



**BOROUGH OF FLORHAM PARK
COUNTY OF MORRIS, STATE OF NEW JERSEY
ORDINANCE #23-14**

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF FLORHAM PARK IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AUTHORIZING THE ADVERTISEMENT FOR THE SALE/ASSIGNMENT OF CERTAIN LEASE INTERESTS AND EASEMENTS ON PROPERTY OWNED BY AND LOCATED IN THE BOROUGH OF FLORHAM PARK FOR SALE BY PUBLIC AUCTION

WHEREAS, the Local Lands and Buildings Law, N.J.S.A. 40A:12-13, authorizes the sale by municipalities of any real property, capital improvements, or personal property, or interests therein, not needed for public use, to be sold by open public sale at auction to the highest bidder after required newspaper advertisement; and

WHEREAS, the statute, N.J.S.A. 40A:12-2, broadly defines “real property” to include, “in addition to the usual connotations”, “development rights or easements, or any right, interest or estate in the area extending above any real property, or capital improvement thereon, to such a height or altitude as any title, interest or estate in real property may extend, commonly known as ‘air rights’” and “capital improvements” to include, “in addition to buildings, any structures, fixtures ... and any other facility;” and

WHEREAS, “the conveyance of any estate, interest, easement or title to, or the waiver, release, or modification of any conditions, restrictions or limitations on any real property, capital improvement” constitutes a “sale” within the meaning of the statute; and

WHEREAS, the Borough of Florham Park (the “Borough”) is the owner of certain real property located in the Borough of Florham Park, County of Morris, and State of New Jersey, identified on the tax map as Block 1907, Lot 9, and Block 2101, Lot 23, on which is situated cellular communications towers, with arrays and other equipment; and

WHEREAS, certain portions of said Property, and rights and interests therein, are currently leased for the operation, installation and maintenance of communications facilities and related improvements and equipment; and

WHEREAS, the specific rights and interests, and the real property and capital improvements leased by the Borough (hereinafter referred to as the “Property and Premises”) are set forth, and more particularly described and defined in, the following Lease Agreements and Amendments thereto, copies of which, along with other records regarding the same (collectively the “Lease Agreements”), are on file with the Borough, and will be available to prospective bidders through the Borough’s Agent, SteepSteel, LLC:

1. Lease 1

Lessee:
New Cingular Wireless PCS, LLC

Dated:
November 1, 2006

2. Lease 2

Lessee:
Cellular Telephone Co. d/b/a Metro One
Cellular Telephone Company d/b/a AT&T Wireless Services
LIN Cellular Communications Corp (NY) LLC
New Cingular Wireless PCS, LLC

Dated:
April 24, 1990
September 1, 2000
November 23, 2004
January 25, 2019

3. Lease 3

Lessee:
T-Mobile USA, Inc./Omnipoint Communications, Inc.

Dated:
November 1, 2006

4. Lease 4

Lessee:
Omnipoint Communications, Inc.
T-Mobile Northeast, LLC.

Dated:
October 1, 2000
May 20, 2019

5. Lease 5

Lessee:
New York SMSA Limited Partnership
New York SMSA Limited Partnership d/b/a Verizon Wireless

Dated:
October 18, 1993
June 20, 2013

6. Lease 6

Lessee:
New York SMSA Limited Partnership d/b/a Verizon Wireless
New York SMSA Limited Partnership d/b/a Verizon Wireless

Dated:
July 23, 2008
February 10, 2014

WHEREAS, the Borough wishes to continue to explore its options with respect to the sale/assignment of the existing and successor Lease Agreements and the grant of easement for the Property and Premises for a duration of sixty (60) years by moving forward with the statutory requirements under N.J.S.A. 40A:12-1 et seq. with respect to the same by (1) determining a just and fair compensation in the event of the sale/assignment; (2) obtaining the benefits of preliminary marketing efforts in that regard; and (3) scheduling an auction at open public sale to the highest bidder after advertisement thereof; and

WHEREAS, the Borough has retained SteepSteel, LLC., to provide services with respect to the marketing, auction and sale;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council of the Borough of Florham Park, in the County of Morris, State of New Jersey as follows:

Section 1.

1. The sale/assignment of the existing and successor Lease Agreements and grant of easement in the Property and Premises, as described therein, for a duration of sixty (60) years, owned by and located in, the Borough of Florham Park shall be advertised for sale by public auction.
2. The Borough Clerk is hereby authorized and directed to advertise a public auction pursuant to the provisions of N.J.S.A. 40A:12-13(a); which Public Notice shall set forth the public sale of the easement in the Property and Premises and Lease

Agreements to be held at the Borough Municipal Building on such date and upon such terms as determined by the Borough and in accordance with the terms of this Ordinance. The Public Notice shall be subject to review and approval by the Finance Committee prior to advertisement of the public auction by the Borough Clerk.

