

SPECIAL MEETING OF THE ROTTERDAM TOWN BOARD

October 4, 2023

7:00 PM

Agenda Review 6:30 PM

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

SUPERVISOR'S REMARKS: Supervisor Mollie A. Collins

EXECUTIVE SESSION

PROCLAMATIONS/PRESENTATIONS

PUBLIC HEARING

PUBLIC COMMENT – PRIVILEGE OF THE FLOOR:

Those members of the public wishing to address the Town Board will be asked to sign in before the meeting is called to order on the sign-in sheets being provided. Speakers will be called to the podium in the order of their signing in. Persons recognized by the Chair to speak during privilege of the floor shall direct his/her comments to the Town Supervisor as Chair of the meeting. Persons granted the privilege of the floor shall first clearly state his/her name and address for the record. Persons so addressing the Chair through the use of a prepared written statement shall submit a copy of the same to the Town Clerk for the purpose of maintaining clear and accurate official minutes of the Town Board meeting.

GENERAL RULES OF PROCEDURE FOR PUBLIC HEARINGS & PRIVILEGE OF THE FLOOR:

Any person recognized by the Town Supervisor to speak during privilege of the floor shall direct his/her comments to the Town Supervisor as chair of the meeting. Any person granted the privilege of the floor shall first clearly state his/her name and address for the record. The purpose of privilege of the floor shall be for speakers to express their views, thoughts and speak freely. Each speaker, who wishes to address the town board, shall have an equal and reasonable opportunity to be heard by the town board. Each speaker shall be afforded a maximum of four (4) minutes to address the town board.

**INTRODUCTION OF MOTIONS, ORDERS AND RESOLUTIONS
RESOLUTIONS**

306.23 Presentation by the Town Clerk of the 2024 Tentative Budget to the Town Board.

307.23 To amend Resolution 279.23 of the year 2023; To approve the JCAP 2023-2024 grant for the Justice Court.

308.23 Authorize an agreement with Prime AE for professional engineering services related to a Leak Detection Survey for Water District No. 5.

LIAISON REPORTS

MISCELLANEOUS

EXECUTIVE SESSION

ADJOURNMENT

Mollie A. Collins, Supervisor

DRAFT

RESOLUTION NO. 306.23

PRESENTATION BY THE TOWN CLERK OF THE 2024 TENTATIVE BUDGET TO THE TOWN BOARD

THEREFORE, UPON MOTION OF Councilmember _____,
seconded by Councilmember _____,

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. The Town Board of the Town of Rotterdam, hereby recognizes the presentation by the Town Clerk of the 2024 tentative budget to the Town Board at this special meeting on October 4, 2023.

SECTION 2. This resolution shall become effective October 4, 2023.

DATED: October 4, 2023

NAME	AYES	NOES	ABSTAIN
Christou			
Miller-Herrera			
Dodson			
Mastroianni			
Collins			

10/02/2023

The 2024 Tentative Budget for the Town of Rotterdam can be found on the home page of www.rotterdamny.org under the tab “Budget”.

RESOLUTION NO. 307.23

**TO AMEND RESOLUTION 279.23 OF THE YEAR 2023;
TO APPROVE THE JCAP 2023-2024 GRANT FOR THE JUSTICE COURT**

THEREFORE, UPON MOTION OF Councilmember _____,

seconded by Councilmember _____,

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. Section 1 of Resolution 279.23, as amended, is hereby amended and restated to read as follows:

The Town Board of the Town of Rotterdam hereby authorizes the Town of Rotterdam Justice Court to apply for the Justice Court Assistance Program (JCAP) grant in the 2023-2024 grant cycle for up to \$30,000.00 dollars, for purchases of office equipment and upgrades in the Town of Rotterdam Justice Court under the New York State Unified Court System.

SECTION 2. This resolution shall become effective October 4, 2023.

DATED: October 4, 2023

NAME	AYES	NOES	ABSTAIN
Christou			
Miller-Herrera			
Dodson			
Mastroianni			
Collins			

Justice Court Assistance Program Grant Application

*Please note: After reading this information, you will need to click on the "Agree and Continue" button towards the bottom.

