

**BOROUGH OF RED BANK, NEW JERSEY**

**RESOLUTION NO. 12-76**

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**RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, NEW JERSEY AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$450,000 OF SPECIAL EMERGENCY NOTES OF THE BOROUGH OF RED BANK; MAKING CERTAIN COVENANTS TO MAINTAIN THE EXEMPTION OF THE INTEREST ON SAID NOTES FROM FEDERAL INCOME TAXATION; AND AUTHORIZING SUCH FURTHER ACTIONS AND MAKING SUCH DETERMINATIONS AS MAY BE NECESSARY OR APPROPRIATE TO EFFECTUATE THE ISSUANCE AND SALE OF THE NOTES**

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**BACKGROUND**

Mr. DuPont offered the following resolution and moved its adoption:

**WHEREAS**, the Local Budget Law, Chapter 169 of the Laws of the State of New Jersey, as amended and supplemented ("Local Budget Law") authorizes, inter alia, municipalities to adopt ordinances authorizing special emergency appropriations for the contractually required severance liabilities resulting from the layoff or retirement of employees; and

**WHEREAS**, the Borough Council ("Council") of the Borough of Red Bank, County of Monmouth, New Jersey ("Borough"), has duly and finally adopted ordinance 2010-37 appropriating the sum of \$750,000 to fund the contractually required severance liabilities resulting from the layoff or retirement of Borough employees ("Project"); and

**WHEREAS**, Section 55 of the Local Budget Law, N.J.S.A. 40A:4-55, authorizes the Borough to issue special emergency notes to finance the costs of the Project; and

**WHEREAS**, the Borough has heretofore issued its special emergency notes in the principal amount of \$600,000 to finance a portion of the cost of the Project ("Prior Notes"); and

**WHEREAS**, the Prior Notes mature on May 30, 2012; and

**WHEREAS**, Section 55 of Local Budget Law, N.J.S.A. 40A:2-55, requires the Borough to pay, at maturity, one-fifth of the total amount authorized under each ordinance; and

**WHEREAS**, it is the desire of the Borough to issue its special emergency notes in the principal amount of up to \$450,000, as further described in Exhibit "A", the proceeds of which, together with other available funds in the amount of \$150,000, will be used to repay the Prior Notes at maturity; and

**WHEREAS**, pursuant to the Local Budget Law and the ordinance, it is the intent of the Borough Council to hereby authorize, approve and direct the issuance and sale of such special emergency notes for the Project as further described in Exhibit "A" attached hereto, to ratify and confirm certain actions heretofore taken by or on behalf of the Borough, and to make certain related determinations and authorizations in connection with such issuance and sale.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Red Bank, County of Monmouth, New Jersey (not less than two-thirds of the members thereof affirmatively concurring), pursuant to Local Budget Law, as follows:

**Section 1.** Pursuant to the Local Budget Law, the issuance of special emergency notes of the Borough, to be designated, substantially, "Borough of Red Bank, County of Monmouth, New

Jersey, Special Emergency Notes of 2012, Series A" ("Notes"), in an aggregate principal amount of up to \$450,000, is hereby authorized, approved, ratified and confirmed.

**Section 2.** The Chief Financial Officer, with the assistance of the law firm of Parker McCay P.A., Bond Counsel, is hereby authorized and directed to award and sell the Notes at a public or private sale at a price of not less than par, and to deliver the same to the purchaser thereof upon receipt of the payment of the purchase price thereof.

**Section 3.** At the next meeting of the Borough Council after the sale of the Notes, the Chief Financial Officer is hereby authorized and directed to report, in writing, to the Borough Council, the principal amount, rate of interest and the name of the purchaser of the Notes.

**Section 4.** The Notes shall be dated the date of delivery thereof and mature no later than one year from said date. The Notes will not be subject to redemption prior to maturity. The Notes may be renewed from time to time, but shall be paid and mature in accordance with the provisions of Section 55(b) of the Local Budget Law, N.J.S.A. 40A:4-55(b).

