

**AGREEMENT FOR
ELECTRONIC TAX LIEN CERTIFICATE SALE SERVICES**

This agreement (“**Agreement**”) entered into as of _____, 2022 (the “**Effective Date**”), between the Township of Franklin, Gloucester County, a municipal subdivision of the State of New Jersey (“**Municipality**”), and RealAuction.com LLC (“**Contractor**”), a Florida limited liability company, located at 861 SW 78th Avenue, Suite 102, Plantation, Florida 33324 licensed to do business in the State of New Jersey, for Internet-based electronic processing of bid information related to the auction sale of Municipality's tax lien certificates (“**Tax Certificates**”).

WHEREAS, the Division of Local Government Services, Department of Community Affairs of the State of New Jersey (the “**DCA**”) pursuant to N.J.S.A. 54:5-19.1(c) adopted regulations N.J.A.C. 5:33-1.1 (the “**New Regulations**”) governing electronic sales of Tax Certificates, effective as of January 2, 2018, and New Regulations have been further clarified by Local Finance Notice 2018-08, dated February 16, 2018 (the “**LFN**”, together with the New Regulations, as either may be amended in the future, the “**Electronic Sale Regulations**”); and

WHEREAS, the Services (as defined below) to be performed for Municipality under this Agreement shall be performed by Contractor, with ROK Industries, Inc. d/b/a NJtaxlieninvestor.com (“**ROK**”) serving as its administrative agent for purposes of invoicing, collecting payment and other ancillary services in furtherance of such Services, all in accordance with the Electronic Sales Regulations.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinabove and hereinafter set forth, the parties hereby agree as follows:

1. Term of Agreement; Cancellation; Termination Upon Default.

A. The term of this Agreement shall be one year from the above date. Either party may cancel this Agreement at any time, with or without cause, with thirty (30) days advance written notice to the other party. If Municipality cancels the Agreement within thirty (30) days of a scheduled auction, Municipality will pay Contractor its reasonable expenses for Services performed to date.

B. Termination for Default or Breach: This Agreement may be terminated by either party upon the failure of, or breach by, the other party to comply with any provision or requirement of this Agreement, provided that written notice of such failure or breach is given to the defaulting party and such failure or breach is not cured within thirty (30) days from the date of receipt of written notice. A party's decision not to take action upon failure of the other party to perform shall not be construed as a waiver of the ability of non-breaching party to take additional action at a later date and time.

2. Services to be Provided by Contractor.

A. The Contractor shall furnish Internet auction services as more particularly provided for in this Agreement (the “**Services**”) for Tax Certificates for the Municipality. If the Services under this Agreement have been awarded to the Contractor pursuant to a Request for Proposal (“**RFP**”) or Request for Quotation (“**RFQ**”) issued by the Municipality, the parties agree that the terms and conditions of the RFP or RFQ (as applicable) and Contractor's RFP or RFQ response (as applicable) accepted by Municipality (collectively, the “**Final RFP/RFQ**”), are hereby incorporated as if fully set forth herein and are expressly included in the defined term “**Services**.” The Electronic Sales Regulations are also hereby incorporated by reference as if fully set forth herein, and all Services shall be provided in accordance with the Electronic Sales Regulations. In the event of a conflict among the New Regulations, LFN, the Final RFP/RFQ or this Agreement, the terms and conditions of the New Regulations shall prevail, followed by the LFN, the Final RFP/RFQ and then this Agreement. For avoidance of doubt, Contractor shall not be required to comply with any terms and conditions in the Final RFP/RFQ that is expressly prohibited by the Electronic Sales Regulations.

B. The Contractor shall provide a host server (the “**Server**”) for the Web Site. As used herein, the term “**Web Site**” shall mean an Internet web site that Contractor will make available to Municipality under this

Agreement. The Web Site will utilize proprietary software, which is capable of accepting and processing competitive bids for Tax Certificates to be issued by Municipality. The Municipality acknowledges that the Contractor's Server may not be dedicated exclusively to the Web Site. The Contractor shall use commercially reasonable efforts to make the Web Site available during all regular business hours (8:30 a.m. to 5:30 p.m. EST) and shall not schedule planned maintenance downtime to occur during these regular business hours.

