

BOROUGH OF RED BANK, NEW JERSEY

RESOLUTION 12-193

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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 \$8,299,000 OF GENERAL OBLIGATION BONDS, SERIES 2012, OF THE BOROUGH OF RED BANK; MAKING CERTAIN COVENANTS TO MAINTAIN THE EXEMPTION OF THE INTEREST ON SAID BONDS 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 BONDS**

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**BACKGROUND**

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

**WHEREAS**, pursuant to the Local Bond Law, constituting Chapter 169 of the Laws of 1960 of the State of New Jersey, as amended and supplemented ("Local Bond Law"), the Borough Council of the Borough of Red Bank, County of Monmouth, New Jersey ("Borough"), has, pursuant to bond ordinances 06-32, as amended by 09-42 and 10-10; 08-17; 08-24, as amended by 09-04 and 09-24; 09-10; 09-44; 10-08; 11-02; 11-06; 11-07; 12-03 and 12-04, each duly and finally adopted and published in accordance with the requirements of the Local Bond Law (collectively, the "Bond Ordinances"), authorized the issuance of general obligation bonds or bond anticipation notes of the Borough to finance the costs of certain capital improvements, as set forth in and authorized by the Bond Ordinances, all as more particularly described in Exhibit "A" attached hereto and made a part hereof; and

**WHEREAS**, on November 29, 2011, the Borough issued its bond anticipation notes of 2011, Series A, in the principal amount of \$5,499,668 ("2011 Notes"), to temporarily finance a portion of the costs of the improvements authorized by bond ordinances 05-31; 05-39, as amended by 09-09; 06-32, as amended by 09-42 and 10-10; 08-17; 09-44; 09-10; 10-08; 11-02; 11-06 and 11-07 ("2011 Improvements"); and

**WHEREAS**, on August 9, 2012, the Borough issued its bond anticipation notes of 2012, Series A, in the principal amount of \$1,604,490 ("2012 Notes", and together with the 2011 Notes, the "Prior Notes"), to temporarily finance the costs of the improvements authorized by bond ordinance 12-04 ("2012 Improvements"; together with the 2011 Improvements, the "Prior Improvements"); and

**WHEREAS**, the Prior Notes mature on November 28, 2012; and

**WHEREAS**, the Borough has not yet issued any obligations to finance the costs of certain improvements authorized by bond ordinances 08-24, as amended by 09-04 and 09-24; 11-06 and 12-03 ("New Improvements"; together with the Prior Improvements, the "Improvements"); and

**WHEREAS**, it is the desire of the Borough to issue its general obligation bonds in the aggregate principal amount of up to \$8,299,000, as further described in Exhibit "A", the proceeds of which, together with other available funds, will be used to: (i) repay a portion of the principal of the Prior Notes; (ii) permanently finance the costs of the New Improvements for which obligations have been authorized, but not issued; and (iii) pay certain costs and expenses incidental to the issuance and delivery of the bonds (collectively, the "Project"); and

**WHEREAS**, pursuant to the Local Bond Law and the Bond Ordinances, it is the intent of the Borough Council hereby to authorize, approve and direct the issuance and sale of such bonds, 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, PURSUANT TO THE LOCAL BOND LAW, AS FOLLOWS:**

**Section 1.** Pursuant to the Local Bond Law and the Bond Ordinances, the issuance and sale of general obligation bonds of the Borough, to be designated substantially "Borough of Red Bank, County of Monmouth, New Jersey, General Obligation Bonds, Series 2012" ("Bonds"), in an aggregate principal amount of up to \$8,299,000 for the Project, is hereby authorized and approved. The Bonds consist of: (i) \$5,637,000 General Improvement Bonds; and (ii) \$2,662,000 Water/Sewer Utility Bonds.

