



Before the  
**Colonial Beach Town Council**

Held at  
Colonial Beach Town Center  
22 Washington Avenue, Colonial Beach, VA 22443

**Wednesday, August 18, 2021 at 06:00 PM**  
**Town Council Regular Meeting**  
**AGENDA**

1. Call To Order
  2. Moment of Silence and Pledge of Allegiance
  3. Roll Call of Members
  4. Additions to the Agenda
  5. Approval of the Agenda
  6. Approval of Minutes for April 7, 2021, Work Session
  7. Council Member Announcements
  8. Town Manager Updates
  9. Presentations
    - a. Tim Trivett, Westmoreland County Supervisor
    - b. Dr. Turner, Colonial Beach Schools Superintendent
  10. Citizen Input (3 minutes allowed, per citizen)  
*(Comments will be limited to three minutes, per person, to provide enough time for each citizen to speak.)*
  11. Old Business
  12. New Business
    - a. Preliminary End of FY 2021 Report, Lisa Okes, Chief Financial Officer
    - b. Document Storage Solutions, Heather Oliver, Town Clerk
    - c. Review of Chapter 20 Taxation, Article III-Transient Lodging Taxation, India Adams-Jacobs, Town Manager and Kathleen Easley, Zoning Administrator
    - d. Resolution # 29-21, Accepts Resignation of Stephen Kennedy, Bobby Duke, Director of Parks and Recreation **(TAB A)**
    - e. Resolution # 30-21, Authorizes Town Manager to Execute Marketing Consultant Contract with FlackShack, India Adams-Jacobs, Town Manager **(TAB B)**
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f. **CivicPlus Contract**, India Adams-Jacobs, Town Manager **(TAB C)**

**13. Closed Meeting (If necessary)**

**14. Adjournment/Recess**

**Tab A**

**COUNCIL PAPER**

**At the regular meeting held on Wednesday August 18, 2021 at the Colonial Beach Town Center**

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**RESOLUTION # 29-21, Accepts the Resignation of Stephen Kennedy from the Colonial Beach Parks and Recreation Advisory Commission**

**WHEREAS**, Stephen Kennedy was appointed to the Colonial Beach Parks and Recreation Advisory Commission on January 6, 2021, effective January 1, 2021; and

**WHEREAS**, Stephen Kennedy submitted his resignation on July 31, 2021, effective immediately.

**NOW THEREFORE BE IT RESOLVED** by the Colonial Beach Town Council, at its regularly scheduled meeting on August 18, 2021, that the resignation of Stephen Kennedy from the Colonial Beach Parks and Recreation Advisory Commission is accepted.

**BE IT FINALLY RESOLVED** that the Colonial Beach Parks and Recreation Advisory Commission shall accept applications for the position for the remaining term and present a recommendation to Town Council at the next Town Council Regular Meeting.

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|                 | AYE | NAY |                     | AYE | NAY |
|-----------------|-----|-----|---------------------|-----|-----|
| Mayor Schick    | ___ | ___ | Thomas Moncure      | ___ | ___ |
| Mike Cabrey     | ___ | ___ | Vicki Roberson      | ___ | ___ |
| Kenneth Allison | ___ | ___ | Caryn Self Sullivan | ___ | ___ |
| Powell Duggan   | ___ | ___ |                     |     |     |

Moved By \_\_\_\_\_

Seconded By \_\_\_\_\_

**Tab B**

COUNCIL PAPER

At the regular meeting held on Wednesday August 18, 2021 at the Colonial Beach Town Center

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**Resolution # 30-21, Authorizes Town Manager to execute Marketing Consultant Contract with FlackShack**

**WHEREAS**, RFP #001-21 MC received 18 proposals; and

**WHEREAS**, based on requirement in request for proposal and criteria included FlackShack was the highest rated responsive bidder.

**NOW THEREFORE BE IT RESOLVED** by the Colonial Beach Town Council on the 18<sup>th</sup> day of August 2021, the Town Council hereby authorizes the Town Manager to execute the attached contract with FlackShack for Marketing Consultant Services.

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Moved By \_\_\_\_\_ Seconded By \_\_\_\_\_

AYE                      NAY

AYE                      NAY

Mayor Schick  
Mike Cabrey  
Powell Duggan  
Kennth Allison

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Thomas Moncure  
Vicki Roberson  
Caryn Self Sullivan

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## CONTRACT FOR SERVICES

This Contract entered into this day of 18<sup>th</sup> of August 2021 by and between FlackShack LLC, whose physical address is 529 S. Muhlenberg Street, Allentown, PA 18104 (Suzan French Gennace and Douglas Patten), collectively referred to as “Contractor,” and the Town of Colonial Beach, (the “Town”).