C. During each auction sale, the Contractor shall provide auction administrators (“**Auction Administrator(s)**”) and technical support necessary to facilitate the Municipality’s conduct of online auction sales of Tax Certificates.

D. Contractor will assist Municipality with the following:

- i. Auction set-up. Municipality is responsible to establish the auction start date, end date and batch size and other terms and business rules for the auction’s administration and execution, including but not limited to management or retrieval of user registration information and auction results. Contractor shall, upon Municipality’s request, consult concerning optimal terms and business rules or amending same to achieve Municipality’s goals. Contractor shall set-up the Web Site to reflect Municipality’s approved terms and business rules and conduct the auction in conformance therewith.
- ii. Granting and denying users and Municipality’s employees various degrees of access privileges to the Web Site. Before any Municipality representative is given privileges to access the Web Site and its information, Municipality must provide Contractor with written authorization directing Contractor to give such employees such authority. Municipality is responsible for notifying Contractor in writing of the revocation of such authority due to the death, retirement, resignation, termination or reassignment of any Municipality employee.
- iii. Monitoring network performance while auction sales are in progress.
- iv. Providing reasonable technical support to resolve questions related to hardware, software or network problems encountered by the Municipality or third party users (i.e., participants in auctions, “**Bidders**”).
- v. Providing telephone, web-based and on-site training sessions for Municipality personnel designated by the Municipality as having a thorough knowledge of the transactions to be consummated through the use of the Web Site at times to be mutually determined.
- vi. Providing personal and telephonic support during regular business hours for the handling of Bidder and Municipality questions relating to the general operation of the Web Site. On-site support may also be provided at the Municipality’s request. Such on-site support shall be reasonable and at times mutually agreed upon by Municipality and Contractor.

E. Contractor will include on the Web Site terms and conditions, with appropriate disclaimers, to which Bidders will be required to consent. Each party will have the right to reasonably approve the terms and conditions or disclaimers that are included within the Web Site.

F. Contractor shall record and maintain records of all activity occurring on the Web Site, and shall retain these records for a period of five (5) years from the date of each auction.

G. Contractor shall permit an independent auditor to review and examine, during normal business hours, Contractor’s internal controls and procedures, provided that such audit shall not occur more than one time in any given calendar year and the costs of such audit will be borne by Municipality.

H. Contractor and ROK, and their respective owners, equity holders, and employees shall not participate as bidders in the sale or purchase of any Tax Certificates of Municipality conducted under this Agreement or that of any other municipality in the State of New Jersey conducted by them.

I. Contractor shall ensure that the Web Site is capable of providing the following functions:

- i. Accepting, processing and displaying bid information and other data related to auctions of Tax Certificates.
- ii. Accepting, processing and maintaining an ID number and password from users before users enter any auction, which they may obtain free of charge by simply registering on the Web Site.
- iii. Providing users with the means for reviewing the list of all Tax Certificates being offered for sale free of charge.
- iv. Providing users with the means to bid and to withdraw bids on Tax Certificates prior to the conclusion of the tax sale.
- v. A proxy bidding system, whereby a user will submit the minimum rate and/or maximum premium that he/she would be willing to receive for the applicable Tax Certificate. The Contractor's software will act on the Bidder's behalf, submitting only the maximum rate (or minimum premium) necessary to win the bidding for any given Tax Certificate, but in no event less than the minimum rate (or maximum premium) specified by the bidder. When the auction is over, Bidder will see only the higher of the minimum rate (or maximum premium) submitted by each Bidder or their winning bid.
- vi. Allowing users to view auction sale results upon completion of the auction.
- vii. Allowing Contractor's Auction Administrators and Municipality's internal auction administrators (the "**Municipality Auctioneers**") to observe auctions in progress and retrieve information immediately upon completion of each auction, and to release the final results of auctions so that they can be viewed by all users with authorized access to the Web Site. Bid amounts shall not be visible to the public or to the Municipality while the auction is in process.
- viii. Enabling the Municipality Auctioneers, or the Contractor Auction Administrator at Municipality's direction, to establish and modify auction parameters; to modify registration information pertaining to a particular Bidder or Municipality user; and to limit or prohibit a user's access privileges to the site. Municipality will provide Contractor with the names of Municipality personnel who are permitted to access and/or authorize modifications. In the event Municipality directs Contractor to effect such modifications, Municipality will be required to give Contractor reasonable advance notice before such modifications are to go into effect.

