

**BOROUGH OF RED BANK  
ORDINANCE NUMBER 2009-4**

**BOND ORDINANCE AMENDING AND SUPPLEMENTING BOND ORDINANCE NUMBER 2008-24 HERETOFORE FINALLY ADOPTED BY THE BOROUGH COUNCIL OF THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY ON OCTOBER 13, 2008 ENTITLED, "BOND ORDINANCE PROVIDING FOR VARIOUS 2008 CAPITAL IMPROVEMENTS BY THE WATER/SEWER UTILITY OF THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY; APPROPRIATING \$675,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$675,000 BONDS OR NOTES TO FINANCE THE COST THEREOF," TO AMEND THE DESCRIPTION THEREIN, TO INCREASE THE APPROPRIATION THEREIN BY \$2,410,000 AND TO INCREASE THE AUTHORIZATION OF BONDS OR NOTES THEREIN BY \$2,289,500 TO FINANCE PART OF THE ADDITIONAL COST THEREOF**

**BE IT ORDAINED AND ENACTED BY THE BOROUGH COUNCIL OF THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY** (not less than two-thirds of all members thereof affirmatively concurring), **AS FOLLOWS:**

**SECTION 1.** Bond Ordinance Number 2008-24 finally adopted on October 13, 2008 by the Borough of Red Bank, in the County of Monmouth, State of New Jersey (the "Borough") entitled, "BOND ORDINANCE PROVIDING FOR VARIOUS 2008 CAPITAL IMPROVEMENTS BY THE WATER/SEWER UTILITY OF THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY; APPROPRIATING \$675,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$675,000 BONDS OR NOTES TO FINANCE THE COST THEREOF" (the "Original Ordinance"), is hereby amended and supplemented to the extent and with the effect as follows:

**SECTION 2.** For the improvement or purpose described in Section 3 of the Original Ordinance, as amended and supplemented hereby, there is appropriated the additional sum of \$2,410,000 from the Water/Sewer Utility of the Borough, said sum to be inclusive of \$120,500 as the amount of down payment as required by the Local Bond Law, N.J.S.A. § 40A:2-1 et seq. (the "Local Bond Law"). The down payment is now available from the Water/Sewer Utility, by virtue of a provision or provisions in a previously adopted budget or budgets of the Borough for down payment or capital improvement purposes. Therefore, the total appropriation from the Water/Sewer Utility of the Borough contained in the Original Ordinance, as amended and supplemented hereby, shall be increased from \$675,000 and shall equal the aggregate principal amount of \$3,085,000, said sum being inclusive of the total down payment, which shall be increased from \$0 and shall equal the aggregate principal amount of \$120,500.

**SECTION 3.** In order to finance the additional cost of the improvement or purpose set forth in Section 3 of the Original Ordinance, as amended and supplemented hereby, not covered by the down payment, additional negotiable bonds or notes of the Water/Sewer Utility of the Borough in the amount of \$2,289,500 are hereby authorized to be issued by the Borough, such that the total authorization of negotiable bonds or notes of the Water/Sewer Utility to be issued by the Borough for the improvement or purpose stated in Section 3 of the Original Ordinance, as amended and supplemented hereby, shall be increased from \$675,000 and shall equal the aggregate principal amount of \$2,964,500.

**SECTION 4.** Section 3 of the Original Ordinance is hereby amended to read in its entirety as follows:

(a) The improvements hereby authorized and purposes for the financing of which said obligations are to be issued are for: (i) the replacement of media in seven filters, repairs to the underdrain and/or steel vessels, improve Lime and Aluminum sulfate chemical feed systems, installation of alarm and security systems, and replacement and removal of manways and gaskets at the Tower Hill and Chestnut Street Facilities, as applicable; (ii) repairs to metal surfaces and interior building walls, and

repair, removal and replacement, as applicable, of various pipes, valves, heating equipment, generators ventilation equipment and other mechanical improvements and replacement of a reservoir hatch and latter to meet OSHA requirements at the Tower Hill Facility; and (iii) repairs to the valve chamber for the discharge line on the Chestnut Street Clarifier. The improvements or purposes described herein shall also include materials, equipment, accessories, painting, inspections and all work necessary therefor or incidental thereto.

(b) The estimated maximum amount of bonds or notes to be issued for said improvement or purpose is \$2,964,500.

(c) The estimated cost of said improvement or purpose is \$3,085,000, the excess thereof over the estimated maximum amount of bonds or notes to be issued therefore is the down payment in the amount of \$120,500 available for such improvement or purpose.”