**WITNESSETH** that the Contractor and the Town, in consideration of promises and of the mutual covenants, considerations and agreements herein contained agree as follows:

- 1. STATEMENT OF WORK:** The Contractor shall perform the Performance Work Statement outlined in the Contractor’s proposal dated June 29, 2021, in a timely manner and perform the work identified in the Town’s Request for Proposals #001-21-MC and dated June 20, 2021, all of which are incorporated into this agreement by reference as if fully set forth herein. In addition, the Contractor shall also perform general media and communications duties on behalf of the Town, including, but perhaps not limited to, coordination of media requests, preparation and distribution of press releases, creation and management of social media content , maintenance of the Town’s website (VisitCBVA.com), and coordination and oversight of the Town’s branding efforts, all at the direction of the Town Manager. Contractor makes no guarantees on the impact of its work on Town’s business but will always provide best efforts in the conduct of all work output. Contractor will seek approval before incurring any out-of-pocket expenses, including, but not limited to, advertising, printing, production, website programming, travel, wire release or other costs.
- 2. POINTS OF CONTACT:** The Contractor is hired by the Town, but the day-to-day supervision and point of contact will be the Town Manager who will provide the Contractor with any and all pertinent information with regard to this contract.
- 3. CONTRACT DOCUMENTS:** This Contract shall consist of this Contract for Services, the Town of Colonial Beach General Terms and Conditions, the Town’s Request for Proposals #001-21-MC dated June 20, 2021, and the proposal submitted by the Contractor, all of which are incorporated into this Contract for Services as if fully set forth herein and which together constitute the entire agreement between the parties. The Town retains the rights to all intellectual property created for it by the Contractor and paid for by the Town.
- 4. COMPENSATION TO BE PAID:** The Contractor shall be reimbursed by the Town for services provided under this agreement in accordance with the proposal submitted by the Contractor which is attached and incorporated by reference. The Contractor shall submit invoices to the Town and theTown agrees to pay to the Contractor the amount of \$4,584 per month for a total of \$55,008 for the term of this Contract. Payment is due on the first day of

the 30-day period for work performed in that timeframe. Pre-approved expenses will be billed and paid separately. Contractor will provide weekly and/or monthly status updates of work performed during the period.

5. **CONTRACT TERM:** This term of this Contract shall be for twelve months beginning on August 18<sup>th</sup>, 2021 , and is renewable for an additional twelve-month term on the same terms and conditions upon the mutual agreement of the Town and Contractor. This Contract may be terminated by either party upon 30 days written notice to the other party.

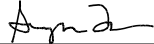
6. **ENTIRE AGREEMENT:** This Agreement, together with all documents incorporated herein, represents the entire agreement between the parties and there are no other agreements between the parties and there are no other agreements between the parties, either verbal or written, which have not been incorporated.

**IN WITNESS WHEREOF**, the parties have caused this contract to be executed by the duly authorized undersigned.

**SIGNATURES ON SEPARATE PAGE**



**CONTRACTOR – FlackShack, LLC**

Signature: 

Title: President

Date: 8/18/2021

**TOWN OF COLONIAL BEACH**

Signature: \_\_\_\_\_

Title: Town Manager

Date: 8/18/21

Approved as to Form:  
Sands Anderson, PC

By: \_\_\_\_\_  
Town Attorney

# Tab C

## NON-EXCLUSIVE CONTRACT FOR GOODS OR SERVICES

This Contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **Town of Colonial Beach, Virginia**, a political subdivision and body politic of the Commonwealth of Virginia and hereinafter referred to as the "Town", and **CivicPlus**, hereinafter referred to as "Contractor."

WHEREAS, the Town desires to engage the services of Contractor in connection with the provision of website development and hosting services; and

WHEREAS, the Town is proceeding under its written small procurement policy adopted pursuant to Va. Code § 2.2-4303 (the "Town's Procurement Policy") because the amount of the goods or services to be provided under this Contract is less than the applicable limits set forth in that policy; and

WHEREAS, Contractor is engaged in the business of providing website development and hosting services and has provided the Town with an estimate of the price of these goods or services; and

WHEREAS, the Town wishes to enter into a non-exclusive contract with Contractor for Contractor to perform the aforementioned services at the prices set forth in Contractor's estimate.