**Section 2.** The Bonds shall be dated their date of delivery and shall mature on October 1 in the years and amounts set forth below:

<b>Year</b>	<b>General Improvement</b>	<b>Sewer Utility</b>	<b>Combined</b>	<b>Year</b>	<b>General Improvement</b>	<b>Sewer Utility</b>	<b>Combined</b>
2013	\$305,000	\$125,000	\$430,000	2021	\$475,000	\$180,000	\$655,000
2014	315,000	125,000	440,000	2022	530,000	195,000	725,000
2015	330,000	125,000	455,000	2023	555,000	215,000	770,000
2016	350,000	135,000	485,000	2024	575,000	230,000	805,000
2017	365,000	140,000	505,000	2025	612,000	235,000	847,000
2018	385,000	150,000	535,000	2026	0	235,000	235,000
2019	405,000	155,000	560,000	2027	0	252,000	252,000
2020	435,000	165,000	600,000				

The term of the Bonds is equal to or less than the average period of usefulness of the Project being financed through the issuance of the Bonds. Interest on the Bonds shall be payable initially on April 1, 2013 and semiannually thereafter on October 1 and April 1 in each year until maturity or earlier redemption.

**Section 3.** The Bonds shall be general obligations of the Borough. The full faith and credit of the Borough are irrevocably pledged to the punctual payment of the principal of and interest on the Bonds and, to the extent payment is not otherwise provided, the Borough shall levy ad valorem taxes on all taxable real property without limitation as to rate or amount for the payment thereof.

**Section 4.** The Bonds will be issued in fully registered book entry only form. One certificate shall be issued for the aggregate principal amount of Bonds maturing in each year. Both the principal of and interest on the Bonds will be payable in lawful money of the United States of America. Each certificate will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository ("Securities Depository"). The certificates will be on deposit with DTC. DTC will be responsible for maintaining a book-entry system for recording the interests of its participants or the transfers of the interests among its participants. The participants will be responsible for maintaining records recording the beneficial ownership interests in the Bonds on behalf of individual purchasers. Individual purchases may be made in the principal amount of \$5,000 through book-entries made on the books and the records of DTC and its participants. The principal of and interest on the Bonds will be paid to DTC by the Borough on the respective maturity dates and due dates and will be credited on the respective maturity dates and due dates

to the participants of DTC as listed on the records of DTC as of the fifteenth (15th) day of the month next preceding an interest payment date. The Bonds will be executed on behalf of the Borough by the manual or facsimile signatures of the Mayor and Chief Financial Officer, attested by the Borough Clerk or the Deputy Borough Clerk, and shall bear the affixed, imprinted or reproduced seal of the Borough thereon.

**Section 5.** The Borough is hereby authorized to make representations and warranties, to enter into agreements and to make all arrangements with DTC, as may be necessary in order to provide that the Bonds will be eligible for deposit with DTC and to satisfy any obligation undertaken in connection therewith.

**Section 6.** In the event that DTC may determine to discontinue providing its service with respect to the Bonds or is removed by the Borough and if no successor Securities Depository is appointed, the Bonds which were previously issued in book-entry form shall be converted to Registered Bonds in denominations of \$5,000, or any integral multiple thereof ("Registered Bonds"). The beneficial owner under the book-entry system, upon registration of the Bonds held in the beneficial owner's name, will become the registered owner of the Registered Bonds. The Borough shall be obligated to provide for the execution and delivery of the Registered Bonds in certified form.

**Section 7.** The Bonds maturing on and after October 1, 2023 are subject to redemption prior to their stated maturity dates at the option of the Borough, upon notice as set forth below, as a whole or in part (and, if in part, such maturities as the Borough shall determine and within any such maturity by lot) on any date on or after October 1, 2022, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, plus accrued interest to the redemption date.

