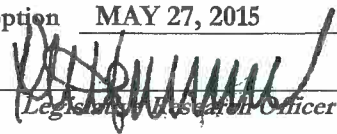


# RESOLUTION OF THE TOWNSHIP OF IRVINGTON, NJ

No. DA 15-0527-17

Date of Adoption MAY 27, 2015

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

  
Legislative Township Officer

PRESENTED BY COUNCIL MEMBER

BURGESS

SECONDED BY

LYONS

## AWARDING A CONCESSION CONTRACT FOR DIGITAL ADVERTISING IN THE MUNICIPAL BUILDING

WHEREAS, Township of Irvington wishes to provide digital advertising in the Municipal lobby, Police headquarter lobby and the Court building lobby; and

WHEREAS, the Township of Irvington has space available in the Municipal lobby, Police headquarter lobby and the Municipal Court building lobby for a business to rent and operate digital advertising; and

WHEREAS, the New Jersey Local Public Contracts Law, NJ.S.A. 40A:11-3 et seq. establishes pursuant to P.L. 1985 Chapter 469 bidding threshold for awarding contracts to local government entities which is not exceeded by the award of this 2015 Contract; and

WHEREAS, Next UP Digital LLC of 17-10 River Road, Suite 2D, Fair Lawn NJ 07410 wishes to rent available space for digital advertising; and

WHEREAS, Next Digital will remit \$40.00 per month to the Township for each location that digital signs are installed.

NOW, THEREFORE, BE IT RESOLVED by the Irvington Municipal Council, as follows:

1. The Mayor and Clerk are hereby authorized to enter into a one year contract with Next UP Digital LLC of 17-10 River Road, Suite 2D, Fair Lawn NJ 07410 starting on June 10, 2015 until June 11, 2016.
2. The Agreement authorized by this resolution is on file in the Office of the Municipal Clerk and may be inspected during regular office hours.
3. This contract for digital advertising is being awarded without competitive bidding since the concession fee to be paid by Next UP Digital LLC of 17-10 River Road, Suite 2D, Fair Lawn NJ 07410 is under the quote threshold, establishes pursuant to P.L. 1985, Chapter 469 of the Laws of the State of New Jersey.
4. A notice of this action shall be published in newspapers as required by law within ten (10) days of its passage.

### 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				JONES, 2ND VICEPRESIDENT				X
COX	X				LYONS	X			
HUDLEY	X				FREDERIC, PRESIDENT	X			
INMAN				X					

PRESIDENT OF COUNCIL 

MUNICIPAL CLERK 

DATE MAY 27, 2015

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 

DATE

MAY 27 2015

BA~~X~~ BLDG~~X~~ CFO~~X~~ COURT~~X~~ DHS~~X~~ DHW~~X~~ DPW~~X~~ ENG~~X~~ FIRE~~X~~ INIC~~X~~ JUDGE~~X~~ LIBR~~X~~ LICEN~~X~~ LEGAL~~X~~ MAYOR~~X~~ OCDP~DIR~~X~~  
OCDP~AD~~X~~ P&R~~X~~ PAYROLL~~X~~ POL~DIR~~X~~ POL~CF~~X~~ PURCH~~X~~ SEC~PB/BA~~X~~ TAX~~X~~ TAX~AS~~X~~ TAX~COL~~X~~ TRAFFIC~~X~~ UEZ~~X~~  
ZONING~OFF~~X~~ DLGS~~X~~ GNCDD~~X~~ OTHER(S):



## Next Up Digital, LLC

### DIVA Placement Agreement

This Agreement is entered into by and between \_\_\_\_\_ (hereinafter referred to as 'Proprietor') and Next Up Digital, LLC, (hereinafter referred to as 'Operator').

#### RECITALS

Operator is a New Jersey Corporation with its principal place of business at 17-10 River Road, Suite 2D, Fair Lawn, NJ 07410. Operator is engaged in the business of installing and operating digital advertising networks in retail locations. Proprietor is the owner and operator of a business establishment located at \_\_\_\_\_, Operator desires to install one or more of its Digital Interactive Retail Advertiser (DIVA) devices, along with any other necessary infrastructure and components (DIVA System) on the premises of Proprietor for the sale of advertising services to third parties, and Proprietor desires to grant Operator a license for such purposes on the terms and conditions contained in this agreement. Therefore, in consideration of the mutual covenants and promises contained herein, it is hereby agreed as follows:

#### ARTICLE 1.

##### EXCLUSIVE GRANT

Proprietor hereby grants to Operator the exclusive right and privilege to install, operate, and maintain a digital advertising network on the premises of Proprietor and it is expressly understood and agreed that all sales, production and display of digital advertising on the premises of the Proprietor shall be performed by the Operator. Proprietor shall not cause or permit the sale of digital advertising on its premises by any other person, firm, or corporation including Proprietor.

#### ARTICLE 2.

##### INSTALLATION OF DIVA SYSTEM

Operator shall install on the premises of the Proprietor at such locations as are mutually agreed upon by the parties, its DIVA System as set forth in Schedule A attached hereto and incorporated herein by this reference.

#### ARTICLE 3.

##### REMOVAL AND REPLACEMENT

Operator shall have the right to remove any of the components of the Diva System installed on the premises of the Proprietor under this Agreement and to replace any such components with ones of similar type, quality, and appearance.