The following guidelines must be met to consider the court's application when submitting a **Board Resolution** and applying for **Construction funds and Security-related equipment**. Mailed, faxed or emailed submissions of supporting documentation not containing the necessary language or information described below cannot be considered.

Board Resolution:

A certified copy of a Board Resolution is required which shall state the Town/Village of XYZ authorizes the XYZ Town/Village Court to apply for a JCAP grant in the 2023-24 grant cycle up to \$30,000, or the exact amount being requested. Resolutions that do not state this language cannot be considered for JCAP funding.

Construction – Interior/Exterior Renovations and Repairs:

Explain the need for the construction project. Indicate if you are ready to begin this project and how long it will take to be completed. Funds are required to be spent within 180 days from receipt.

If the amount granted does not cover the entire amount necessary for the requested project, an alternate funding source to pay for the project will be necessary. As such, pursuant to section 138.4 of the Rules of the Chief Administrator, prior to final determination of any application, the administrators may inquire with respect to the availability of "other sources of funding to pay some or all of the costs for which the application seeks funding".

- If the item you are requesting is in a shared space, you may request partial funding only. Costs are to be shared with your municipality.
- The contractor or vendor should be aware that the funds will be disbursed on or before April 1, 2024 and that they honor any estimate until the court can begin the project. The detailed estimate must list the itemized cost of labor, itemized cost of materials, and a detailed scope of work including the exact location of work to be performed.
- The online application must contain a narrative to explain the need for the request, the specific location being modified, and any pertinent information the court deems relevant to best describe the project.
- Check with your municipality regarding prevailing rates and New York State bidding requirements.
- Applications for construction projects must also include a sketch with dimensions of the existing floor plan of the building and room(s) along with proposed floor plans of the building and room(s). Indicate on the floor plan the various points of entry and room names or you may use digital photographs of the exterior of the building to understand your current facility as well as digital photographs of any interior rooms to be affected. Please take photographs from each angle of the room (i.e. from the bench as the judge views the room, from the back of the courtroom as the public sees the judge's bench, from each doorway, etc.)

Security Equipment Requests:

All requests for security equipment must include a detailed estimate with the itemized

At the regularly scheduled public meeting of the Town Board of the Town of Rotterdam, held at the Rotterdam Junction Fire Department 1215 Main Street, Rotterdam Junction, New York, 12150 on Wednesday, September 13, 2023, at 7:00 p.m., the following resolution was duly adopted:

RESOLUTION NO. 279.23

TO APPROVE THE JCAP 2023-2024 GRANT FOR THE JUSTICE COURT

WHEREAS, funding has been made available under a competitive grant process through the New York State Unified Court System, Justice Court Assistance Program (JCAP), for funding assistance with municipal court projects; and

WHEREAS, it is in the best interest of the Town of Rotterdam to apply for available funding to assist with financing of such projects for the Town Justice Court; and

WHEREAS, the Rotterdam Town Board has reviewed the application for funding under the 2023-2024 Justice Court Assistance Program; NOW

THEREFORE, UPON MOTION OF Councilmember **DODSON**, seconded by Councilmember **MASTROIANNI**,

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. The Town Board of the Town of Rotterdam hereby authorizes the Supervisor to execute the 2023-2024 application for the purchase of office equipment and upgrades in the Town of Rotterdam Justice Court under the New York State Unified Court System Justice Court Assistance Program.

SECTION 2. This resolution shall become effective September 13, 2023.

DATED: September 13, 2023

NAME	AYES	NOES	ABSTAIN
Christou	X		
Miller-Herrera (Absent)			
Dodson	X		
Mastroianni	X		
Collins	X		

I, Diane M. Marco, Town Clerk of the Town of Rotterdam, Schenectady County, New York, **DO HEREBY CERTIFY** that the foregoing resolutions were approved by the Town Board of the Town of Rotterdam on September 13, 2023 and that the foregoing resolution is a true and correct transcript of the original resolution and of the whole thereof and that said resolution is on file in the Town Clerk's office.

I DO FURTHER CERTIFY that each of the members of the Town Board had due notice of the said Town Board meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Rotterdam this September 15, 2023.