NOW THEREFORE, and in consideration of the mutual undertakings of the parties to this Contract, the Town and Contractor hereby covenant and agree, each with the other, that Contractor shall provide goods or services as set forth in its estimate as an independent contractor in accordance with the terms and conditions of this Contract as follows:

1. The CivicPlus Contract Terms and Conditions, attached as Exhibit A, are hereby incorporated by reference into this Contract. All references to "bidder," "vendor," "contractor," or any equivalent term mean "Contractor," as defined by this Contract.
2. The Statement of Work submitted by Contractor on 6/10/2021, including all attachments, exhibits, and addenda, is hereby incorporated by reference into this Contract.
3. The Contractor's proposal, submitted to the Town on 6/10/2021, including all exhibits and attachments is hereby attached.
4. If there is any conflict between the documents so incorporated and this Contract, then the Contract shall control except that the Town's General Terms and Conditions always control. If there is a disagreement between the incorporated documents, then the order of precedence is the order in which the documents are incorporated into this Contract above. These documents constitute the entirety of the agreement between the parties and supersede all prior communications, agreements, negotiations, and discussions.

5. CivicPlus will not be liable for any act, omission of act, negligence, or defect in the quality of service of any underlying carrier, licensor, or other third-party service provider whose facilities or services are used in furnishing any portion of the service received by the Town under this Contract.

CivicPlus will not be liable for any failure of performance that is caused by, or is the result of, any act or omission by Town or any entity employed/contracted on the Town's behalf. During Project Development, Town will be responsive and cooperative with CivicPlus to ensure the Project Development is completed in a timely manner.

Town agrees that it is solely responsible for any solicitation, collection, storage, or other use of end-user's personal data on any Service provided by CivicPlus. Town further agrees that CivicPlus has no responsibility for the use or storage of end-users' personal data in connection with the Services or the consequences of the solicitation, collection, storage, or other use by Town or by any third party of personal data.

CivicPlus shall, at all times, comply with the terms and conditions of its Privacy Policy, found at <https://www.civicplus.com/privacy-policy>. CivicPlus will maintain commercially reasonable administrative, physical, and technical safeguards designed to protect the security and confidentiality of Town data. Except (a) in order to provide the Services; (b) to prevent or address service or technical problems in connection with support matters; (c) as expressly permitted in writing by Town; or (d) in compliance with our Privacy Policy, CivicPlus will not modify Town data or disclose Town data, unless specifically directed by Town or compelled by law. Notwithstanding the foregoing and unless prohibited by the Virginia Freedom of Information Act or other applicable law, CivicPlus reserves the right to delete known malicious accounts without Town authorization.

IN WITNESS WHEREOF, Contractor has executed this Agreement pursuant to proper authority and in the manner appropriate to it and the Town of Colonial Beach has caused this Contract to be executed pursuant to a proper resolution granting such authority.

\_\_\_\_\_  
Contractor

By:\_\_\_\_\_

TITLE:\_\_\_\_\_

Town of Colonial Beach, Virginia

By: \_\_\_\_\_

TITLE: \_\_\_\_\_

**TOWN OF COLONIAL BEACH  
CIVICPLUS CONTRACT TERMS AND CONDITIONS**

These General Terms and Conditions are attached to and made a part of the contract to which they are attached or referenced. In the event of any conflict between any provision of these General Terms and Conditions and the contract to which they are attached, these General Terms and Conditions shall control, unless the provisions in these General Terms and Conditions are contrary to Virginia law. Nothing in the contract or the attached documents shall be construed as granting authority for either party to make commitments which will bind either party beyond the scope of the services or goods contained herein.

