

**BOROUGH OF RED BANK
BOND ORDINANCE NUMBER 2009-9**

BOND ORDINANCE AMENDING AND SUPPLEMENTING BOND ORDINANCE NUMBER 2005-39 FINALLY ADOPTED BY THE BOROUGH COUNCIL ON OCTOBER 10, 2005 ENTITLED "BOND ORDINANCE PROVIDING FOR VARIOUS IMPROVEMENTS AND RENOVATIONS TO MARINE PARK WITHIN THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY (THE "BOROUGH"); APPROPRIATING \$2,826,100 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$1,525,000 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COST THEREOF", TO INCREASE THE APPROPRIATION THEREIN BY \$1,174,550 AND TO INCREASE THE AUTHORIZATION OF BONDS OR NOTES THEREIN BY \$260,000 TO FINANCE PART OF THE ADDITIONAL COSTS 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. The bond ordinance of the Borough of Red Bank, in the County of Monmouth, State of New Jersey (the "Borough"), heretofore finally adopted by the Borough Council on October 10, 2005, numbered 2005-39 and entitled, "BOND ORDINANCE PROVIDING FOR VARIOUS IMPROVEMENTS AND RENOVATIONS TO MARINE PARK WITHIN THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY (THE "BOROUGH"); APPROPRIATING \$2,826,100 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$1,525,000 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF 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 hereby appropriated the additional sum of \$1,174,550, said sum being inclusive of an additional grant in the amount of \$874,550 expected to be received from the New Jersey Department of Environmental Protection (the "NJDEP Additional Grant"), an additional grant in the amount of approximately \$300,000 expected to be received from the County of Monmouth, State of New Jersey (the "County Grant") and an additional down payment in the amount not to exceed \$15,000 (the additional down payment will only be required if the County Grant is not received by the Borough or if the amount of the County Grant received by the Borough is less than \$300,000, in such case the additional down payment will be an amount less than \$15,000, as applicable), as required by the Local Bond Law, N.J.S.A. 40A:2-1 *et seq.* (the "Local Bond Law"), now available therefor by virtue of provisions in a previously adopted budget or budgets of the Borough for down payment or for capital improvement purposes. Therefore, the total appropriation contained in the Original Ordinance, as amended and supplemented hereby, shall be increased by \$1,174,550 from \$2,826,100 and shall equal the amount of \$4,000,650, said sum being inclusive of the total amount of the NJDEP Additional Grant expected to be increased by approximately \$874,550, from \$1,251,100 to equal the amount of \$2,125,650, the total amount of the County Grant expected to be increased by approximately \$300,000, from \$0 to equal the amount of \$300,000 and the total amount of down payment increased by \$15,000 (or a lesser amount if the County Grant or a portion thereof is received by the Borough), from \$75,000 to equal the amount of \$90,000.

SECTION 3. In order to finance the cost of the improvement or purpose set forth in Section 3 of the Original Ordinance, as amended and supplemented hereby, not covered by the NJDEP Additional Grant, the County Grant and/or the additional down payment, additional negotiable

bonds or notes of the Borough in the amount of \$260,000 are hereby authorized to be issued by the Borough, such that the total authorization of negotiable bonds or notes 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 \$260,000.

(a) The estimated maximum amount of bonds or notes to be issued for the improvement or purpose stated in the Original Ordinance, as amended and supplemented hereby, shall be increased by \$260,000 from \$1,525,000 to equal the amount of \$1,785,000 (or a lesser amount if the full amount of the County Grant is received by the Borough).

(b) The estimated cost of the improvement or purpose stated in the Original Ordinance, as amended and supplemented hereby, is equal to \$4,000,650.

SECTION 4. The Capital Budget of the Borough is hereby amended, as necessary, to conform with the provisions of this amendatory 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 5. 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, New Jersey Department of Community Affairs, 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 \$260,000 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 sum of \$100,000 is hereby reduced for the items of expense listed in and permitted under N.J.S.A. §40A:2-20, making the total amount for such items of expense equal to \$650,000, 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 6. 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 6 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 \$1,785,000. 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 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 7. 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 8. Except as expressly amended and supplemented hereby, the Original Ordinance shall remain in full force and effect.

SECTION 9. This bond ordinance shall take effect twenty (20) days after the first publication thereof after final adoption and approval by the Mayor, as provided by the Local Bond Law.

ADOPTED ON FIRST READING

DATED: February 23, 2009

PAMELA BORGHI
Deputy Borough Clerk

ADOPTED ON SECOND READING

DATED: March 9, 2009

PAMELA BORGHI
Deputy Borough Clerk

APPROVAL BY THE MAYOR ON THIS 9TH DAY OF MARCH, 2009.

PASQUALE MENNA, Mayor
Borough of Red Bank