Diane M. Marco

Diane M. Marco, Town Clerk



RESOLUTION NO. 308.23

AUTHORIZE AN AGREEMENT WITH PRIME AE FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO A LEAK DETECTION SURVEY FOR WATER DISTRICT NO. 5

THEREFORE, UPON MOTION OF Councilmember _____,

seconded by Councilmember _____,

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. The Town Board of the Town of Rotterdam hereby authorizes the Supervisor to negotiate and execute an agreement with Prime AE, located at 100 Great Oaks Boulevard, Suite 114, Albany, NY 12203, to provide Professional Engineering Services related to the Leak Detection Survey of portions of the Rotterdam Water District No. 5, in the amount not to exceed twenty-six thousand and 00/100 (\$26,000.00) dollars.

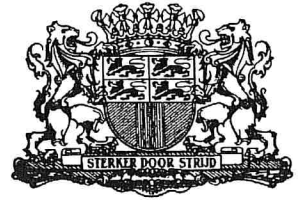
SECTION 2. This resolution shall become effective on October 4, 2023.

DATED: October 4, 2023

NAME	AYES	NOES	ABSTAIN
Christou			
Miller-Herrera			
Dodson			
Mastroianni			
Collins			

TOWN OF ROTTERDAM

John F. Kirvin Government Center • 1100 Sunrise Boulevard • Rotterdam, NY 12306
Telephone: 518-355-7575 • Fax: 518-355-7976 • Website: www.rotterdamny.org



LEGISLATIVE REQUEST FORM

DATE: October 2, 2023

TO: Mollie Collins, Town Supervisor

FROM: Charles Jack Dodson, Deputy Supervisor

TITLE OF REQUEST: Proposal for Engineering Services-.Rotterdam
Junction WD5 Leak Detection Survey

TOWN BOARD MEETING: October 4, 2023

Background Information: Water District No. 5 is served by an extensive water distribution system that consists of water mains of various age and materials. Water mains, hydrants and water services are prone to leakage which wastes treated potable water, increases the energy and chemical costs to pump and treat the water.

Evaluation/Analysis: The NYSDEC Water Withdrawal Permit requires the Town to conduct a Water Audit and preform a Leak Detection Survey of the water distribution system to comply with permit conditions.

Recommendation(s): Authorize the Supervisor to negotiate and execute an agreement with Prime AE for professional engineering services to assist with a Leak Detection Survey for Water District No. 5.

Attachment/Document(s): Prime AE agreement dated September 22, 2023.

Compliance with Purchasing Policy: Yes

Effect(s) on Existing Law(s): N/A

LEGISLATION WILL BE PREPARED BY: Supervisors Office



Albany Office
100 Great Oaks Boulevard, Suite 114, Albany, NY 12203
P: 1.833.723.4768

September 22, 2023

Mollie Collins
Supervisor
Town of Rotterdam
1100 Sunrise Blvd., Town Hall
Rotterdam, NY 12306

Re: **Town of Rotterdam**
WD#5 Leak Detection Survey
Proposal for Engineering Services

Dear Mrs. Collins:

KB Group of NY, Inc. dba PRIME AE Group of NY (PRIME AE) is pleased to submit this Proposal to provide Professional Engineering Services related to the Leak Detection Survey of portions of the Rotterdam Water District #5. These portions include five (5) areas in the Town as highlighted on the attached maps. The five areas include the Old Colonial Manor Area (10 miles of pipe), Old Draper School Area (5 miles of pipe), Altamont Avenue (1 mile of pipe), water transmission mains (4.5 miles of pipe), and the water transmission main on Curry Road (3 miles of pipe) for a grand total of approximately 23.5 miles of pipe. We propose the following scope of engineering services:

A. Base Services

Task 1: Field Survey

1. PRIME AE will perform a field survey to gather the location and GPS coordinates of existing water valves and existing fire hydrants in the five areas listed above. This GPS data will be utilized to develop the shape files necessary for the Water Leak Detection Contractor to perform their work accurately and efficiently. We have included 120 hours for a field person to obtain GPS locations of the existing water valves and fire hydrants.

Task 2: Contract Administration

1. PRIME AE will coordinate the Leak Detection Survey with the Contractor and Town Water Department personnel.
2. PRIME AE will locate, catalogue and evaluate the issues found during the survey. We have included a field person to be on site full time during the investigation and obtain GPS locations of the problem areas.

