

# RESOLUTION OF THE TOWNSHIP OF IRVINGTON, NJ

No. **DRF16-00927-66**

Date of Adoption **SEPTEMBER 27, 2016**

APPROVED AS TO FORM AND LEGALITY ON THE BASIS OF FACTS SET FORTH BY

*Legislative Research Officer*

PRESENTED BY COUNCIL MEMBER

**JONES**

SECONDED BY

**COX**

## AUTHORIZING A NON-FAIR AND OPEN FOR AUCTIONEERING AND MARKETING SERVICE

WHEREAS, the Township of Irvington, in the County of Essex and State of New Jersey, is the need of an auctioneer to marketing and sell special tax liens (assigned sale under NJSA 55:19-101); and

WHEREAS, the Township would like to retain the service of a certified Auctioneer to provide service that includes managing and advertising the sale and auction of properties in the Township; and

WHEREAS, Max Spann Real Estate & Auction Company was provided a proposal to complete the required work at no cost to the Township and the Administration has reviewed and accepted the same; and

WHEREAS, Max Spann Real Estate & Auction Company shall charge a Buyers Premiums payable solely by the purchaser for an amount not to exceed ten percent (10%) to be added to the sales price of all tax liens; and

WHEREAS, this service will exceed the Pay to Play threshold and pursuant to the provisions of N.J.S.A. 19:44A-20.4 the vendor has completed the required pay to plays forms; and,

WHEREAS, the C-271 Political Contribution Disclosure forms were on file in the Office of the Municipal Clerk and Purchasing Agent on August 27, 2016; and,

WHEREAS, the Township would like to award a Non Fair and Open contract to Max Spann Real Estate & Auction Company

WHEREAS, the anticipated term of this contract is one year starting on September 27, 2016 through September 28, 2017; and

WHEREAS, Max Spann Real Estate & Auction Company has completed and submitted a Business Entity Disclosure Certification which certifies that Max Spann Real Estate & Auction Company has not made any reportable contributions to a political or candidate committee in the Township of Irvington in the previous one year, and that the contract will prohibit Max Spann Real Estate & Auction Company from making any reportable contributions through the term of the contract, and

NOW THEREFORE, BE IT RESOLVED that the Municipal Council of the Township of Irvington authorizes the award of a non-fair and open contract to Max Spann Real Estate & Auction Company of 1325 Route 31, Annadale, NJ 08801; and,

BE IT FURTHER RESOLVED, the Auctioneer will charge a Buyer's Premium to all properties sold, payable solely by the purchaser for not an amount not to exceed ten (10) percent of be added to the sale paid by the purchase. The Township shall not incur any cost for this service; and

BE IT FURTHER RESOLVED, Max Spann Real Estate & Auction Co. is hereby retained as Auctioneer for the Township of Irvington for the sale of special tax liens to the highest bidder by open public sale at auction, the tax certificates ; and

BE IT FURTHER RESOLVED, a list of all tax liens that Max Spann Real Estate & Auction Co sells on behalf of the Township shall be approved by a separate resolution ; and

BE IT FURTHER RESOLVED that the Township Attorney is hereby authorized and directed to prepare the necessary contract, and the Mayor and Township Clerk are authorized and directed to sign the same; and

BE IT FURTHER RESOLVED, notice of this action shall be published in newspapers as required by law by the Municipal Clerk.

## RECORD OF COUNCIL VOTE

X = Indicates Vote N.V. = No Vote A.B. = Absent

| COUNCIL MEMBER              | YES | NO | N.V. | A.B. | COUNCIL MEMBER           | YES | NO | N.V. | A.B. |
|-----------------------------|-----|----|------|------|--------------------------|-----|----|------|------|
| BURGESS, 1ST VICE PRESIDENT | X   |    |      |      | INMAN                    | X   |    |      |      |
| COX                         | X   |    |      |      | JONES, 2ND VICEPRESIDENT | X   |    |      |      |
| FREDERIC                    | X   |    |      |      | LYONS, PRESIDENT         | X   |    |      |      |
| DR. HUDLEY                  | X   |    |      |      |                          |     |    |      |      |

PRESIDENT OF COUNCIL *David Lyons* MUNICIPAL CLERK *Sheldene* DATE **SEPTEMBER 27, 2016**

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Municipal Council. In witness whereof I have hereunto set my hand and the Corporate Seal of the Township of Irvington.

MUNICIPAL CLERK *Sheldene*

DATE **SEP 27 2016**

ADMINISTRATOR ☐ ASSESSOR ☐ BLDG ☐ CFO ☒ COLLECTOR ☒ COURT ☐ ENGINEER ☒ FIRE ☒ HEALTH ☐ HOUSING ☐ INIC ☐ JUDGE ☐ LEGAL ☒ LIBR ☐ LICEN ☐ MAYOR ☐ OCDP ☐ PARKS ☐ PAYROLL ☐ PUBLIC SAFETY ☐ DIR ☐ PUBLIC WORKS ☒ PURCHASING ☒ SEC ☐ PB/ZBA ☐ TRAFFIC ☐ ZONING ☐ OFF ☐ DLGS ☒ GNCD ☐ OTHER(S): *Bus. dev. Director*

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
AUCTION MARKETING SERVICES**

AGREEMENT, dated this \_\_\_\_ day of \_\_\_\_\_ 2016, by and between the Township of Irvington with a mailing address of 1 Civic Square, Irvington, New Jersey 07111 (hereinafter referred to as the "SELLER"), and Max Spann R.E. & Auction Co., a licensed New Jersey Real Estate Broker and Certified Auctioneer, with a business mailing address of P.O. Box 4992, Clinton, New Jersey 08809 (hereinafter referred to as "Max Spann R.E. & Auction")

**WITNESS**

**WHEREAS**, the parties seek to list property for sale through Max Spann R.E. & Auction Co. and to attempt to effectuate the sale of real property listed on schedule A (the "Property") at an Auction to be conducted by Max Spann R.E. & Auction Co., Auction specialist, and

**WHEREAS**, the parties wish to enumerate the services to be provided by and compensation paid to Max Spann R.E. & Auction Co. in connection with the listing and auctioning of Property.