3. Cooperation by Municipality. Notwithstanding any other provision herein, the Municipality shall:

A. Notify Contractor in writing of the actual date for each tax certificate sale to be conducted on the Web Site at least 60 days prior to such date and provide Contractor with all information concerning the properties for which Tax Certificates are being offered at auction at least 45 days prior to the date of each auction.

B. Providing Contractor with the names, titles and contact information for all Municipality employees who will have decision-making authority of any kind in the auction process or access to the Contractor's Web Site, as well as the names and contact information of all Municipality employees who are responsible for processing Contractor's requests for payment and supporting documentation.

C. The Web Site shall bear Municipality's name and such other trade dress (e.g., logos, introductory statement from the Municipality etc.) as reasonably directed by the Municipality. The Municipality acknowledges and agrees that every page of the Web Site may display the Contractor's name and company logo.

D. Municipality will cooperate with Contractor to ensure that Contractor has access to and is provided with all the information it needs to effectuate the Tax Certificate auctions described in this Agreement and for preparation and delivery of the Contractor's requests for payment, including reasonable access to any IT systems and databases (whether owned, licensed or leased from a third party). The information provided will include the initial data load and timely updates of any Tax Certificates that have been redeemed, purchased or transferred.

4. Payment for Services.

A. Municipality acknowledges that Contractor has appointed ROK to act as its administrative agent for payment and collection under this Agreement, and Contractor will be paid based upon invoices submitted to the Municipality by ROK after the completion of the auction sale in accordance with this Agreement.

B. In consideration of the Services set forth in this Agreement, Municipality shall pay (or cause to be paid) the following fees to Contractor c/o its administrative agent (ROK) in the manner described:

- i. \$15 per property listed on the initial list of properties provided by Municipality to Contractor.
- ii. Municipality will not be responsible for paying Contractor any other fees beyond those set forth above in clause (i) for a given auction sale, unless Municipality cancels this Agreement prior to the auction sale in which case Municipality will be responsible for paying Contractor its reasonable expenses for Services performed to date in accordance with the last sentence in Paragraph 1(A) above.

C. Following the conclusion of an auction sale, ROK shall provide Municipality with an invoice, which shall be paid within fifteen (15) days of receipt by the Municipality. Contractor and/or ROK will provide Municipality any other information that may be reasonably required by the Municipality.

D. All payments shall be made to:

ROK Industries, Inc.
(Administrative Agent for RealAuction.com LLC)
Attn: Igor Roitburg
306 Harlingen Road
Belle Mead, New Jersey, 08502

E. Contractor shall not be obligated to provide any Services hereunder in the event Municipality is more than sixty (60) days delinquent in paying any invoices, provided, however, that Contractor or ROK has advised the Municipality Tax Collector in writing that it will cease performing services unless delinquent invoices are paid in full.

F. Any payment due and payable under this Agreement made after the date such payment is due and payable shall bear interest as of the day after the date such payment was due and payable and shall continue to accrue such interest until such payment is made at a rate of sixteen percent (16%) per annum, compounded monthly, or at the maximum rate allowed by law if said maximum

amount is less. The calculation of a daily rate shall be made based upon a year of three hundred and sixty (360) days and a month of thirty (30) days.

5. Limited Warranty; Disclaimer of Implied Warranties; Limitation of Liability; Consequential Damages or Incidental Damages; Indemnification.

A. Contractor warrants that the Web Site, when provided with accurate and properly formatted data by Municipality and Bidders, and when accessed by properly functioning software and equipment of Bidders, will perform substantially as required in order to facilitate Municipality's online auction sales of Tax Certificates. Contractor will, at no charge to Municipality, make corrections to the Web Site so that the Web Site performs substantially as agreed by Municipality and Contractor prior to the auction sale, and will use commercially reasonable efforts to make such corrections available within 36 hours or receiving notice of same, provided that Municipality reports to Contractor any failures or defects in the Web Site and provides Contractor with information sufficient to correct such failure or defect. In the event Contractor is not able to make such corrections available within 36 hours, the Contractor will confer with Municipality to advise Municipality with respect to the status of problem resolution and anticipated time of correction.