B. Fee

We propose to provide the above services for a lump sum amount not to exceed **\$26,000.00**, to be billed monthly on a percentage complete basis.

C. Exceptions and Limitations: No AutoCAD drawings will be created from the GPS field work, only shape files to be provided to the contractor.

D. Additional Services

Additional projects and services will be the subject of a mutually agreed and separately executed Change Order. In the event that you request additional routine services that substantively relate to the subject of this Proposal and which in our judgement do not rise to the level of a Change Order or require a new proposal, (“Out-of-Scope Services”), our fees for such services will be based on the time required for the work performed at our standard rates, plus expenses. All such services will be subject to the terms of this Proposal, including PRIME AE’s Standard Terms and Conditions, attached hereto.

E. Access to Client Facilities.

In providing the Services, PRIME AE may from time to time need to test, access, or use the Client’s systems, applications, or hardware (collectively, “Client Network”). Client shall provide PRIME AE in advance of the commencement of the affected Services with a copy of Client’s safety, security, and facilities policies which are applicable to the use of, and access to, the Client Network and PRIME AE shall use commercially reasonable efforts to abide by such communicated policies as appropriate under the circumstances. If compliance with such policies will prevent or impair PRIME AE from performing the Services or its obligations under this Agreement, the Parties shall work in good faith to develop reasonable exceptions to such policies. If such exceptions cannot be agreed upon, the applicable Statement(s) of Work will be modified to excuse PRIME AE’s performance of the affected Services. If PRIME AE’s adherence to Client’s policies increases PRIME AE’s costs of providing the Services, PRIME AE shall notify Client of the foregoing and Client shall pay PRIME AE for the increased costs associated with adherence to such policies.

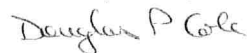
F. Terms & Conditions

Our work under this Proposal shall be performed in accordance with PRIME AE’s Standard Terms and Conditions, attached hereto and hereby incorporated herein and made a part of this Proposal for all purposes as if fully set forth herein.

If you agree with this Proposal, please return an executed copy of this Proposal. If you have any questions, please feel free to contact me.

Sincerely,

KB Group of NY, Inc. dba PRIME AE Group of NY



Douglas P. Cole, P.E.
Senior Director of Engineering

Enclosure: Standard Terms & Conditions

cc: Charles Jack Dodson

Mrs. Collins
Proposal – WD#5 Leak Detection Survey
September 22, 2023

AGREED TO BY TOWN OF ROTTERDAM:

Mollie Collins, Supervisor

DATE:

AGREED TO BY KB GROUP OF NY, INC. DBA
PRIME AE GROUP OF NY:

Douglas P Cole

Douglas P. Cole, P.E. – Senior Director of
Engineering

DATE: 9/22/2023



Standard Terms & Conditions

1. **General.** These Standard Terms & Conditions ("ST&C"), together with the accompanying proposal, constitute the full and complete Agreement between PRIME AE Group, Inc. (and its affiliates and subsidiaries) ("PRIME AE") and the entity or person to whom the proposal is addressed ("Client") to perform basic or additional services as set forth in the proposal. PRIME AE and Client may be referred to collectively herein as "the parties", and any one of them may be referred to as "a party". The technical and pricing information in the proposal is the confidential and proprietary property of PRIME AE and shall not be disclosed or made available to third parties without the written consent of PRIME AE. Unless otherwise specified in the proposal, the proposal fees and schedule constitute PRIME AE's best estimate of the charges and time required to complete the project. As the project progresses, site conditions, changes in the law, or other unknown facts or events may dictate revisions in scope and fee. PRIME AE will inform Client of such situations so that proposal revisions can be accomplished. The parties agree to negotiate such revisions in good faith.

