown as the owner on the fifteenth day of the month preceding each payment date.

The holder of this Bond shall not be required to present or surrender this Bond as a condition of receiving payment due hereunder.

All acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia to happen, exist or to be performed precedent to and in 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 limitation prescribed by the Constitution and statutes of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the Town has caused this Bond to be signed by its Mayor and the seal of the Town to be affixed hereto and attested by the Clerk of the Town, and this bond to be dated the date first above written.

(SEAL)

_____
Mayor of the Town of Smithfield, Virginia

ATTEST:

_____
Clerk of the Town of Smithfield, Virginia

SCHEDULE I

TOWN OF SMITHFIELD
GENERAL OBLIGATION REFUNDING BOND
SERIES 2020A-2

Installment Number	Principal Installment Amount	Due Date

[to be completed at closing]