A. Anti-Discrimination:

By submitting bids or proposals, bidders, offerors or contractors certify to Town of Colonial Beach (the "Town") that they will conform to the applicable provisions of the federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2-4311 of the Virginia Public Procurement Act, which provides:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, political affiliation, veteran status, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, shall state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor shall include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

3. Pursuant to Section 2.2-4343.1 of the *Code of Virginia* of 1950, as amended, in all invitations to bid, requests for proposals, contracts, and purchase orders, Town of Colonial Beach does not discriminate against faith-based organizations. "Faith-based Organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

B. Ethics in Public Contracting:

By submitting a bid or proposal, bidders, offerors or contractors certify that their bids or proposals are made in full compliance with the Virginia Conflicts of Interest Act and without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder or offeror, supplier, manufacturer or subcontractor in connection with their bid or proposal and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

C. Immigration Reform and Control Act of 1986:

By submitting a bid or proposal, bidders, offerors or contractors certify that they do not and will not, during the performance of this contract, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

D. Policy on Drug and Alcohol Abuse:

Town of Colonial Beach has adopted a Policy on Drug and Alcohol Abuse. By submitting a bid or proposal, bidders, offerors or contractors certify full compliance with this policy. A copy of the policy is available upon request. Further, in every contract over \$10,000 the following provisions apply:

During the performance of this contract, contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

E. Receipt of Bids/Proposals:

To be considered, bids or proposals shall be received at the location provided and within the time period specified in the Invitation for Bids (IFB) or the Request for Proposals (RFP). Responses received after the specified date and time shall be returned unopened.

F. Acceptance/Rejection of Bids/Proposals:

Town of Colonial Beach reserves the right to accept or reject any or all bids or proposals or portion of any bid or proposal and to reissue said bid or proposal. The Town reserves the right to award a contract based on a lump sum or per item basis or a sample provided.

G. Clarification of Terms:

Prospective bidders, offerors or contractors may submit questions in writing concerning the specifications or other solicitation documents no later than seven (7) working days before the due date. Any revisions to the IFB or RFP will be issued as an addendum.

H. Firm Prices:

Prices and all associated charges offered by proposers, bidders, offerors, or contractors shall be firm for sixty (60) days after the due date of the bids or proposals unless otherwise stated by Town of Colonial Beach.

I. Taxes:

Town of Colonial Beach (federal I.D. #54-6001376) is exempt from federal, state and local taxes. Taxes included on invoices will be deducted from the payment amount. Tax-exempt forms will be completed for a vendor upon request.

J. Delivery:

All costs and other charges associated with the delivery of a good or non-professional service shall be included in the bid or proposal. The Town reserves the right to cancel all or any part of a contract without obligation if delivery is not made within the time period specified in the bid or proposal document or if the quantity or quality of products or non-professional services delivered is inadequate.

K. Required Signature:

All bids and proposals shall be signed with the firm name, federal identification number and by a representative possessing the authority to bind said firm with his/her signature. The Town may request documentation of the signer's authority.

L. Qualifications of Bidders, Offerors or Contractors:

The bidder, offeror, or contractor represents and warrants that it has the requisite experience, skills, capabilities, and manpower to perform the duties required by the contract in a good and workmanlike fashion and that it is authorized to do business in Virginia and has all necessary licenses required by law. Town of Colonial Beach may make such reasonable investigations as deemed proper and necessary to determine the ability of a bidder, offeror or contractor to perform the work or supply the goods. The bidder, offeror or contractor shall furnish to the Town all such information and data for this purpose as may be requested. The Town reserves the right to inspect the bidder's, offeror's, or contractor's physical facilities prior to award to satisfy questions regarding the bidder's or offeror's capabilities. Further, the Town reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of, such bidder or offeror fails to satisfy the Town that such bidder or offeror is properly qualified to carry out the obligations of the contract and to complete the work or supply the goods.

M. Changes to the Contract:

No fixed price contract may be increased by more than twenty-five (25) percent of the amount of the contract or \$50,000, whichever is greater. Changes can be made to the contract only by mutual agreement of the parties evidenced by a signed writing



N. Payment Terms:

All approved invoices will be paid within forty-five (45) days of receipt.

O. Default:

In case of default by the contractor for failure to deliver or perform in accordance with the contract's specifications or terms and conditions, the Town may procure the articles or services from other sources. The contractor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence. Failure of a contractor's source to deliver is generally not considered to be an unavoidable cause. The burden of proof rests with the contractor.

P. Assignment:

The contract may not be assigned, sublet, or transferred without the written consent of Town of Colonial Beach which shall not be unreasonably held in the event of a sale of all of Contractor's assets or Contractor's merger.

Q. Hold Harmless:

The contractor and all its subcontractors shall bear all loss, expense (including reasonable attorney's fees) and damage in connection with, and shall indemnify Town of Colonial Beach, its Board of Supervisors members, officers, employees and agents against and save them harmless from all third party claims, demands, and judgments made or recovered against them because of bodily injuries, including death at any time resulting there from, and/or because of damage to property, from the Contractor's sole negligence or malicious acts or omissions during the performance of the contract. Compliance by the contractor with the insurance provisions hereof shall not relieve the contractor from liability under this provision.

