

**BOROUGH OF RED BANK
ORDINANCE NUMBER 2009-42**

BOND ORDINANCE AMENDING AND SUPPLEMENTING BOND ORDINANCE NUMBER 2006-32 FINALLY ADOPTED BY THE BOROUGH COUNCIL ON JUNE 12, 2006 ENTITLED "BOND ORDINANCE PROVIDING FOR THE CONVERSION AND DEVELOPMENT OF MUNICIPALLY OWNED LAND INTO A WATERFRONT PARK, BY AND IN THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY (THE "BOROUGH"); APPROPRIATING \$230,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$218,500 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COST THEREOF", TO INCREASE THE APPROPRIATION THEREIN BY \$370,000 AND TO INCREASE THE AUTHORIZATION OF BONDS OR NOTES THEREIN BY \$133,000 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 June 12, 2006, numbered 2006-32 and entitled, "BOND ORDINANCE PROVIDING FOR THE CONVERSION AND DEVELOPMENT OF MUNICIPALLY OWNED LAND INTO A WATERFRONT PARK, BY AND IN THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY (THE "BOROUGH"); APPROPRIATING \$230,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$218,500 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 improvements or purposes described in Section 3(a) of the Original Ordinance, as amended and supplemented hereby, there is hereby appropriated the additional sum of \$370,000, said sum being inclusive of a grant in the amount of \$230,000 expected to be received from the New Jersey Economic Development Authority (the "Grant") and an additional down payment in the amount of \$7,000, 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 \$370,000 from \$230,000 and shall equal the amount of \$600,000, said sum being inclusive of the Grant in the amount of \$230,000 and the total amount of down payment increased by \$7,000 from \$11,500 to equal the amount of \$18,500.

SECTION 3. (a) In order to finance the cost of the improvements or purposes set forth in Section 3(a) of the Original Ordinance, as amended and supplemented hereby, not covered by the Grant and additional down payment, additional negotiable bonds or notes of the Borough in the amount of \$133,000 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 improvements or purposes set forth in Section 3(a) of the Original Ordinance, as amended and supplemented hereby, shall be increased by \$133,000 from \$218,500 and shall equal the amount of \$351,500.

(b) The estimated maximum amount of bonds or notes to be issued for the improvements or purposes set forth in Section 3(a) of the Original Ordinance, as amended and supplemented hereby, shall be increased by \$133,000 from \$218,500 to equal the amount of \$351,500.

(c) The estimated cost of the improvements or purposes set forth in Section 3(a) of the Original Ordinance, as amended and supplemented hereby, is equal to the amount of \$600,000.

SECTION 4. The Capital Budget 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 5. Except for the Grant, in the event the United States of America, the State of New Jersey, and/or the County of Monmouth make a contribution or grant in aid to the Borough for the improvements and purposes authorized in Section 3(a) of the Original Ordinance, as amended and supplemented hereby, and the same shall be received by the Borough prior to the issuance of the bonds or notes authorized in Section 2 of the Original Ordinance, as amended and supplemented hereby, then the amount of such bonds or notes to be issued shall be reduced by the amount so received from the United States of America, the State of New Jersey, and/or the County of Monmouth. Except for the Grant, in the event that any amount so contributed or granted by the United States of America, the State of New Jersey and/or the County of Monmouth shall be received by the Borough after the issuance of the bonds or notes authorized in Section 2 of the Original Ordinance, as amended and supplemented hereby, then such funds shall be applied to the payment of the bonds or notes so issued and shall be used for no other purpose.

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, 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 \$133,000 and the said obligations authorized herein will be within all debt limitations prescribed by law.

(b) For the improvements or purposes set forth in the Original Ordinance, as amended and supplemented hereby, the additional sum of \$50,000 is hereby included 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 increase by \$50,000 from \$200,000 to equal the amount of \$250,000, such total amount being included in the estimated cost indicated herein for the improvements or purposes set forth in the Original Ordinance, as amended and supplemented hereby.

SECTION 7. The full faith and credit of the Borough are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by the Original Ordinance, as amended and supplemented hereby. The obligations shall be direct, unlimited obligations of the Borough, and the Borough shall be obligated to levy *ad valorem* taxes upon all the taxable property within the Borough for the payment of the obligations and the interest thereon without limitation as to rate or amount.

SECTION 8. 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 8 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 \$351,500. 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 9. 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 10. Except as expressly amended and supplemented hereby, the Original Ordinance shall remain in full force and effect.

SECTION 11. 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.

First Reading: July 27, 2009

Final Reading: August 10, 2009