**Section 8.** Notice of redemption shall be given by mailing first class mail in a sealed envelope with postage pre-paid not less than thirty (30) days nor more than sixty (60) days prior to the redemption date to the owner of every Bond of which all or a portion is to be redeemed at his or her last address, if any, appearing on the registration books of the Paying Agent (as defined below). So long as the Bonds are issued in book-entry-only form, all notices of redemption will be sent only to DTC and not be sent to the beneficial owners of the Bonds. Failure of an owner of the Bonds to receive such notice or of DTC to advise any participant of any failure of a participant to notify any beneficial owner of the Bonds shall not affect the validity of any proceedings for the redemption of the Bonds. Such notice shall specify: (i) the series and maturity of the Bonds to be redeemed; (ii) the redemption date and the place or places where amounts that are due and payable upon such redemption will be payable; (iii) if less than all of the Bonds are to be redeemed, the letters and numbers or other distinguishing marks of the Bonds to be redeemed; (iv) in the case of a Bond to be redeemed in part only, the portion of the principal amount thereof to be redeemed; (v) that on the redemption date there shall become due and payable with respect to each Bond or portion thereof to be redeemed the redemption price; and (vi) that from and after the redemption date interest on such Bonds or portion thereof to be redeemed shall cease to accrue and be payable.

**Section 9.** The preparation of a preliminary official statement ("Preliminary Official Statement") relating to the Bonds, and the distribution of said Preliminary Official Statement to prospective purchasers of the Bonds and others having an interest therein, are hereby authorized and directed. The Mayor, Administrator, Chief Financial Officer and Borough Clerk are each hereby authorized to deem the Preliminary Official Statement "final", as contemplated by

paragraph (b)(1) of Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended ("Rule 15c2-12").

**Section 10.** The appointment of McElwee & Quinn, LLC, Cherry Hill, New Jersey ("Printer"), to provide electronic and/or physical dissemination of the Preliminary Official Statement and Official Statement (hereinafter defined) is hereby authorized, approved, ratified and confirmed. The Chief Financial Officer of the Borough is hereby authorized and directed to enter into an agreement with Printer for the services to be provided.

**Section 11.** The Chief Financial Officer is hereby authorized to engage the services of a qualified financial institution to serve as paying agent ("Paying Agent") and/or Dissemination Agent ("Dissemination Agent") for the Bonds. The Chief Financial Officer is hereby authorized to execute and deliver an agreement with the Paying Agent and/or Dissemination Agent.

**Section 12.** Pursuant to the Local Bond Law, the Chief Financial Officer ("Sale Official") is hereby authorized to sell and award the Bonds at a public sale. The sale of the Bonds shall be in accordance with the provisions of the Local Bond Law and the advertised terms of such public sale. If necessary or desirable, the Sale Official is hereby authorized to postpone, from time to time, the date and time established for receipt of bids for the sale of the Bonds in accordance with the Local Bond Law. If any date fixed for receipt of bids and the sale of the Bonds is postponed, the Sale Official is hereby authorized to announce an alternative sale date at least forty-eight (48) hours prior to such alternative sale date. The Sale Official is hereby authorized and directed to cause a summary notice of sale and a notice of sale of the Bonds to be prepared and disseminated in accordance with the Local Bond Law. At the next meeting of the Borough Council after the sale and award of the Bonds, the Sale Official shall report, in writing, to the Borough Council the principal amount, the rate or rates of interest, the maturity dates, the dates upon which interest on the Bonds shall be paid, the price and the purchaser or purchasers of the Bonds.

**Section 13.** The utilization of i-Deal LLC, New York, New York, to provide electronic bidding services to the Borough in connection with the competitive sale of the Bonds ("Bidding Agent") through the use of the Bidding Agent's BiDCOMP/PARITY auction system, pursuant to the Local Bond Law and the regulations promulgated thereunder, is hereby authorized, approved, ratified and confirmed.

**Section 14.** The preparation of a final official statement ("Official Statement") with respect to the Bonds is hereby authorized and directed. Within seven (7) business days of the sale of the Bonds and in sufficient time to accompany any confirmation that requests payment from a customer, the Borough will deliver sufficient copies of the Official Statement to the purchaser of the Bonds in order for the same to comply with Paragraph (b)(4) of Rule 15c2-12. The Mayor, Administrator, Chief Financial Officer and Borough Clerk are each hereby authorized to execute the Official Statement, and the distribution thereof to purchasers and others is hereby authorized and directed. The execution of the final Official Statement by the Mayor, Administrator, Chief Financial Officer and Borough Clerk shall constitute conclusive evidence of approval by the Borough of the changes therein from the Preliminary Official Statement. The Mayor, Administrator, Chief Financial Officer and Borough Clerk are each hereby authorized to approve any amendments of or supplements to the Official Statement.