2. **Performance of Services.** PRIME AE's services will be performed in accordance with generally accepted practices and ordinary skill and care of architects, engineers, scientists and/or technical professionals providing similar services at the same time, in the same locale, and under like circumstances ("Standard of Care"). Client agrees that PRIME AE has been engaged to provide professional services only, and that PRIME AE does not owe a fiduciary duty or responsibility to Client. There are no intended third-party beneficiaries to this Agreement. No other warranty, express or implied, is included or intended by the Agreement. PRIME AE is an independent contractor and nothing in this Agreement shall be construed to create a partnership, joint venture, or create a relationship of employer/employee or principal/agent between PRIME AE and Client or its subcontractors or consultants. PRIME AE does not represent or warrant that any permit or approval will be issued by any governmental body in view of the complexity and the frequent changes in applicable rules and regulations and interpretations by authorities.

3. **Right of Entry.** Client shall be responsible for obtaining all legal right-of-entry, and associated costs, onto properties required by the project.

4. **Modification.** This Agreement may be changed, amended, added to, superseded, or waived only if both parties specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these ST&C and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these ST&C shall govern.

5. **Compensation.** Fees are quoted for present calendar year and will be subject to escalation on January 1st each year thereafter as determined by PRIME AE. The Client shall pay PRIME AE pursuant to the rates and charges set forth in the proposal. Invoices terms are net cash, due and payable upon receipt of invoice. Full payment of all invoices will be due before release of final deliverables. The Client shall notify PRIME AE in writing of any disputed amount within seven (7) days from date of the invoice, give reasons for the objection, and promptly pay the undisputed amount. If Client fails to make any payment due to PRIME AE for services and expenses within thirty (30) days after receipt of PRIME AE's statement therefor, the amounts due PRIME AE will be increased at the rate of 1.5% per month from said thirtieth day, and in addition, PRIME AE may, upon written notice to Client, suspend services under this Agreement. In the event of a suspension of services, PRIME AE shall have no responsibility to Client for delay or damage caused Client because of such suspension of services. Upon suspension, Client shall pay all undisputed fees before PRIME AE continues any performance of services or delivery of any deliverables. In the event PRIME AE employs the services of any attorney or collection agency to collect any sums due hereunder or to enforce any terms contained herein, Client agrees to pay reasonable attorney's fees and court costs incurred by PRIME AE to collect outstanding fees.

6. **Insurance.** PRIME AE will maintain workers' compensation insurance as required under the laws of the state in which the services will be performed. PRIME AE agrees to provide at its own expense, Comprehensive General Liability insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate; Professional Liability insurance in the amount of \$1,000,000 per claim and \$2,000,000 in the aggregate; Automobile Liability insurance with a combined single of \$1,000,000 per occurrence; and will, upon request, furnish insurance

certificates to Client reflecting PRIME AE's standard coverages and providing thirty (30) days prior written notice in the event of cancellation in coverage.

7. Confidentiality. PRIME AE will hold confidential all business and technical information obtained from Client or generated in performing services under this Agreement, except to the extent required for: (1) performance of services under this Agreement; (2) compliance with professional standards of conduct; (3) the preservation of the public safety, health, and welfare; (4) compliance with any court order, statute, law, or governmental directive; and/or (5) protection of PRIME AE against claims or liabilities arising from the performance of services under this Agreement. PRIME AE's obligations hereunder shall not apply to information in the public domain or lawfully obtained on a non-confidential basis from others.

8. Ownership of Documents. All reports, notes, drawings, specifications, data, intellectual property, inventions, discoveries, processes, calculations, and other documents, including those in electronic form, obtained, created or prepared by PRIME AE in performing services under this Agreement are instruments of PRIME AE's service ("Instruments"), and all rights, copyrights, titles and interests in the Instruments shall remain PRIME AE's property, whether or not the project is completed. Client agrees not to use Instruments for marketing purposes, for projects other than the project for which the documents were prepared by PRIME AE, for future modifications to this project, or for any other purpose than the purpose intended under this Agreement, without first obtaining PRIME AE's express written permission for a written specific use license. Any reuse or distribution of Instruments to third parties, without such express written specific use license will be at Client's sole risk and without liability to PRIME AE or its employees, affiliates, subsidiaries, independent contractors, and subcontractors. Client shall indemnify, defend, and hold harmless PRIME AE and its employees, affiliates, subsidiaries, independent contractors, and subcontractors from all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from use without a written special use license. Any such verification or project-specific adaptation shall entitle PRIME AE to additional compensation.