**SECTION 5.** The Capital Budget of the Water/Sewer Utility of the Borough is hereby amended, as necessary, to conform with the provisions of this amendatory and supplemental bond ordinance and to the extent of any inconsistency herewith, a resolution in the form promulgated by the Local Finance Board showing full detail of the amended Capital Budget and Capital Program as approved by the Director of the Division of Local Government Services, New Jersey Department of Community Affairs (the “Director of the Division of Local Government Services”), will be on file in the office of the Clerk and will be available for public inspection.

**SECTION 6.** The following additional matters are hereby determined, declared, recited and stated:

(a) The Supplemental Debt Statement required by the Local Bond Law has been duly made and filed in the Office of the Clerk of the Borough and a complete executed duplicate thereof has been filed in the Office of the Director of the Division of Local Government Services, and such statement shows that the gross debt of the Borough as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided for in this amendatory and supplemental bond ordinance by \$2,289,500 and the said obligations authorized herein will be within all debt limitations prescribed by law.

(b) For the improvement or purpose set forth in the Original Ordinance, as amended and supplemented hereby, the additional sum of \$275,000 is hereby included for items of expense listed in and permitted under N.J.S.A § 40A:2-20, making the total amount for such items of expense \$350,000, such total amount being included in the estimated cost indicated herein for the improvement or purpose set forth in the Original Ordinance, as amended and supplemented hereby.

(c) The average period of usefulness of said improvements or purposes set forth in the Original Ordinance, as amended and supplemented hereby, within the limitations of said Local Bond Law, according to the reasonable life thereof computed from the date of the said bonds authorized by the Original Ordinance, as amended and supplemented hereby, is 25.08 years.

**SECTION 7.** The Borough reasonably expects to reimburse any expenditures toward the cost of the improvement or purpose described in the Original Ordinance, as amended and supplemented hereby, and paid prior to the issuance of any bonds or notes authorized by the Original Ordinance, as amended and supplemented hereby, with the proceeds of such bonds or notes. No funds from sources other than the bonds or notes authorized by the Original Ordinance, as amended and supplemented hereby, have been or are reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside by the Borough, or any member of the same “Controlled Group” as the Borough, within the meaning of Treasury Regulation Section 1.150-1(e), pursuant to its budget or financial policies with respect to any expenditures to be reimbursed. This Section 7 is intended to be and hereby is a declaration of the Borough’s official intent to reimburse any expenditures toward the cost of the improvement or purpose described in the Original Ordinance, as amended and supplemented hereby, to

be incurred and paid prior to the issuance of bonds or notes authorized by the Original Ordinance, as amended and supplemented hereby, in accordance with Treasury Regulation Section 1.150-2, and no further action (or inaction) will be an abusive arbitrage device in accordance with Treasury Regulation Section 1.148-10 to avoid the arbitrage yield restrictions or arbitrage rebate requirements under section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The proceeds of any bonds or notes authorized by the Original Ordinance, as amended and supplemented hereby, used to reimburse the Borough for any expenditures toward the cost of the improvement or purpose described in Section 3 of the Original Ordinance, as amended and supplemented hereby, will not be used directly or indirectly (i) to "refund" an issue of governmental obligations within the meaning of Treasury Regulation Section 1.150-1(d), (ii) to create, within one year, following the reimbursement of any expenditures of bond proceeds "replacement proceeds", within the meaning of Treasury Regulation Section 1.148-1 of the bonds, or any other bond issue, or (iii) to reimburse the Borough for any expenditure or payment that was originally paid with the proceeds of any obligation of the Borough (other than borrowing by the Borough from one of its own funds or the funds of a member of the same "Controlled Group" within the meaning of Treasury Regulation Section 1.150-1(e)). The bonds or notes authorized by the Original Ordinance, as amended and supplemented hereby, to reimburse the Borough for any expenditures toward the cost of the improvement or purpose described in Section 3 of the Original Ordinance, as amended and supplemented hereby, will be issued in an amount not to exceed \$2,964,500. The costs to be reimbursed with the proceeds of the bonds or notes authorized by the Original Ordinance, as amended and supplemented hereby, will be "capital expenditures" in accordance with the meaning of section 150 of the Code and Treasury Regulation Section 1.150-1. This provision will take effect immediately, but will be of no effect with regard to expenditures for costs paid outside the permitted reimbursement period set forth in Treasury Regulation Section 1.150-2(d)(2).

**SECTION 8.** The Borough covenants to maintain the exclusion from gross income under section 103(a) of the Code, of the interest on all bonds and notes issued under the Original Ordinance, as amended and supplemented hereby.

**SECTION 9.** Except as expressly amended and supplemented hereby, the Original Ordinance shall remain in full force and effect.

**SECTION 10.** This bond ordinance shall take effect twenty (20) days after the first publication hereof after final adoption, as provided by the Local Bond Law.

First Reading: February 9, 2009

Final Reading: February 23, 2009