**Section 15.** In order to assist the underwriters of the Bonds in complying with the secondary market disclosure requirements of Rule 15c2-12, the Mayor, Administrator, Chief Financial Officer and Borough Clerk are each hereby authorized to execute on behalf of the

Borough before the issuance of the Bonds an agreement with the Dissemination Agent, providing for the preparation and filing of the necessary reports in accordance with Rule 15c2-12.

**Section 16.** The Borough hereby covenants that it will not make any use of the proceeds of the Bonds or do or suffer any other action that would cause: (i) the Bonds 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 Income Tax Regulations promulgated thereunder; (ii) the interest on the Bonds to be included in the gross income of the owners thereof for federal income taxation purposes; or (iii) the interest on the Bonds to be treated as an item of tax preference under Section 57(a)(5) of the Code.

**Section 17.** The Borough hereby covenants as follows: (i) it shall timely file 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 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**Section 18.** To the extent not otherwise exempt, 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 Bonds.

**Section 19.** The Borough hereby designates the Bonds 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 Bonds.

For purposes of this Section 19, 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 20.** Application to Standard and Poor's Ratings Services and/or Moody's Investors Service for a rating of the Bonds, and the furnishing of certain information concerning the Borough and the Bonds, for the purpose of qualifying the Bonds for municipal bond insurance, are hereby authorized, ratified, confirmed and approved.

**Section 21.** All actions heretofore taken and documents prepared or executed by or on behalf of the Borough by the Mayor, Administrator, Chief Financial Officer, Borough Clerk, other Borough officials or by the Borough's professional advisors, in connection with the issuance and sale of the Bonds are hereby ratified, confirmed, approved and adopted.

**Section 22.** The Mayor, Administrator, Chief Financial Officer and Borough Clerk are each hereby authorized to determine all matters and execute all documents and instruments in connection with the Bonds not determined or otherwise directed to be executed by the Local Bond Law, the Bond Ordinances, or by this or any subsequent resolution, and the signatures of the Mayor, Administrator, Chief Financial Officer or Borough Clerk on such documents or instruments shall be conclusive as to such determinations.

**Section 23.** All other resolutions, or parts thereof, inconsistent herewith are hereby rescinded and repealed to the extent of any such inconsistency.

**Section 24.** This resolution shall take effect immediately upon adoption this 26<sup>th</sup> day of September, 2012.

Seconded by Mr. Zipprich 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: September 26, 2012

**Exhibit "A"**

**General Improvement Bond Ordinances**

<b>Ordinance Number</b>	<b>Obligations Authorized</b>	<b>Notes Outstanding</b>	<b>Bonds to be Issued</b>
06-32/09-42/10-10	\$351,500	\$133,000	\$133,000
08-17	747,700	328,000	328,000
09-44	328,000	795,500	795,500
10-08	795,500	747,000	747,000
11-06	984,432	984,000	984,010
12-03	1,045,000	0	1,045,000
12-04	1,604,490	1,604,490	1,604,490
<b>TOTAL</b>	<b>\$5,856,622</b>	<b>\$4,591,990</b>	<b>\$5,637,000</b>

**Water/Sewer Utility Bond Ordinances**

<b>Ordinance Number</b>	<b>Obligations Authorized</b>	<b>Notes Outstanding</b>	<b>Bonds to be Issued</b>
08-24/09-04/09-24	\$3,291,000	\$0	\$150,000
10-09	\$477,900	477,000	477,000
11-02	1,846,000	1,846,000	1,846,000
11-07	189,168	189,168	189,000
<b>TOTAL</b>	<b>\$5,804,068</b>	<b>\$2,512,168</b>	<b>\$2,662,000</b>

**TOTAL**

<b>Bonds/Notes Authorized</b>	<b>Notes Outstanding</b>	<b>Bonds to be Issued</b>
<b>\$11,660,690</b>	<b>\$7,104,158</b>	<b>\$8,299,000</b>