R. Audit:

The Contractor hereby agrees to retain all books, records, and other documents related to this Agreement for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The Town and its authorized agents, state auditors, the grantor of the funds to the Town, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to the Agreement for the purpose of making audits, examinations, excerpts or transcriptions.

S. Ownership of Documents:

Any reports, studies, photographs, negatives, or other documents prepared by the contractor in the performance of its obligations under this contract shall be remitted to the Town upon completion, termination or cancellation of the contract. The Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of the contractor's obligations under this Agreement without the prior written consent of the Town. Upon full and complete payment of amounts owed for Project Development under the applicable Statement of Work, Town will own the website graphic designs, webpage or Services content, module content, importable/exportable data, and archived information ("Client Content") created by CivicPlus on behalf of Town pursuant to this Agreement. "Client Content" also includes any elements of text, graphics, images, photos, designs, artworks, logos, trademarks, services marks, and other materials or content which Town provides or inputs into any website, software or module

in connection with any Services. Client Content excludes any content in the public domain; and any content owned or licensed by CivicPlus, whether in connection with providing Services or otherwise.

Upon completion of the Project Development, Town will assume full responsibility for Client Content maintenance and administration. Town, not CivicPlus, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Content. Town hereby grants CivicPlus a worldwide, non-exclusive right and license to reproduce, distribute and display the Client Content as necessary to provide the Services. Town represents and warrants that Town owns all Client Content or that Town has permission from the rightful owner to use each of the elements of Client Content; and that Town has all rights necessary for CivicPlus to use the Client Content in connection with providing the Services.

At any time during the term of the applicable agreement, Town will have the ability to download the Client Content and export the Town data through the Services. Town may request CivicPlus to perform the export of Town data and provide the Client data to Town in a commonly used format at any time, for a fee to be quoted at time of request and approved by Town. Upon termination of the applicable agreement for any reason, whether or not Town has retrieved or requested the Town data, CivicPlus reserves the right to permanently and definitively delete the Client Content and Town data held in the Services thirty (30) days following termination of the applicable agreement (following the 120-days' notice of termination). During the thirty (30) day period following termination of the agreement, regardless of the reason for its termination, Town will not have access to the Services.

Intellectual Property in the software or other original works created by or licensed to CivicPlus, including all source code, documents, and materials used in the Services ("CivicPlus Property") will remain the property of CivicPlus. CivicPlus Property specifically excludes Client Content. Town shall not (i) license, sublicense, sell, resell, reproduce, transfer, assign, distribute or otherwise commercially exploit or make available to any third party any CivicPlus Property in any way, except as specifically provided in the applicable agreement; (ii) adapt, alter, modify or make derivative works based upon any CivicPlus Property; (iii) create internet "links" to the CivicPlus Property software or "frame" or "mirror" any CivicPlus Property administrative access on any other server or wireless or internet-based device that may allow third party entities, other than Town, to use the Services; (iv) reverse engineer, decompile, disassemble or otherwise attempt to obtain the source code to all or any portion of the Services; or (v) access any CivicPlus Property in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of any CivicPlus Property, or (c) copy any ideas, features, functions or graphics of any CivicPlus Property. The CivicPlus name, the CivicPlus logo, and the product and module names associated with any CivicPlus Property are trademarks of CivicPlus, and no right or license is granted to use them outside of the licenses set forth in this Agreement.

Provided Town complies with the terms and conditions herein, the relevant SOW, and license restrictions set forth in this section S, CivicPlus hereby grants Town a limited, nontransferable, nonexclusive, license to access and use the CivicPlus Property associated with any valid and effective agreement, for the term of the respective agreement.

T. Payment and Performance Bond:

If required by law, the contractor shall furnish to the Town performance and payment bonds in the amount of the Contract Sum, regardless of its amount, pursuant to Sections 2.2-4336 and 2.2-4337 of the *Code of Virginia*, 1950, as amended (the (“Code”)) and shall otherwise fully comply with the requirements of such sections of the Code.