B. Except for the express limited warranty set forth in the preceding section of this Agreement, Contractor makes no warranty, representation, promise or guarantee, either express or implied, statutory or otherwise, with respect to the Web Site or the Services provided hereunder, including their quality, performance, merchantability or fitness for a particular purpose, or whether any of the transactions to be conducted using the Web Site comply with any applicable federal, state, municipality or other law or regulations. Contractor will have no responsibility for any actual or purported loss resulting from damages associated with the auction format selected by Municipality for any particular auction conducted on the Web Site. Contractor shall be responsible for any errors or omissions of its employees and agents in performing the Services hereunder. In no event will Contractor be liable for indirect, special, incidental, economic, cover, consequential, tort or other damages (including without limitation damages or costs relating to the loss of profits, business, goodwill, data or computer programs, even if advised of the possibility of such damages), without regard to the legal theory of such damages, arising out of the use of or inability to use the Web Site or the services provided hereunder. Except as provided in this paragraph, in no event will Contractor's liability to Municipality arising out of or related to this Agreement exceed the fees earned by Contractor under this Agreement during the twelve month period immediately preceding the date that the event giving rise to Contractor's liability occurred. Notwithstanding anything to the contrary contained herein, Contractor's liability to Municipality arising out of claims brought against Contractor under this Agreement will be no greater than \$100,000 in the aggregate.

C. Subject to the last sentence of Paragraph 5(B) above, Contractor shall indemnify and hold harmless the Municipality, its directors, officers, members, employees and agents, from and against any and all claims, losses, costs, damages and liabilities incurred in connection with any third party claims relating to Contractor's performance of, or failure to perform, the Services under the Agreement.

6. Confidentiality; Proprietary Information.

A. The format in which Contractor stores data provided by Municipality will be proprietary to Contractor. Municipality's retrieval and use of the data compiled by Contractor on the Web Site shall be limited to Municipality's internal use only, and Municipality agrees that it will not, unless otherwise required by law, transmit to third parties, or permit other third parties to access the data in the format and compilation created by Contractor.

B. Municipality acknowledges that with respect to Bidders who provide minimum bids as part of the Web Site's proxy bidding feature, Contractor will be deemed the agent of such bidders in so

far as Bidders have provided such minimum bids. Such minimum bids will be the confidential information of the Bidder, which Contractor will be required to maintain, and which Contractor will not release except as required by law.

C. Except upon prior written approval by the Municipality, the Contractor, or its subcontractors, shall not furnish or disclose to any person and/or organization, any non-public information that Municipality designates as confidential.

D. It is expressly understood and agreed that the software used to develop and operate the Web Site; any related materials and documentation provided by Contractor or any of its subcontractors, including without limitation information related to security or other technical aspects of the Web Site; and the non-public pages of the Web Site constitute a valuable proprietary product and trade secret of Contractor embodying substantial creative efforts and confidential information, ideas, and expressions (collectively for the purposes of this section "**Contractor's Confidential Information**"). Municipality agrees to hold all such Contractor's Confidential Information in strictest confidence and take such steps as are reasonably necessary to protect the confidentiality of the Contractor's Confidential Information and other materials designated by Contractor as confidential. Such steps shall include, without limitation, refraining from taking any action in derogation of Contractor's ownership rights and taking actions similar to those taken by Municipality with respect to protecting other third party confidential information in its possession. Municipality shall not disclose or otherwise make available the Contractor's Confidential Information in any form to any person except to those employees of Municipality or Contractor who have a need to know and need access to the information to facilitate Municipality's authorized use of the Web Site. Nothing herein shall be construed, however, to prohibit Municipality from making any disclosures required of Municipality pursuant to any legal process or request from any governmental authority having jurisdiction over Municipality, or from making disclosure required by New Jersey law, provided however that prior to disclosure to any such governmental authority, Municipality shall provide prior notice to Contractor in order to enable Contractor to seek protection of such confidential information or seek other relief, and provided, further, that Municipality will only disclose the minimum amount of confidential information required.

