

ORDINANCE NO. 2010-17

REFUNDING BOND ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$500,000 AGGREGATE PRINCIPAL AMOUNT OF REFUNDING BONDS AND/OR REFUNDING NOTES BY THE BOROUGH OF RED BANK, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY FOR THE PURPOSE OF PAYING AMOUNTS OWED TO TAXPAYERS FROM TAX APPEAL JUDGMENTS AND SETTLEMENTS AND APPROPRIATING THE PROCEEDS OF SUCH REFUNDING BONDS TO SUCH PURPOSE

WHEREAS, pursuant to the Local Bond Law, N.J.S.A. 40A:2-1 et seq., as amended and supplemented (the "Local Bond Law"), the Borough of Red Bank, in the County of Monmouth, State of New Jersey (the "Borough") has determined to provide for the payment of tax appeal judgments and settlements with various taxpayers in the amount of \$453,057.82, plus costs associated with such appeals and the issuance of Refunding Bonds (as hereinafter defined) through the issuance by the Borough of refunding bonds and/or refunding notes in an aggregate principal amount not to exceed \$500,000, as provided in this refunding bond ordinance.

NOW, THEREFORE, 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. In order to finance the purposes described in Section 2 hereof, negotiable refunding bonds and/or refunding notes of the Borough are hereby authorized to be issued in an aggregate principal amount not to exceed \$500,000 (collectively, the "Refunding Bonds"). The proceeds of the Refunding Bonds are hereby appropriated to the purposes described in Section 2 hereof.

Section 2. (a) The purposes for which the Refunding Bonds are to be issued are to pay liabilities owed by the Borough from tax appeal judgments and settlements in the amount the amount of \$453,057.82 plus all costs of issuance relating to the Refunding Bonds, including, but not limited to, as applicable, printing, advertising, accounting, financial and legal services, rating agency fees, underwriter's discount, and bond insurance premiums, if any.

(b) The aggregate cost of issuing the Refunding Bonds and all costs associated with the aforesaid tax appeal judgments and settlements, as provided by N.J.S.A. 40A:2-51(b), shall not exceed \$45,000, which amount includes all items described in Section 2(a) hereof. Such amount is included in the maximum authorized aggregate principal amount of Refunding Bonds set forth in Section 1 hereof.

Section 3. Any further provisions as to terms of sale, deposit, security regulation, investment, reinvestment, disposition or application of the proceeds of the Refunding Bonds, and matters in connection therewith, shall be determined by resolution of the Borough adopted prior to the issuance of the Refunding Bonds, except that refunding notes shall be issued in accordance with the provisions of Section 4 and Section 12 of this refunding bond ordinance and no subsequent resolution of the Borough is required to be adopted to authorize the issuance of refunding notes.

Section 4. The Borough Council hereby delegates to the Chief Financial Officer of the Borough the power to sell the Refunding Bonds on a negotiated basis, to determine the terms of the Refunding Bonds and to perform such other actions and make such other determinations, subject to, as applicable, the limitations to be set forth in a subsequent resolution of the Borough.

Section 5. The Borough Council hereby authorizes and delegates to the Chief Financial Officer, in consultation with Wilentz, Goldman & Spitzer, P.A., Bond Counsel to the Borough ("Bond Counsel") and DAK CPA, Auditor to the Borough (the "Auditor"), the authority to negotiate, approve the terms of and to execute on behalf of the Borough a Bond Purchase Agreement for the purchase and sale of the Refunding Bonds.

Section 6. All other matters relating to the Refunding Bonds shall be performed or determined by subsequent resolution of the Borough, or the performance or determination thereof shall be delegated by resolution of the Borough to the Chief Financial Officer of the Borough.

Section 7. A certified copy of this refunding bond ordinance, as introduced and adopted upon first reading, shall be filed with the Director of the Division of Local Government Services, in

the New Jersey Department of Community Affairs prior to final adoption hereof, together with the statement signed by the Chief Financial Officer of the Borough required by N.J.S.A. 40A:2-55.

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 Refunding Bonds authorized by this refunding bond ordinance. The Refunding Bonds shall be direct, unlimited obligations of the Borough, and, unless paid from other sources, the Borough shall be obligated to levy *ad valorem* taxes upon all the taxable property within the Borough for the payment of the Refunding Bonds and the interest thereon without limitation as to rate or amount.

Section 9. After passage upon first reading of this refunding bond ordinance, the Borough Clerk is hereby authorized and directed to publish a summary of this refunding bond ordinance, together with the "NOTICE OF PENDING BOND ORDINANCE" (with appropriate completions, insertions and corrections), at least once in a newspaper qualified under N.J.S.A. 40A:2-19, at least seven (7) days prior to the date of the public hearing and further consideration for final passage (which date shall be at least ten (10) days after introduction and first reading). The Borough Clerk is further directed to comply with all provisions of N.J.S.A. 40A:2-17(b) regarding postings, publications, and the provision of copies of this refunding bond ordinance. The Clerk is hereby authorized and directed to set the date of the public hearing for this refunding bond ordinance for May 24, 2010.

Section 10. After final adoption of this refunding bond ordinance by the Borough Council, and approval by the Mayor, the Borough Clerk is hereby directed to publish a summary of this refunding bond ordinance, as finally adopted, together with the "NOTICE OF ADOPTION OF BOND ORDINANCE" (with appropriate completions, insertions and corrections), at least once in a newspaper qualified under N.J.S.A. 40A:2-19.

Section 11. The Borough Council hereby covenants on behalf of the Borough to take any action necessary or refrain from taking such action in order to preserve the tax-exempt status of the Refunding Bonds authorized hereunder as is or may be required under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"), including compliance with the Code with regard to the use, expenditure, investment, timely reporting and rebate of investment earnings as may be required thereunder.

Section 12. All tax appeal refunding 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 refunding 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, and the maturity schedule of the notes so sold, the price obtained and the name of the purchaser.

Section 13. 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 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 bond ordinance by \$500,000 and the said obligations authorized by this bond ordinance will be within all debt limitations prescribed by said Local Bond Law.

Section 14. This bond ordinance shall take effect twenty (20) days after the first publication hereof after final adoption, as provided in the Local Bond Law, but not prior to the time that the consent of the Local Finance Board in the Division of Local Government Services, New Jersey Department of Community Affairs has been endorsed upon a certified copy of this refunding bond ordinance as finally adopted, as provided by N.J.S.A. 40A:2-55.

First Reading: April 26, 2010

Final Reading: May 10, 2010