9. Suspension of Services and Termination. Either party may, at any time, suspend further services or terminate this Agreement. Suspension or termination shall be by written notice. PRIME AE may terminate this Agreement immediately upon giving Client a written notice of termination upon occurrence of any of the following: (a) an event of Force Majeure has been continuing during more than thirty (30) days or (b) prevented, hindered, or delayed performance due to disease, epidemic, pandemic, quarantine, or acts of government (foreign or domestic). Client agrees to compensate PRIME AE for all services performed and commitments made prior to the suspension or termination, together with reimbursable expenses including those of subcontractors, subconsultants and vendors. Where payment is based on lump sum contract, Client agrees that the final invoice after Client's suspension or termination of services will be based on the percentage of work completed as of the date of suspension or termination, plus reasonable suspension or termination charges including, but not limited to, personnel and equipment rescheduling and all other related costs and charges directly attributable to suspension or termination. In the event of suspension of services or termination by Client, PRIME AE shall have no liability to Client or others. Client agrees to indemnify, defend and hold PRIME AE harmless from any claim or liability resulting from any suspension or termination.

10. Force Majeure. Except for Client's obligation to pay for services rendered by PRIME AE, including those of its' subcontractors, subconsultants and vendors, no liability will attach to either party from delay in performance or nonperformance caused by circumstances or events beyond the reasonable control of the party affected, including, but not limited to, acts of God, cyber-attacks, disease, epidemic, pandemic, quarantine, acts of government (foreign or domestic), fire, flood, unanticipated site, building or subsurface conditions, regulatory permitting, terrorism, explosion, war, request or intervention of a government authority (foreign or domestic), court order (whether at law or in equity), labor relations, accidents, delays or inability to obtain materials, equipment, fuel or transportation. Delays within the scope of this article that cumulatively exceed thirty (30) calendar days shall, at the option of either party, make this Agreement subject to termination or renegotiation. Should Client require PRIME AE to maintain its

personnel and equipment available during the delay period, Client agrees to compensate PRIME AE for additional labor, equipment, and any and all other costs associated with PRIME AE in maintaining its personnel during the delay period.

11. Mutual Waiver of Consequential Damages.

Neither Client nor PRIME AE, nor their affiliates or subsidiaries, nor the officers, directors, agents, employees, or their subcontractors, subconsultants, or vendors, shall be liable to the other, third parties, or shall make any claim for any incidental, indirect, special, collateral, exemplary, punitive or consequential damages arising out of, or connected in any way to the services or this Agreement, whether the action in which recovery of damages is sought is based upon contract, tort, including, to the greatest extent permitted by law, the sole, concurrent or other negligence, whether active or passive, strict liability, breach of contract and breach of warranty. Consequential damages include, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action.

12. Design Services During Construction (DSDC).

If PRIME AE provides DSDC during the construction phase of the project, it is understood that the purpose of such services, including project site visits, will be to determine, in general, if construction is proceeding in a manner indicating that the completed work of others will generally conform to the contract documents. PRIME AE shall not, during such visits or as a result of observations of construction, supervise, direct, or have control over others' work nor shall PRIME AE have authority over, or responsibility for, the means, methods, sequences or procedures of construction selected by others or safety precautions and programs incidental to the work of others or for any failure of others to comply with laws, rules, regulations, ordinances, codes or orders applicable to others furnishing and performing their work. PRIME AE does not guarantee the performance of the construction work or contract by others and does not assume responsibility for others' failure to furnish and perform their work. If PRIME AE's DSDC includes shop drawing review or requests for information as set forth in PRIME AE's proposal, PRIME AE will review (or take other appropriate action with respect to) shop drawings,

samples, and other data which PRIME AE's proposal and scope of services require PRIME AE to review, but only for conformance with PRIME AE's design concept of the project and compliance with the information set forth in contract documents. Such review or other actions shall not extend to means, methods, techniques, sequences, or procedures of manufacture (including the design of manufactured products) or construction, or to safety precautions and programs incident thereto. PRIME AE's review or other actions shall not constitute approval of construction, an assembly or product of which an item is a component, nor shall it relieve others of (a) their obligations regarding review and approval of any such submittals, and (b) their exclusive responsibility for the means, methods, sequences and procedures of constructions, including safety of construction. If DSDC is not included in the proposal, and the Client requests DSDC from PRIME AE, PRIME AE shall be entitled to additional compensation at its standard rates and fees.

