

**RESOLUTION 75 – 2016
RESOLUTION AUTHORIZING AGREEMENT
WITH ISLAND OFFICIALS, LLC**

WHEREAS, the Borough has heretofore invited and received Proposals for Website Redesign and Management for the Borough's website; and

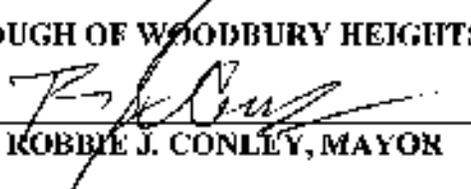
WHEREAS, the Purchasing Agent has recommended acceptance of a Proposal from ISLAND OFFICIALS, LLC, for such services as more particularly described within their Agreement received by the Borough; and

WHEREAS, the Borough deems it in its best interests to accept the aforesaid Agreement from ISLAND OFFICIALS, LLC, which entity is experienced and qualified to perform such services on behalf of the Borough;

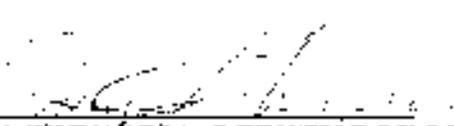
NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Woodbury Heights, with the Mayor concurring, that the Agreement from ISLAND OFFICIALS, LLC, for the provision of certain website redesign and management as more particularly set forth in their Agreement is hereby accepted and authorized;

BE IT FURTHER RESOLVED, that the Mayor and Clerk are hereby authorized to endorse an Agreement for the aforesaid services upon terms consistent with the aforementioned Agreement attached hereto.

BOROUGH OF WOODBURY HEIGHTS

BY: 
ROBBIE J. CONLEY, MAYOR

Attest:


JOLYN GREGÓRIA, DEPUTY BOROUGH CLERK

The foregoing Resolution was duly adopted by the Borough Council of the Borough of Woodbury Heights at the regular meeting held on the 20th of July, 2016.


JOLYN GREGÓRIA, DEPUTY BOROUGH CLERK

**WEBSITE REDESIGN and MANAGEMENT AGREEMENT
BY AND BETWEEN
ISLAND OFFICIALS LLC AND THE BOROUGH OF WOODBURY HEIGHTS**

This Website redesign and management Agreement ("Agreement") is entered into effective _____, 2016 (the "Effective Date") by and between Island Officials LLC ("Island" or "Developer") and the Borough of Woodbury Heights ("Heights" or "Customer"), referred to herein collectively as the "Parties."

RECITALS

WHEREAS, Heights is a municipal corporation of the State of New Jersey; and

WHEREAS, Island is engaged in the business of developing and designing mobile Website solutions; and

WHEREAS, Heights desires to engage Island as an independent contractor for Heights for the purpose of re-designing and managing Heights's website municipal on the terms and conditions set forth below; and

WHEREAS, Island desires to re-design the Website and agrees to do so under the terms and conditions of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement;

NOW THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, the Parties hereto agree as follows:

I. SCOPE OF WORK AND COMPLETION DATE

Heights hereby appoints and engages the Developer, and the Developer hereby accepts this appointment, to perform the following services in connection with the design and development of the Website (collectively, the "Services"):

- A. redesign of the existing Website for acceptance by Heights
- B. redesign of the site in 21 days from the start date of _____ (TBD
by Developer)
- C. Inclusion of the following features in the Website:
 - Responsive for mobile platforms
 - Content management system (CMS) for easier updating

E. All items within Scope of Work shall be completed within twenty-one (21) days of the announced date of the developer.

II. COMPENSATION

The total compensation for the development of the Website shall be \$1,200.00, payable by Heights within ten (10) business days after receipt of notification to Heights by Developer of the acceptance of the Website by Heights. Annual compensation of \$1200.00 (\$100.00 per month for operation & maintenance and all updating of PDF based files (twice per month after thorough meetings) for no less than five years of which the first payment is due 10 days after completion of the site.

