

**BOROUGH OF RED BANK
ORDINANCE NUMBER 2008-17**

BOND ORDINANCE PROVIDING FOR PHASE II ROAD IMPROVEMENTS TO SPRING STREET, BY AND IN THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY (THE "BOROUGH"); APPROPRIATING \$545,000 THEREFOR (INCLUDING A GRANT EXPECTED TO BE RECEIVED IN THE AGGREGATE AMOUNT OF \$200,000) AND AUTHORIZING THE ISSUANCE OF \$328,000 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COST 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 improvement or purpose described in Section 3 of this bond ordinance is hereby authorized to be undertaken by the Borough of Red Bank, in the County of Monmouth, State of New Jersey (the "Borough") as a general improvement. For the said improvement or purpose stated in Section 3 hereof, there is hereby appropriated the sum of \$545,000, said sum being inclusive of a \$200,000 grant expected to be received from the New Jersey Department of Transportation (the "Grant to be Received") for the improvements being made to Spring Street and a down payment in the amount of \$17,000 now available for said improvement or purpose as required by the Local Bond Law, as amended and supplemented (N.J.S.A. § 40A:2-1 *et seq.*) (the "Local Bond Law"), by virtue of an appropriation from the Capital Improvement Fund of the Borough for down payment or capital improvement purposes in a previously adopted budget or budgets of the Borough.

SECTION 2. For the financing of said improvement or purpose described in Section 3 hereof and to meet the part of said \$545,000 appropriation not provided for by application hereunder of said down payment or the Grant to be Received, negotiable bonds of the Borough are hereby authorized to be issued in the aggregate principal amount of \$328,000 pursuant to the Local Bond Law. In anticipation of the issuance of said bonds and to temporarily finance said improvements or purposes, negotiable notes of the Borough in an aggregate principal amount not exceeding \$328,000 are hereby authorized to be issued pursuant to and within the limitations prescribed by said Local Bond Law.

SECTION 3. (a) The improvement hereby authorized and the purpose for the financing of which said obligations are to be issued is for Phase II of the road improvements to approximately 2,200 linear feet along Spring Street between Harding Road and East Front Street in the Borough, including, but not limited to, as required, the reconstruction, milling, overlaying, paving and resurfacing of said roadway, the removal and replacement of, as applicable, sidewalks, concrete

curbing, curb ramps and driveway aprons, and regrading, landscaping, excavation, pavement striping, installation of traffic calming devices, the replacement of approximately 380 linear feet of 42-inch storm sewer, and also including all work, materials, labor, appurtenances and equipment necessary therefor or incidental thereto.

(b) The estimated maximum amount of bonds or notes to be issued for said improvement or purpose is \$328,000.

(c) The estimated cost of said improvement or purpose is \$545,000, the excess thereof over the estimated maximum amount of bonds or notes to be issued therefor is the down payment in the amount of \$17,000 available for such improvement or purpose and the Grant to be Received in the amount of \$200,000.

SECTION 4. Except for the Grant to be Received, 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 improvement and purpose authorized hereby and the same shall be received by the Borough prior to the issuance of the bonds or notes authorized in Section 2 hereof, 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 to be Received, in the event, however, 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 hereof, then such funds shall be applied to the payment of the bonds or notes so issued and shall be used for no other purpose. This Section 4 shall not apply, however, with respect to any contribution or grant in aid received by the Borough as a result of using funds from this bond ordinance as "matching local funds" to receive such contribution or grant in aid.

SECTION 5. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the Chief Financial Officer of the Borough, provided that no note shall mature later than one (1) year from its date. The notes shall bear interest at such rate or rates and be in such form as may be determined by the Chief Financial Officer. The Chief Financial Officer of the Borough shall determine all matters in connection with the notes issued pursuant to this bond ordinance and the signature of the Chief Financial Officer upon the notes shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time in accordance with the provisions of the Local Bond Law. The Chief Financial Officer is hereby authorized to sell part or all of the notes from time to time at a public or private sale and to deliver them to the purchaser thereof upon receipt of payment of the purchase price and accrued interest thereon from their dates to the date of delivery thereof. The Chief Financial Officer is

directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this bond ordinance is made. Such report must include the principal amount, the description, the interest rate, the maturity schedule of the notes so sold, the price obtained and the name of the purchaser.

SECTION 6. The capital budget of the Borough is hereby amended to conform with the provisions of this 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 programs as approved by 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 7. The following additional matters are hereby determined, declared, recited and stated:

(a) The purpose described in Section 3 of this bond ordinance is not a current expense and is an improvement which the Borough may lawfully undertake as a general improvement, and no part of the cost thereof has been or shall be specially assessed on property specially benefited thereby.

(b) The period of usefulness of said improvement or purpose within the limitations of said Local Bond Law, according to the reasonable life thereof computed from the date of the said bonds authorized by this bond ordinance, is ten (10) years.

(c) 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 in the 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 or notes provided for in this bond ordinance by \$328,000 and the said obligations authorized by this bond ordinance will be within all debt limitations prescribed by said Local Bond Law.

(d) An aggregate amount not exceeding \$100,000 for items of expense listed in and permitted under N.J.S.A. § 40A:2-20 is included in the estimated cost indicated herein for the purpose or improvement hereinbefore described.

SECTION 8. 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 this bond ordinance. 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 9. The Borough reasonably expects to reimburse any expenditures toward the costs of the improvement or purpose described in Section 3 of this bond ordinance and paid prior to the issuance of any bonds or notes authorized by this bond ordinance with the proceeds of such bonds or notes. No funds from sources other than the bonds or notes authorized herein 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 9 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 hereof to be incurred and paid prior to the issuance of bonds or notes authorized herein 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 herein and used to reimburse the Borough for any expenditures toward the costs of the improvement or purpose described in Section 3 hereof 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) of the Code, (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 Code, 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 herein to reimburse the Borough for any expenditures toward the costs of the improvement or purpose described in Section 3 hereof will be issued in an amount not to exceed \$328,000. The costs to be reimbursed with the proceeds of the bonds or notes authorized herein 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 10. The Borough covenants to maintain the exclusion from gross income under Section 103(a) of the Code the interest on all bonds and notes issued under this bond ordinance.

SECTION 11. This bond ordinance shall take effect twenty (20) days after the first publication hereof after final adoption, and approval by the Mayor, as provided by the Local Bond Law.

ADOPTED ON FIRST READING

DATED: July 28, 2008

CAROL A. VIVONA,
Borough Clerk

ADOPTED ON SECOND READING

DATED: August 11, 2008

CAROL A. VIVONA,
Borough Clerk

APPROVED BY THE MAYOR THIS 11TH DAY OF AUGUST, 2008.

PASQUALE MENNA