3. The aforementioned easement in the Property and Premises and Lease Agreements will be sold at an open public sale pursuant to the provisions of N.J.S.A. 40A:12-13 and shall be subject to the following conditions:
 - (a) The sale will be conducted by SteepSteel, LLC., the Borough's Agent. Bid packages, including copies of all Lease Agreements, will be emailed to prospective bidders upon registration for the auction on SteepSteel, LLC's website: SteepSteel.com. Bids will be accepted by open public sale at auction. Bidders are to provide negotiated sealed bids, with all required materials listed in the Advertisement and a form of proposed Wireless Communication Lease Assignment and Assumption Agreement and of an Easement for each location, in advance of the scheduled public auction. The highest sealed bid shall set the minimum starting bid amount for the live public auction, provided that in no event shall such starting bid amount be less than the minimum bid amount. The auctioneer will, at his/her sole discretion, determine the highest bidder at the time of the auction, which subject to the final acceptance by the Borough, will serve as the Purchase Price.
 - (b) No bid of less than \$9,000,000.00 will be accepted. In addition, the successful bidder shall pay a buyer's premium of five percent (5.0%) of the accepted Purchase Price to SteepSteel, LLC., upon closing.
 - (c) The Lease Agreements and Property and Premises to be sold/assigned are subject to the terms and conditions of the existing Lease Agreements and Amendments, including existing encumbrances, liens, easements, zoning ordinances, other restrictions of record, and such facts as an accurate survey would reveal. The Borough makes no representations as to the Property and Premises, the terms and conditions of the Lease Agreements and the purchaser assumes the risk of any such conditions, and otherwise agrees to accept the sale/assignment of the Lease Agreements and Property and Premises "as is".
 - (d) The successful bidder shall submit a certified check, cashier's check or money order, payable to the Borough of Florham Park in an amount of one percent (1%) of the Purchase Price (hereinafter referred to as the "Deposit") no later than forty-eight (48) hours from the time of the close of the auction, together with a form of proposed Wireless Communication Lease Assignment and Assumption Agreement and Easement and such other documentation as provided in the Public Notice of Auction. Said payment shall be non-refundable and applied to the remaining balance of the Purchase Price in accordance with the Public Notice of Auction. In the event the highest bidder fails to submit the balance of the Deposit within the time required, such bid shall be deemed to be disqualified and the party that submitted the next highest bid at auction shall be considered the successful bidder.
 - (e) All bids shall be referred to the Mayor and Council for review and final approval pursuant to N.J.S.A. 40A:12-13. The Mayor and Council reserve the right to accept the highest bid or reject any and all bids. The Mayor and Council shall make their decision known by Resolution no later than the Council's second regularly scheduled meeting following the auction, unless otherwise agreed by

the Borough and the successful bidder. No bid may be withdrawn.

(f) The sale shall be subject to the terms and conditions as set forth in this Ordinance and the Public Notice of Auction, which will be made available upon the advertisement of the sale and the award of the bid shall be contingent upon mutual agreement to the proposed Wireless Communication Lease Assignment and Assumption Agreement and of an Easement, subject to such modifications as determined by the Borough, in conjunction with the Borough Attorney.

4. The Borough reserves the right to waive any and all defects and informalities in any proposal and to accept or reject the highest responsible and responsive bid deemed to be in the best interest of the Borough. No bid shall be considered finally accepted until passage of a Resolution by the Borough accepting said bid.

Section 2. Repealer. All ordinances or parts of ordinances contrary to or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 3. Severability. Each section, subsection, paragraph, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase. If any portion of this Ordinance, or its application to any person or circumstances, shall be adjudged or otherwise determined to be invalid, unconstitutional, preempted, void, or ineffective for any clause or reason, such determination shall not affect the remaining provisions of this Ordinance, and the application of such remaining provisions shall not be affected thereby and shall remain in full force and effect, and to this end, the provisions of this Ordinance are severable.

Section 4. Effective Date. This Ordinance shall take effect immediately upon final passage and publication according to law.

Section 5. Prior actions. All actions of the Borough of Florham Park taken prior to the date of adoption hereof contemplated by this Ordinance are hereby ratified and approved.

Section 6. Codification. This Ordinance may be renumbered for codification purposes.

INTRODUCED: March 16, 2023

ADOPTED: April 20, 2023

Mark Taylor, Mayor

ATTEST:

Danielle M. Lewis, Borough Clerk