

SUPPLEMENTAL TERMS AND CONDITIONS
TO INVITATION TO BID FOR TOWN OF NARROWS
SEWER LINE REPAIR PROJECT

This Supplemental Terms and Conditions to Invitation to Bid for Town of Narrows Sewer Line Repair Project (the "Supplemental Terms and Conditions") is incorporated into the Invitation to Bid and shall become a part of the Contract Documents for the Project. Any successful bidder awarded the contract for the Work shall be required to comply with the Supplemental Terms and Conditions in addition to any other terms contained in the Contract Documents. In the event of any conflict between the terms of this Supplemental Terms and Conditions and the terms of the other Contract Documents, the terms of this Supplemental Terms and Conditions shall control.

Owner and Contractor agree as follows:

1. **Non-Discrimination:** During the performance of the Agreement, Contractor agrees as follows:

A. Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any 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 Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that 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 these provisions.

D. Contractor shall include the foregoing provisions concerning non-discrimination in every subcontract or purchase order of over ten thousand dollars (\$10,000.00) so that the provisions will be binding upon each subcontractor or vendor.

2. **Drug-Free Workplace:** During the performance of the Agreement:

A. Contractor agrees to (i) provide a drug-free workplace for employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that shall be taken against employees for violations of this prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that it 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.

B. For the purposes of the above, "drug-free workplace" means a site for the performance of work done in connection with this Agreement, or a subcontract or purchase order awarded to a subcontractor or vendor in accordance with the Virginia Public Procurement Act, 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 under the subcontract or this Agreement.

3. **Faith-Based Organizations:** Pursuant to Virginia Code § 2.2-4343.1, in all invitations to bid, requests for proposals, contracts, and purchase orders, the Owner 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.

If Contractor is a faith-based organization, then Contractor shall give to each individual who applies for or receives goods, services, or disbursements provided pursuant to this Agreement the following notice:

NOTICE

Pursuant to § 2.2-4343.1 of the Code of Virginia of 1950, as an applicant for or recipient of goods, services, or disbursements provided pursuant to a contract between the Owner and a faith-based organization, you are hereby notified as follows:

Neither the Owner's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the Owner.

4. **Certifications.** Contractor certifies and agrees to the following:

A. The bid or offer (1) has been made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from the acceptance of the bid or proposal, (2) is in all respects fair and without collusion or fraud, and (3) is or is intended to be competitive and free from any collusion with any person, firm or corporation;

B. Contractor has not offered or received any kickback from any other bidder or contractor, supplier, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, Contractor has not received or provided to another person any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;

C. Contractor is not a party to nor has it participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or conditions upon which the contract resulting from the acceptance of his bid proposal is to be performed;

D. Contractor has not and will not confer on any public employee having official responsibility for a 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 is exchanged;

E. If Contractor prepares any invitation to bid or request for proposal for the Owner, Contractor shall not (1) submit a bid or proposal for that procurement or any portion thereof or (2) disclose to any bidder or offeror information concerning the procurement that is not available to the public. Notwithstanding the foregoing, the Owner may permit Contractor to submit a bid or proposal for the procurement or any portion thereof if the Owner determines that the exclusion of Contractor would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the Owner;

F. Contractor shall comply, as applicable, with the requirements of Virginia Code § 2.2-4374 of the Virginia Public Procurement Act; and,

G. Contractor acknowledges that collusive bidding is a violation of the Virginia Governmental Frauds Act, the Virginia Public Procurement Act, and federal law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this proposal.

5. **Claims Procedure:** Notwithstanding any other provision contained in the Agreement, contractual claims or disputes by Contractor, whether for money or other relief, as a condition precedent to pursuing any other legal remedy, shall be subject to the following procedure:

All such claims shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Contractor shall give the Owner written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Contractor's 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 Contractor files such written notice, Contractor shall proceed with the work as directed. If 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.

The Owner, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within sixty (60) days of the claim. Each such decision rendered shall be forwarded to the Contractor by written notice.

If the Contractor disagrees with the decision of the Owner concerning any pending claim, the Contractor shall promptly notify the Owner by written notice that the Contractor is proceeding with the Work under protest. Any claim that is not resolved, whether by failure of the Contractor to accept the decision of the Owner or under a written notice of Contractor's intention to file a claim or a detailed claim not acted upon by the governing body of the Owner, shall be specifically exempt by the Contractor from any future payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in subsequent payments.

The decision on contractual claims by the governing body of the Owner shall be final and conclusive unless the Contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate circuit court.

6. **Payment Provisions:** Pursuant to Virginia Code § 2.2-4354, the Contractor covenants and agrees to:

A. 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 Owner attributable to the work under the Agreement performed by such subcontractor, or (ii) notify the Owner and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefor; and

B. Provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the Agreement; and

C. 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 Owner for work performed by the subcontractor under the Agreement, except for amounts withheld as described above.

D. Contractor shall include in its contracts with any and all subcontractors the requirements stated above.

7. **Immigration Laws:** Pursuant to Virginia Code § 2.2-4311.1, during the performance of the Agreement, the Contractor shall not knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

8. **Authority to Transact Business:** Pursuant to Virginia Code § 2.2-4311.2, any Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Virginia Code Title 13.1 or Title 50 or as otherwise required by law.

9. **Project Funding; Notice:** Owner and Contractor acknowledge that the project described in the Agreement may be funded in whole or in part by American Rescue Plan Act (ARPA) funding. Owner and Contractor agree to comply with all federal, state, and local rules, laws, and regulations relating to the use of ARPA funding for the project. Furthermore, the Owner and Contractor agree to comply with the provisions of the federal inserts and notices attached hereto and incorporated herein by reference.

10. **Additional Notice:** Minority, women, veteran, and small business enterprises and employment service organizations are encouraged to submit proposals. Applicants must comply with President's Executive Order Number 11246 prohibiting discrimination in employment regarding race, color, creed, sex, or national origin and President's Executive Orders Numbers 12138 and 11625 regarding utilization of minority and women business enterprises; and the Civil Rights Act of 1964. Bidders must certify that they do not or will not maintain or provide for their employees any facilities that are segregated on the basis of race, color, creed, or national origin.