

BOROUGH OF RED BANK

COUNTY OF MONMOUTH

RESOLUTION NO. 12-227

**A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF SPECIAL EMERGENCY NOTES OF THE BOROUGH OF RED BANK IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$454,000; MAKING CERTAIN COVENANTS TO EFFECT AND MAINTAIN THE EXEMPTION OF 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**

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

**WHEREAS**, the Local Budget Law, constituting Chapter 169 of the Laws of the State of New Jersey, as amended and supplemented ("Local Budget Law"), authorizes, *inter alia*, municipalities to adopt resolutions authorizing special emergency appropriations to cover the cost of extraordinary expenses associated with the repair and reconstruction of streets, roads or bridges or other public property damaged by flood or hurricane where such expense was not foreseen at the time of the adoption of the municipality's budget; and

**WHEREAS**, the Borough Council of the Borough of Red Bank, County of Monmouth, New Jersey ("Borough"), has previously authorized a special emergency appropriation in the amount of up to \$454,000 ("Appropriation") to cover the cost of extraordinary expenses associated with the repair, rehabilitation, reconstruction and/or replacement of, among other things, streets, roads, bridges, or other public property located in the Borough damaged by Hurricane Sandy ("Project") in accordance with Section 54 of the Local Budget Law (N.J.S.A. 40A:4-54), and;

**WHEREAS**, Section 55 of the Local Budget Law (N.J.S.A. 40A:4-55) authorizes the Borough to borrow money and issue special emergency notes to finance the costs of the Project, which Notes may be renewed from time to time; provided, however, at least 1/5 of all such special emergency notes, and the renewals thereof, shall mature and be paid in each year, so that all special emergency notes and renewals shall have matured and have been paid not later than the last day of the fifth year following the date of the special emergency resolution; and

**WHEREAS**, pursuant to the Local Budget Law, it is the intent of the Borough Council to hereby authorize, approve and direct the issuance and sale of such special emergency notes, 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, IN THE COUNTY OF MONMOUTH, NEW JERSEY, (NOT LESS THAN TWO-THIRDS OF ALL MEMBERS THEREOF AFFIRMATIVELY CONCURRING) PURSUANT TO THE LOCAL BUDGET LAW, AS FOLLOWS:**

**Section 1.** Pursuant to the Local Budget Law and the Appropriation, 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 B" ("Notes"), in an aggregate principal amount of up to \$454,000 is hereby authorized and approved.

**Section 2.** Payment of the Notes shall be provided for by the inclusion of an annual appropriation of at least 1/5 of the total amount originally appropriated by resolution. Said appropriation shall be paid annually from the Borough's budget.

**Section 3.** The Chief Financial Officer, with the assistance of Parker McCay, P.A. ("Bond Counsel"), is hereby authorized and directed to award and sell the Notes, at public or private sale, in such amount as may be determined, at a price not less than par, plus accrued interest, and to deliver the same to the purchaser thereof, upon receipt of the purchase price for the Notes.

**Section 4.** The Notes shall be executed in the name of the Borough by the manual 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 signatures of the Borough Clerk or Deputy Borough Clerk.

**Section 5.** The Notes shall be dated their date of delivery, 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 6.** The Notes shall not be subject to redemption prior to maturity, shall be issued in registered or bearer form, shall be in the denomination of \$50,000 or greater, and shall be in the form permitted by the Local Budget Law and as Bond Counsel shall approve.

**Section 7.** 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 8.** 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 9.** 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 10.** 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 11.** 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 12.** 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: (i) during the period from January 1, 2012 through and including the date hereof, the Borough has not issued or designated tax-exempt obligations in an amount which, when added to the aggregate principal amount of the Notes, exceeds \$10,000,000; and (ii) the Borough reasonably anticipates that the amount of tax-exempt obligations to be issued by it 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.

**Section 13.** All actions heretofore taken and documents prepared or executed by or on behalf of the Borough by the Mayor, Chief Financial Officer, Borough Clerk, Deputy 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 14.** The Mayor, Chief Financial Officer, Borough Clerk and Deputy Borough Clerk are each 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, Borough Clerk or Deputy Borough Clerk on such documents or instruments shall be conclusive as to such determinations.

**Section 15.** All other resolutions, or parts thereof, inconsistent herewith are hereby rescinded and repealed to the extent of any such inconsistency.

**Section 16.** This Resolution shall take effect immediately upon adoption this 5th day of December, 2012.

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

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

Dated: December 5, 2012