**NOW, THEREFORE**, the parties agree as follows:

1. **AUCTION:** Seller authorizes Max Spann R.E. & Auction Co. to take such action as may be reasonably necessary in conformance with N.J.S.A. 40A:12-13 to advertise and conduct an auction to procure a purchaser for the Property.
2. **SERVICES:** Max Spann R.E. & Auction Co. shall provide the following services to the Seller in connection with the listing and auctioning of the Property and/or future real estate properties the municipality sells during the term of this Agreement:
  - (a) Advertise the Auction in media deemed most effectual and appropriate by Max Spann R.E. & Auction Co.
  - (b) Furnish a qualified Auctioneer.
  - (c) Post and circulate promotional material on the Property promoting the Auction.
  - (d) Take any and all other action reasonably calculated in conformance with N.J.S.A. 40A:12-13 to effect an advantageous sale of the Property in accordance with the terms of this Agreement.
3. **TERMS AND CONDITIONS OF SALE:** The terms and conditions of sale are as follows:

(a) The terms and conditions of sale are more particularly set forth in a Contract of Sale, Resolution Authorizing Sale and Notice of Sale prepared by the Seller's attorney, which documents shall be distributed by Max Spann R.E. & Auction Co. to prospective purchasers prior to the Auction.

(b) The Contract of Sale shall notify purchaser that the three (3) day attorney review period does not apply to this transaction.

(c) The Seller reserves the right to accept or reject any/or all bids. Seller will give notice of acceptance or rejection of bid no later than 15 days following the auction. Any reserve price established by the Seller will be non-published and be held **confidential** between the Seller and Max Spann R.E. & Auction Co. until the conclusion of the Auction.

(d) Seller shall hold all deposit money. In case of forfeiture by a prospective purchaser of any earnest money payment upon the above described properties, said deposit money shall be divided equally between the parties hereto, one-half to the Seller and one half to the Max Spann R.E. & Auction Co., except Max Spann R.E. & Auction Co.'s portion shall not exceed the regular commission due.

(e) The closing of title shall take place within forty-five (45) days of Seller's acceptance of the bid.

(f) Seller authorizes Max Spann R.E. & Auction Co. to advertise the Property.

4. **COMPENSATION:** The Seller is not responsible for payment of any brokerage commissions. In accordance with prevailing custom and practice, Max Spann R.E. & Auction Co. will charge a BUYERS PREMIUM payable solely by the purchaser and has determined it will charge a BUYERS PREMIUM of ten percent (10%) to be added to the sales price which sum shall be due and payable at closing from the sale proceeds. Seller agrees sale will be contingent upon said Buyer's Premium being paid by the purchaser.
5. **TERM:** This Agreement shall extend from the date hereof for a one year period (the Term"). Seller shall be obligated to pay Max Spann R.E. & Auction Co. the compensation set forth in section 4 above on any completed purchase of the Property resulting from an accepted bid on the Auction date or during the Term.
6. **SELLER'S REPRESENTATIONS:** Seller makes the following representations:
- (a) Seller understands its responsibilities under New Jersey's Law against Discrimination and agrees to abide by the same.
  - (b) Seller has title to the Property and the legal right to enter into this Agreement.

(c) Seller will provide Max Spann R.E. & Auction Co. with a certified list of individual parcels and lots to be included in the sale. Said list shall designate properties as conforming or non-conforming and be certified as to accuracy by the appropriate municipal official/employee.

(d) Seller shall convey title free from all liens and encumbrances, except those liens and encumbrances which would be revealed by a title search of the property. Seller further agrees to defend, indemnify and hold harmless Max Spann R.E. & Auction Co., its officers, directors and employers from any and all claims of any nature whatsoever, including but not limited to claims arising from zoning, title or environmental issues as they pertain to the Property or to off-site conditions relating to the Property of the Municipality.

(e) Seller hereby agrees to indemnify, defend and hold Broker harmless from any and all damages, claims, losses or demands, resulting from the Broker's performance (unless due to Broker's negligence, willful misconduct or fraud) of its duties hereunder on any transaction which is the result thereof.

7. **PROSPECTIVE PURCHASERS:** Seller shall refer to Max Spann R.E. & Auction Co. any and all inquiries from prospective purchasers or real estate brokers concerning the Property, from the date hereof until the end of the Term.
8. **BIDDER:** Max Spann R.E. & Auction Co. does not guarantee production of the highest bidder, nor does it guarantee execution of a Contract of Sale by the highest bidder at the Auction.
9. **APPLICABLE LAW:** This Agreement shall be governed by and construed in accordance with the Law of the State of New Jersey. In the event any part of this Agreement shall be negated as a matter of law, it is the intent of the parties that the balance of the Agreement shall remain in full force and effect. This Agreement shall be binding upon the heirs and assigns of both parties.
10. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement between the parties and may not be amended or cancelled except by an Agreement in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have affixed their hands, as of the date first above written.

SELLERS  
TOWNSHIP OF IRVINGTON

MAX SPANN REAL ESTATE & AUCTION CO.

\_\_\_\_\_  
Tony Vauss, Mayor

By: \_\_\_\_\_  
Maximillian M. Spann, President

Attest:

\_\_\_\_\_  
Harold Weiner, Clerk

\_\_\_\_\_  
Secretary,

**Schedule A- Properties to be Auctioned**

To be determined