

**BOROUGH OF RED BANK
BOND ORDINANCE NUMBER 2009-24**

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," AS PREVIOUSLY AMENDED AND SUPPLEMENTED BY BOND ORDINANCE NUMBER 2009-4 FINALLY ADOPTED ON FEBRUARY 23, 2009, TO INCREASE THE APPROPRIATION THEREIN BY \$206,000 AND TO INCREASE THE AUTHORIZATION OF BONDS OR NOTES THEREIN BY \$195,500 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", as previously amended and supplemented by bond ordinance number 2009-4 finally adopted on February 23, 2009 (collectively, 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 \$206,000 from the Water/Sewer Utility of the Borough, said sum to be inclusive of \$10,500 as the amount of additional 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 by \$206,000 from \$3,085,000 and shall equal the aggregate principal amount of \$3,291,000, said sum being inclusive of the total down payment, which shall be increased by \$10,500 from \$120,500 and shall equal the aggregate principal amount of \$131,000.

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 \$195,500 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 by \$195,500 from \$2,964,500 and shall equal the aggregate principal amount of \$3,160,000.

SECTION 4. Section 3(b) and 3(c) of the Original Ordinance is hereby amended to read as follows:

(b) The estimated maximum amount of bonds or notes to be issued for said improvement or purpose is \$3,160,000.

(c) The estimated cost of said improvement or purpose is \$3,291,000, the excess thereof over the estimated maximum amount of bonds or notes to be issued therefore is the aggregate down payment in the amount of \$131,000 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 \$195,500 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 \$121,000 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 increase from \$350,000 to \$471,000, 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.

SECTION 7. The Borough reasonably expects to reimburse any expenditures toward the costs of the improvement or purpose described in Section 3 of 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. This Section 7 is intended to be and hereby is a declaration of the Borough's official intent to reimburse any expenditures toward the costs of the improvement or purpose described in Section 3 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 Regulations Section 150-2. No reimbursement allocation will employ an "abusive arbitrage device" under Treasury Regulations §1.148-10 to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147, inclusive, 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 costs of the improvement or purpose described in Section 3 of the Original Ordinance, as amended and supplemented hereby, or funds corresponding to such amounts, will not be used in a manner that results in the creation of "replacement proceeds", including "sinking funds", "pledged funds" or funds subject to a "negative pledge" (as such terms are defined in Treasury Regulations §1.148-1), of any bonds or notes authorized by the Original Ordinance, as amended and supplemented hereby, or another issue of debt obligations of the Borough, other than amounts deposited into a "bona fide debt service fund" (as defined in Treasury Regulations §1.148-1). The bonds or notes authorized by the Original Ordinance, as amended and supplemented hereby, to reimburse the Borough for any expenditures toward the costs of the improvement or purpose described in Section 3 the Original Ordinance, as amended and supplemented hereby, will be issued in an amount not to exceed \$3,160,000. 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. All reimbursement allocations will occur not later than 18 months after the later of (i) the date the expenditure from a source other than any bonds or notes authorized by the Original Ordinance, as amended and supplemented hereby, is paid, or (ii) the date the improvement or purpose described in Section 3 of the Original Ordinance, as amended and supplemented hereby, is "placed in service" (within the meaning of Treasury Regulations §1.150-2) or abandoned, but in no event more than 3 years after the expenditure is paid.

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: June 22, 2009

Final Reading: July 13, 2009