#### ARTICLE 4.

##### INCREASE OR DECREASE IN NUMBERS OF DIVA DEVICES

Operator shall have the right to increase or decrease the number of DIVA devices installed on the premises of Proprietor, to adjust to changes in demand, sales, or economic conditions, provided however, at least one DIVA shall be provided at all times during the term of this Agreement. Proprietor shall have the right to impose restrictions on the number or placement of devices where such number or placement would interfere with the normal operation of Proprietor's business.

#### ARTICLE 5.

##### COMPENSATION

Operator shall pay to Proprietor for the exclusive right to sell digital advertising on the described premises \$ *40 per quantity* per month for each paid advertisement shown on the DIVA System located on the Proprietors premises.

#### ARTICLE 6.

##### RECORDS AND STATEMENTS

Operator shall maintain a complete and accurate record of the number of Advertisers who have purchased advertising on the DIVA System located on the premises of the Proprietor and covered by this Agreement and shall by the *1st* of each *month* submit a statement of such and of the commissions due the Proprietor under Article 5 of this Agreement. Payment in full for such commissions due shall accompany the statement.

#### ARTICLE 7.

##### TERM

This Agreement shall commence immediately upon installation of the DIVA System in the Proprietors location. This Agreement shall be for a term of one year from that commencement date and shall be renewed automatically and continue for successive periods unless notice of termination is given by either party to the other in writing at least 30 days prior to the expiration of the then current period.

#### ARTICLE 8.

##### OWNERSHIP OF DIVA SYSTEM

It is understood and agreed by and between the parties that the hardware and necessary infrastructure that constitute the DIVA System installed on the premises of Proprietor by Operator are and shall remain the property of Operator. Upon termination of this Agreement by any means, Operator shall have the right without further notice to Proprietor to remove any and all of property belonging to Operator which has been installed on the premises of Proprietor.

#### ARTICLE 9.

##### RISK OF DAMAGE TO DIVA SYSTEM

Except as may be attributable to Proprietor by reason of the negligence of its officers, agents, or employees; Operator assumes partial risk and responsibility for any loss, destruction, or damage occurring to its property located on the premises of the Proprietor. Operator reserves the right of compensation from Proprietor from losses incurred as the result of damage to the DIVA System by those employed by Proprietor.

#### ARTICLE 10.

##### MAINTENANCE AND SERVICE

Operator shall regularly inspect, service, clean, and maintain the DIVA System and shall keep it operating and in good working order, at all times.

#### ARTICLE 11.

##### NOTIFICATION OF DIVA SYSTEM FAILURE

Proprietor agrees to notify Operator promptly of any failure of the DIVA System to function properly and further agrees to permit only authorized agents of Operator to move, service, maintain or in any way alter any elements of the DIVA System.

#### ARTICLE 12.

##### UTILITIES

Proprietor shall furnish and bear the cost of all utilities necessary for the operation of the DIVA System installed under this Agreement and shall furnish suitable utility outlets for use by the DIVA System. Proprietor shall provide continuous electric service to the DIVA System and shall not cause or permit the interruption of such service except in the event of an emergency.

#### ARTICLE 13.

##### FEES AND TAXES

Operator shall be responsible for and shall pay all state, county, and city fees and sales or other taxes that may be imposed on it in the course of its business. Proprietor shall be responsible for all state, county and city fees and other taxes that may be imposed on the income it derives from this agreement.

#### ARTICLE 14.

##### RELATION OF PARTIES

It is the intention of the parties that Operator be an independent contractor hereunder, and that no agency or employment relationship be created by this Agreement.

#### ARTICLE 15.

##### COMPLIANCE WITH LAWS

Each party shall comply with all federal, state, local, or other laws or regulations applicable to the sale and display of advertising.

#### ARTICLE 16.

##### TERMINATION OF AGREEMENT

16.1 This Agreement may be terminated by either party if the other party defaults in the performance of an obligation or materially breaches any of the terms or conditions of this Agreement and fails to cure such default or breach within 30 days after service of written notice upon him of such default or breach.

16.2 This Agreement may be terminated at any time by Operator by reason of unprofitability by giving 30 days notice in writing to Proprietor.

#### ARTICLE 17.

##### ASSIGNMENT

This Agreement shall not be assignable by either party without the prior written consent of the other party. Subject to the forgoing limitation, this Agreement shall endure to the benefit of and be binding upon the successors and assigns of the respective parties.

#### ARTICLE 18.

##### ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof and supersedes any and all agreements, understandings, statements, or representations either oral or in writing.

#### ARTICLE 19.

##### ATTORNEYS' FEES

Should any litigation be commenced between the parties hereto or their personal representative concerning any provisions of these Articles, or the rights and duties of any person in relation thereto, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for their or his attorneys' fee in such litigation, which shall be determined by the court in such litigation, or in a separate action brought for that purpose.

#### ARTICLE 20.

##### GOVERNING LAW

The validity of this Agreement and of any of its terms or provisions as well as the rights and duties of the parties hereunder shall be interpreted and construed pursuant to and in accordance with the laws of the State of New Jersey.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized representatives.

Next Up Digital, LLC

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

*Proprietor*

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title