III. TERM

This Agreement shall become effective as of the Effective Date and, unless otherwise terminated in accordance with the provisions of Paragraph IV of this Agreement, will continue until the Services have been satisfactorily completed and the Developer has been paid in full for such Services (the "Term").

IV. TERMINATION

This Agreement may be terminated:

A. by either Party hereto upon seven (7) days written notice to the other Party;

B. by either Party for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within three (3) days of receipt of written notice thereof; or

C. by Heights, at any time and without prior notice, if the Developer is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directives of Heights, or is guilty of serious misconduct in connection with performance under this Agreement.

V. SUPPORT PERIOD

The Developer agrees to provide continued support for the Website for a period of five (5) years (the "Support Period") after the Website is successfully approved by the Borough (the "Support Period"). The Support Period shall refer to any bugs or issues relating to the features specified in Paragraph 1, and not to create new functionality for the Website. This support will be provided to Heights at the above mentioned cost of \$1200.00 per year for no less than five (5) years.

VI. CONFIDENTIAL INFORMATION

A. The Developer agrees, during the Term and thereafter, to hold in strictest confidence, and not to use, except for the benefit of Heights, or to disclose to any person, firm, or corporation without the prior written authorization of Heights, any Confidential Information of Heights. "Confidential Information" means any of Heights's proprietary information, technical data, trade secrets, or know-how, including, but not limited to, business plans, research, product plans, products, services, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other information disclosed to the Developer by Heights either directly or indirectly.

B. Heights agrees, during the Term and thereafter, to hold in strictest confidence, and not to use, except for the benefit of Heights, or to disclose to any person, firm, or corporation without the prior written authorization of Heights, any Confidential Information of Developer. "Confidential Information" means any of Developer's proprietary information, technical data, trade secrets, or know-how, including, but not limited to, business plans, research, product plans, products, services, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other information disclosed to the Developer by Heights either directly or indirectly.

VII. REPRESENTATIONS AND WARRANTIES

A. The Parties each represent and warrant as follows:

1. That it has full power, authority and right to perform its obligations under the Agreement;

2. That this Agreement is a legal, valid and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally and equitable remedies);

3. That entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a party.

B. The Developer hereby further represents and warrants as follows:

1. That it has the right to control and direct the means, details, manner and method by which the Services required by this Agreement will be performed;

2. That it has the experience and ability to perform the Services required by this Agreement;

3. That it has the right to perform the Services required by this Agreement at any place or location, and at such times as the Developer shall determine;

4. That the Services shall be performed in accordance with and shall not violate any applicable laws, rules or regulations, and that it shall obtain all permits or permissions required to comply with such laws, rules or regulations;

5. That the Services required by this Agreement shall be performed by the Developer, and Heights shall not be required to hire, supervise or pay any assistants to help the Developer perform such services, and

6. That it is responsible for paying all ordinary and necessary expenses of itself and/or its staff.

VIII. WEBSITE REPRESENTATIONS AND WARRANTIES

A. Performance. The Developer hereby represents and warrants that during the Support Period the Website will be free from programming errors and defects in workmanship and materials, and will conform to the specifications set forth in Paragraph I. If programming errors or other defects are discovered during the Support Period, the Developer shall promptly remedy those errors or defects at its own expense.

B. No Disablement. The Developer hereby warrants and represents that the Website, when delivered or accessed by Heights, will be free from material defects, and from viruses, logic locks, and other disabling devices or codes, and in particular will not contain any virus, Trojan horse, worm, drop-dead devices, trap doors, time bombs or other software routines or other hardware component that could permit unauthorized access, disable, erase or otherwise harm the Website or any software, hardware or data, cause the Website or any software or hardware to perform any functions other than those specified in this Agreement, halt, disrupt or degrade the operation of the Website or any software or hardware, or perform any other such actions.