13. Certifications. PRIME AE shall not be required to sign any documents, no matter by whom requested, including for Client to obtain financing, that would result in PRIME AE's having to provide certification, a guarantee, or a warranty, or agree to terms that are in conflict with these ST&C.

14. Reliance. PRIME AE shall be entitled to rely, without limitation or liability, on the accuracy and completeness of any and all information provided by Client, Client's employees, representatives, agents, independent contractors, construction managers, consultants and contractors, and information from public records, without the need for PRIME AE's independent verification. Any opinions rendered by PRIME AE pursuant to this Agreement are for the sole and exclusive use of Client, and are not intended for the use of, or reliance upon, by any third parties without the prior written approval of PRIME AE. Client agrees to indemnify, defend and hold harmless PRIME AE to the fullest extent permitted by law for any claims, losses, or damages allegedly suffered by PRIME AE or others due to PRIME AE's reliance on such information contemplated under this Section 14.

15. Opinion of Probable Costs. When required as part of its scope of services outlined in its proposal, PRIME AE will furnish opinions of probable cost, but does not



Standard Terms & Conditions

guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by PRIME AE hereunder will be made on the basis of PRIME AE's experience and qualifications and will represent PRIME AE's judgment in accordance with the Standard of Care. However, users of the probable cost opinions must recognize that PRIME AE does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the services.

16. Limitation of Liability. Client and PRIME AE have discussed the risks, rewards, and anticipated outcome of the project and an estimated total fee for PRIME AE's scope of services, and agree that to the fullest extent permitted by law, the total liability, in the aggregate, of PRIME AE, its' parent company, officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to PRIME AE's scope of services, the project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, errors, omissions, strict liability or contract, regulatory fines or court judgments shall be limited to an amount of \$50,000 or PRIME AE's fee, whichever is greater. PRIME AE's calculation of fees, however set forth in the proposal, is based upon and conditioned on Client's acceptance of and enforcement before a mediator or a court of this limitation of liability. A request by Client to increase this limitation of liability must be made to PRIME AE in writing prior to Client's acceptance of the proposal. PRIME AE may increase the limit of liability in consideration of additional payment by Client. The increased limit of liability will become effective only upon a specific modification to these ST&C by an authorized representative of PRIME AE.

17. Dispute Resolution. If a dispute arises out of or relates to this Agreement or breach thereof, the parties will attempt in good faith to resolve the dispute through negotiation. If the dispute is not resolved by these negotiations, prior to the initiation of legal proceedings, Client and PRIME AE agree to submit all claims and disputes arising out of this Agreement to non-binding

mediation with a mutually agreed upon mediator. The parties agree that they will participate in the mediation in good faith, that they will share equally in its costs, and that neither party will commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

18. Precedence. These ST&C shall take precedence over any inconsistent or contradictory provisions contained in, or referenced by, any proposal, contract, purchase order, requisition, notice to proceed, or similar or like document.

19. Severability. If any of these ST&C are finally determined to be invalid or unenforceable in whole or in part, the remaining provisions shall remain in full force and effect and be binding upon the parties. The parties agree to reform these ST&C to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

20. Survival. These ST&C shall survive the completion of PRIME AE's services on the project and the suspension or termination of services for any cause.

21. Governing Law. The laws of the state in which the project is located shall govern the validity and interpretation of this Agreement. Client agrees that any legal action or proceeding arising out of the provision of services by PRIME AE pursuant to the proposal or any modification thereof may be submitted by PRIME AE to a State Court in the State of Maryland or State of Ohio without regard to the choice of law provision. Client irrevocably consents to jurisdiction of (and waives dispute of venue in) the aforementioned venues.

22. Assignment. No assignments by Client of this Agreement or of any monies due or to become due hereunder shall be binding upon PRIME AE until PRIME AE's written consent thereto is obtained. Any assignment by Client to anyone of any right under this Agreement without the written consent of PRIME AE shall be null and void and without effect.