E. Each party agrees to treat any information they receive that is submitted to the Web Site by Bidders, including without limitation, deposit amounts, social security numbers, federal tax identification numbers, etc., in accordance with applicable law and the "privacy policy" set forth in the related link on the Web Site. Contractor will not change the "privacy policy" without Municipality's consent, which will not be unreasonably withheld.

7. Limited Agency Created; No Third Party Beneficiaries Intended. For the limited purpose of providing auction sale services for the Tax Certificate auction and other services specifically described herein, Contractor shall be an agent of the Municipality and shall be required to take direction from the Municipality as to the mechanism and effectuation of the sale, except to the extent inconsistent with applicable law including but not limited to the rules, guidance or direction of the DCA. Other than with the respect to the handling of the tax sale auction and other services described herein, Contractor acknowledges that it does not have the authority to act on behalf of the Municipality or its agencies. Contractor's personnel shall not be employees of the Municipality. There are no intended third party beneficiaries, including without limitation any users of the Web Site described herein.

8. Force Majeure. Delay in performance or non-performance of any obligation contained herein shall be excused to the extent such failure or non-performance is caused by "force majeure" event. For purposes of this Agreement, a "force majeure" event shall mean any cause or agency preventing performance of an obligation which is beyond the control of either party hereto, including without limitation, fire, flood, sabotage, embargo, strike, explosion, labor trouble, accident, riot, acts of governmental authority (including, without limitation, acts based on laws or regulations now in existence as well as those enacted in the future), and delays or failure in obtaining raw materials or transportation, acts of God, telephone line outages, Internet

traffic slowdowns (including any Internet transmission problems incurred by either Municipality's or Contractor's Internet service provider), down computer networks, down hardware, (head crashes, operating system hang-ups and the like), software or operating systems failure caused by a virus or other denial of service attack, and electricity outages. A party affected by a force majeure event shall, upon notice to it of the force majeure event, promptly notify the other party, explaining the nature and expected duration thereof, and shall act diligently to remedy the interruption or delay if it is reasonably capable of being remedied.

9. Entire Understanding; Amendments. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to its subject matter and supersedes all prior or contemporaneous agreements, representations, warranties and understandings of such parties, whether oral or written. This Agreement may only be amended by a separate document, signed by both parties.

10. Assignment. Contractor may assign its rights hereunder, in whole or in part, to a wholly-owned subsidiary or an affiliate, with Municipality's consent, which consent shall not be unreasonably withheld.

11. Governing Law; Venue. This Agreement shall be interpreted and construed in accordance with the laws of the State of New Jersey, without regard to any choice of law principles. The Contractor agrees that the notwithstanding the venue rules of the applicable court, venue for any and all claims between the parties arising from this Agreement shall be solely in the federal or state courts in and for the County in New Jersey where the Municipality is located.

Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be in writing and will be delivered personally, or mailed by first class registered or certified mail, postage prepaid, or overnight courier service, addressed as follows:

If to Municipality:

Address notice to the "Tax Collector" at the Municipality's official address in New Jersey.

If to Contractor:

RealAuction.com LLC
861 SW 78th Avenue
Plantation, Florida 33324
Attention: NJ Electronic Sales

With copy to:

ROK Industries, Inc.
Administrative Agent
Attn: Igor Roitburg
306 Harlingen Road
Belle Mead, New Jersey, 08502

12. Severability. If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

13. Counterparts. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto. The parties may sign and deliver this Agreement or any amendment thereto by facsimile transmission, email of a PDF document or electronic signature. Each party agrees that the delivery of the Agreement or any amendment thereto by facsimile, email of a PDF document or electronic signature shall have the same force and effect as delivery of original signatures.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

For Municipality: Township of Franklin, Gloucester County

Name: _____

Title: _____

Date: _____

*[The remainder of this page left blank intentionally.
Additional signature page follows.]*



For Contractor: RealAuction.com LLC



Name: Lloyd McClendon
Title: Managing Member

For Administrative Agent: ROK Industries, Inc. d/b/a NJTaxlieninvestor.com



Name: Igor Koltburg
Title: Chief Executive Officer