IX. TIMING AND DELAYS

The Developer recognizes and agrees that failure to deliver the Website in accordance with the delivery schedule set forth herein will result in expense and damage to Heights. The Developer shall inform Heights immediately of any anticipated delays in the delivery schedule and of any remedial actions being taken to ensure completion of the Website according to such schedule. If a delivery date is missed, Heights may, in its sole discretion, declare such delay a material breach of the Agreement under Paragraph IV.A and pursue all of its legal and equitable remedies. Heights may not declare a breach, and the Developer cannot be held in breach of this Agreement, of this section if such delay is caused by an action or failure of action of Heights. In such case, the Developer will provide Heights with written notice of the delay and work on the Website will cease until the reason for the delay has been resolved by Heights and written notice of that resolution has been provided to the Developer.

X. NATURE OF RELATIONSHIP

A. Independent Contractor Status. The Developer agrees to perform the Services hereunder solely as an independent contractor. The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. The Developer is and will remain an independent contractor in its relationship to Heights. Heights shall not be responsible for withholding taxes with respect to the Developer's compensation hereunder. The Developer shall have no claim against Heights hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits or employee benefits of any kind. Nothing in this Agreement shall create any obligation between either Party or a third party.

B. Indemnification of Heights by Developer. Heights has entered into this Agreement in reliance on information provided by the Developer, including the Developer's express representation that it is an independent contractor and in compliance with all applicable laws related to work as an independent contractor. If any regulatory body or court of competent jurisdiction finds that the Developer is not an independent contractor and/or is not in compliance with applicable laws related to work as an independent contractor, based on the Developer's own actions, the Developer shall assume full responsibility and liability for all taxes, assessments, and penalties imposed against the Developer and/or Heights resulting from such contrary interpretation, including but not limited to taxes, assessments and penalties that would have been deducted from the Developer's earnings had the Developer been on Heights's payroll and employed as an employee of Heights.

XI. PROPRIETARY RIGHTS OF DEVELOPER

Heights expressly acknowledges and agrees that any all proprietary materials prepared by the Developer under this Agreement shall be considered the exclusive property of Developer unless otherwise specified. These items shall include, but shall not be limited to, any and all deliverables resulting from the Developer's Services or contemplated by this Agreement, all tangible results and proceeds of the Services, works in progress, records, diagrams, notes, drawings, specifications, schematics, documents, designs, improvements, inventions, discoveries, developments, trademarks, trade secrets, customer lists, databases, software, programs, middleware, Websites, and solutions conceived, made or discovered by the Developer, solely or in collaboration with others, during the Term of this Agreement relating in any manner to the Developer's Services.

XII. PERPETUAL LICENSE AGREEMENT

Developer hereby grants Heights an exclusive, worldwide, royalty-free, perpetual, irrevocable license to use, distribute, publish, and otherwise exploit Website.

XIII. INDEMNIFICATION

A. Of Heights by Developer. The Developer shall indemnify and hold harmless Heights and its officials, officers, managers, employees, agents, contractors,

sublicensees, affiliates, subsidiaries, successors and assigns from and against any and all damages, liabilities, costs, expenses, claims and/or judgments, including, without limitation, reasonable attorneys' fees and costs, that any of them may suffer from or incur and that arise or result primarily from (i) any negligence, gross negligence or willful misconduct of the Developer arising from or connected with the Developer's carrying out of its duties under this Agreement, or (ii) the Developer's breach of any of its obligations, agreements or duties under this Agreement.

B. Of Developer by Heights. Heights shall indemnify and hold harmless the Developer and its officers, members, managers, employees, agents, contractors, sublicensees, affiliates, subsidiaries, successors and assigns from and against all any and all damages, liabilities, costs, expenses, claims and/or judgments, including, without limitation, reasonable attorneys' fees and costs, that any of them may suffer from or incur and that arise or result primarily from (i) any negligence, gross negligence or willful misconduct of Heights arising from or connected with the Heights's carrying out of its duties under this Agreement, or (ii) Heights's breach of any of its obligations, agreements or duties under this Agreement.

XIV. INTELLECTUAL PROPERTY

A. No Intellectual Property Infringement by Developer. The Developer hereby represents and warrants that the use and proposed use of the Website by Heights or any third party does not and shall not infringe, and the Developer has not received any notice, complaint, threat or claim alleging infringement of, any trademark, copyright, patent, trade secrets, industrial design, or other rights of any third party in the Website, and the use of the Website will not include any activity that may constitute "passing off." To the extent the Website infringes on the rights of any such third party, the Developer shall obtain a license or consent from such third party permitting the use of the Website.