**Section 5.** The Notes shall be issued in bearer form in denominations of \$50,000 or greater. The Notes shall be executed in the name of the Borough by the manual or facsimile signatures of the Mayor and Chief Financial Officer, and shall be under the corporate seal of the Borough affixed, imprinted, or reproduced thereon, and attested by the manual or facsimile signature of the Borough Clerk or Deputy Borough Clerk.

**Section 6.** The Notes are ultimately payable from ad valorem taxes that shall be levied upon all taxable real property in the Borough without limitation as to rate or amount.

**Section 7.** The Borough hereby covenants that it will not make any use of the proceeds of the Notes or do or suffer any other action that would cause: (i) the Notes to be "arbitrage bonds" as such term is defined in Section 148(a) of the Internal Revenue Code of 1986, as amended ("Code"), and the Regulations promulgated thereunder; (ii) the interest on the Notes to be included in the gross income of the owners thereof for federal income taxation purposes; or (iii) the interest on the Notes to be treated as an item of tax preference under Section 57(a)(5) of the Code.

**Section 8.** The Borough hereby covenants as follows: (i) it shall timely file, or cause to be filed, with the Internal Revenue Service, such information report or reports as may be required by Sections 148(f) and 149(e) of the Code; and (ii) it shall take no action that would cause the Notes to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**Section 9.** The Borough hereby covenants that it shall make, or cause to be made, the rebate required by Section 148(f) of the Code in the manner described in Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149(b)-1, 1.149(d)-1, 1.149(g)-1, 1.150-1 and 1.150-2, as such regulations and statutory provisions may be modified insofar as they apply to the Notes.

**Section 10.** The Borough hereby designates the Notes as "qualified tax-exempt obligations" as defined in and for the purposes of Section 265(b)(3) of the Code. For purposes of this designation, the Borough hereby represents that it reasonably anticipates that the amount of tax-exempt obligations to be issued by the Borough during the period from January 1, 2012 to December 31, 2012, and the amount of obligations designated as "qualified tax-exempt obligations" by it, will not exceed \$10,000,000 when added to the aggregate principal amount of the Notes.

For purposes of this Section 10, the following obligations are not taken into account in determining the aggregate principal amount of tax-exempt obligations issued by the Borough: (i) a private activity bond as defined in Section 141 of the Code (other than a qualified 501(c)(3)

bond, as defined in Section 145 of the Code); and (ii) any obligation issued to refund any other tax-exempt obligation (other than to advance refund within the meaning of Section 149(d)(5) of the Code) as provided in Section 265(b)(3)(c) of the Code.

**Section 11.** All actions heretofore taken and documents prepared or executed by or on behalf of the Borough by the Mayor, Chief Financial Officer, Treasurer, Borough Clerk, other Borough officials or by the Borough's professional advisors, in connection with the issuance and sale of the Notes are hereby ratified, confirmed, approved and adopted.

**Section 12.** The Mayor, Chief Financial Officer and Borough Clerk are hereby authorized and directed to determine all matters and execute all documents and instruments in connection with the Notes not determined or otherwise directed to be executed by the Local Budget Law or by this or any subsequent resolution, and the signatures of the Mayor, Chief Financial Officer or Borough Clerk on such documents or instruments shall be conclusive as to such determinations.

**Section 13.** All other resolutions, or parts thereof, inconsistent herewith are hereby rescinded and repealed to the extent of any such inconsistency.

**Section 14.** This Resolution shall take effect immediately upon adoption this 11th day of April, 2012.

Seconded by Ms. Lewis and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Ms. Lewis	( x )	( )	( )	( )
Mr. Zipprich	( x )	( )	( )	( )
Mr. DuPont	( x )	( )	( )	( )
Ms. Horgan	( x )	( )	( )	( )
Ms. Lee	( x )	( )	( )	( )
Mr. Murphy	( x )	( )	( )	( )

Dated: April 11, 2012

**Exhibit "A"**

<b>Ordinance Number</b>	<b>Notes Authorized</b>	<b>Notes Outstanding</b>	<b>Available Funds</b>	<b>Notes to be Issued</b>
2010-37	\$750,000	\$600,000	\$150,000	\$450,000