U. Required Payment to Subcontractors:

Pursuant to Section 2.2-4354 of the Code, the contractor covenants and agrees to:

1. within seven (7) days after receipt of any amounts paid to the contractor under the Agreement, (i) pay any subcontractor for its proportionate share of the total payment received from the Town attributable to the Services under the contract performed by such subcontractor, or (ii) notify the Town and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor’s payment and the reason therefor;

2. provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the contract; and

3. pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the contractor on all amounts owed by the contractor that remain unpaid after seven (7) days following receipt by the contractor of payment from the Town for services performed by the subcontractor under the contract, except for amounts withheld pursuant to subparagraph 12, a above.

4. include in its contracts with any and all subcontractors the requirements of a, b, and, c above.

V. Liability Coverage:

The contractor shall take out and maintain during the life of the Agreement such bodily injury, liability and property damage liability insurance as shall protect it and the Town from claims for damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this contract.

W. Loss or Damage in Transit: Delivery by the contractor to a common carrier does not constitute delivery to Town. Any claim for loss or damage incurred during delivery shall be between the contractor and the carrier. The Town accepts title only when goods are received regardless of the F.O.B. point. The Town will note all apparent damages in transit on the freight bill and notify the contractor. Discovery of concealed damages or loss will be reported by the Town to the carrier and the contractor within seven days of receipt and prior to removal from the point of delivery if possible. the contractor shall make immediate replacement of the damaged or lost merchandise or be in default of this contract. It shall be the contractor’s responsibility to file a claim against the carrier. If damage is to a small quantity, with the approval of the Town, the contractor may deduct the amount of damage or loss from his or her invoice to the Town in lieu of replacement.

X. No Waiver:

Any failure of the Town to demand rigid adherence to one or more of the terms and provisions of the contract, including these General Terms and Conditions, on one or more occasions, shall not be construed as a waiver nor deprive the Town of the right to insist upon strict compliance with the terms of the contract. Any waiver of a term of the contract, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

Y. Termination:

Either Party may terminate the contract for its convenience and any or no cause at any time upon one hundred twenty (120) days' written notice to the other party.

Z. Choice of Law:

To ensure uniformity of the enforcement of the contract, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this contract is made and is intended to be performed in the Commonwealth of Virginia, and shall be governed by and construed in accordance with the laws of that state without regard to principles of conflicts of law.

AA. Severability:

If any provision of the contract is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provision shall be fully severable and the contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of the contract, and the remaining provisions of the contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from the contract.

BB. Contractual Claims Procedure:

1. Contractual claims or disputes by the contractor, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, may be submitted in writing after final payment. Any written notice of the contractor' intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not the contractor files such written notice, the contractor shall proceed with the services as directed. If the contractor fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

2. The Town, upon receipt of a claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of receipt of the claim. Each such decision rendered shall be forwarded to the contractor by written notice.

3. If the contractor disagrees with the decision of the Town concerning any pending claim, the contractor shall promptly notify the Town by written notice that the contractor is proceeding with the services under protest. Any claim not resolved, whether by failure of the contractor to accept the decision of the Town or under a written notice of the contractor' intention to file a claim or a detailed claim not acted upon by the governing body of the Town, shall be

specifically exempt by the contractor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

4. The decision on contractual claims by the governing body of the Town shall be final and conclusive unless the contractor appeals the final decision on the claim by instituting legal action in the appropriate circuit court.

CC. Subject to Annual Appropriation:

The contract is subject to annual appropriation by the Board of Supervisors of the Town of Colonial Beach Board of Supervisors. Neither the contract nor any amount due or to become due under the contract shall be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the Town. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the Town, shall be obligated to pay any amount due or to become due under this contract except from funds annually appropriated by the Board of Supervisors of Town of Colonial Beach for such purpose.

In the event of non-appropriation of funds for the items under this contract, the Town may terminate this contract as to the services for which funds have not been appropriated. Written notice will be provided to the contractor as soon as possible after such action is taken. Notwithstanding the foregoing, in the event of termination due to non-funding, Town is still responsible for any invoices covering the initial Project Development and Deployment fees and all such amounts owed shall become due immediately.

DD. Forum Selection

The parties hereby submit to the personal jurisdiction and venue of the Circuit Court of Westmoreland County, Virginia, and the General District Court of Westmoreland County, Virginia, for resolution of any and all claims, causes of action, or disputes arising out of or related to this Contract. The parties further agree that any claims, causes of action, or disputes arising out of, relating to or concerning this Contract shall have jurisdiction and venue in the Circuit Court of Westmoreland County, Virginia, and/or the General District Court of Westmoreland County, Virginia, and shall be brought only in such courts.