B. No Intellectual Property Infringement by Heights. Heights represents and warrants that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to the Developer for inclusion in the Website are owned by Heights, or that Heights has permission from the rightful owner to use each of these elements, and will hold harmless, protect, indemnify, and defend the Developer and its subcontractors from any liability (including attorneys' fees and court costs), including any claim or suit, threatened or actual, arising from the use of such elements furnished by Heights.

C. Continuing Ownership of Existing Trademarks. The Developer recognizes Heights's right, title and interest in and to all service marks, trademarks and trade names used by Heights and agrees not to engage in any activities or commit any acts, directly or indirectly, that may contest, dispute, or otherwise impair Heights's right, title and interest therein, nor shall the Developer cause diminishment of value of said trademarks or trade names through any act or representation. The Developer shall not apply for, acquire or claim any right, title or interest in or to any such service marks, trademarks or trade names, or others that may be confusingly similar to any of them, through advertising or otherwise. Effective as of the termination of this Agreement, the Developer shall cease to use all of Heights's trademarks, marks, and trade names.

XV. ASSIGNMENT

The Developer may not, without the written consent of Heights, assign, subcontract, or delegate its obligations under this Agreement, except that the Developer may transfer the right to receive any amounts that may be payable to it for its Services under this Agreement, which transfer will be effective only after receipt by Heights of written notice of such assignment or transfer.

XVI. NOTICES

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) to the respective Parties as follows:

If to Heights:

Borough of Woodbury Heights
Attention:

If to the Developer:

Island Officials LLC
232 S. Broad Street
Woodbury, NJ 08096

XVII. MISCELLANEOUS PROVISIONS

A. No Implied Waivers. The failure of either Party at any time to require performance by the other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter. Nor shall the waiver by a Party of a breach of any provision hereof be construed to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

B. Severability. This Agreement shall be deemed severable and if any portion shall be held to be invalid for any reason, the remainder shall not be deemed invalid but shall remain in full force and effect.

C. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their officers, directors, agents, employees, independent contractor agents, heirs, successors, and permitted assigns.

D. Entire Agreement. This Agreement constitutes the final, complete, entire and exclusive agreement between the Parties with respect to the subject matter hereof and it supersedes any previous or contemporaneous agreements, whether written or oral.

E. Modifications. No change, addition to or modification of any portion of this Agreement shall be valid or binding upon either party unless in writing and signed.

F. Headings. Headings in this Agreement are used for convenience only and shall not be used in construing this Agreement or the intent of the Parties.

G. Venue and Governing Law. This Agreement is governed by and shall be construed and enforced in accordance with the laws of the State of New Jersey without regard to principles of conflicts of law that would require the Website of another jurisdiction's laws. Any claim which may be brought under or to enforce this Agreement or with respect to any alleged breach hereof shall be brought in the Superior Court of New Jersey, Gloucester County. Each party hereby consents to the jurisdiction of such Court.

H. Execution of Counterparts. For the convenience of the Parties, the Parties may execute any number of counterparts of this Agreement. Each such counterpart shall be, and shall be deemed to be, an original instrument, but all such counterparts taken together shall constitute one and the same Agreement.

I. Facsimile and Electronic Copies. Execution of facsimile transmissions or electronic copies of this Agreement shall be treated and acknowledged by the parties as though they are originals and shall have the same force and effect as originals.

WITNESS the execution hereof as an instrument under seal as of the date first above written.

BOROUGH OF WOODBURY HEIGHTS

Dated: 7.20.2016

By: [Signature]
Name: Richard T. Conroy
Title: MAYOR

ATTEST:

Dated: 7.20.2016

By: [Signature]
Name: [Signature]
Title: [Signature]

ISLAND OFFICIALS LLC

Dated: _____

By: _____
Name: _____
Title: _____