**PART II**

**The Morin-Cameron Group, Inc.**

**Professional Services,** **Terms and Conditions**

The engagement of The Morin-Cameron Group, Inc. (MCG) by the CLIENT is under the following terms and conditions. These terms and conditions are an integral part of the collective Agreement between the CLIENT and MCG.

**1.** Part I Scope of Services will commence upon receipt of a signed Agreement and, if requested, a retainer. All retainer amounts will be applied to the last invoice. **A RETAINER OF $\_\_\_\_\_\_\_\_\_\_ IS REQUIRED BEFORE SERVICES CAN COMMENCE.**

**2.** The fee estimate for the proposed Scope of Services is valid for **60 days** from the date of Proposal.

**3. Billings/Payments:** Invoices will be submitted monthly by MCG, in MCG’s standard format, to the CLIENT for services and reimbursable expenses and, unless other mutually satisfactory arrangements have been made between the CLIENT and MCG, are due upon receipt. The invoices shall be considered past due if not paid within 30 days after the invoice date and MCG may, without waiving any claim or right against the CLIENT, and without liability whatsoever to the CLIENT or others, suspend the performance of services. A finance charge will be assessed in the amount of 1.5% per month on unpaid balances. In the event any portion of the account remains unpaid 60 days after billing, the CLIENT shall pay MCG’s collection costs, including reasonable attorney’s fees. If the CLIENT fails to make payment to MCG in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination by MCG. Payment of invoices is in no case subject to unilateral discounting or set-offs by the CLIENT, and payment is due regardless of suspension or termination of the Agreement by either party.

**4. Access to Site:** Unless otherwise stated, MCG will have access to the Site for activities necessary for the performance of the services; such access will be arranged by the CLIENT. The CLIENT understands that use of testing or other equipment may unavoidably cause some damage, MCG will take precautions to minimize damage due to these activities, but shall not be held responsible for the restoration of any resulting damage.

**5. Information Provided by Others:** The CLIENT shall furnish, at their own expense, all information, requirements, reports, data, surveys and instructions required by this agreement. MCG may use all such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

**6. Jobsite Safety:** Neither the professional activities of MCG, nor the presence of MCG or its employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequence, techniques, or procedures necessary for performing, superintending, or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. MCG and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT agrees that the General Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the CLIENT’s agreement with the General Contractor. The CLIENT also agrees that the CLIENT, MCG, and MCG’s consultants shall be indemnified and shall be made additional insured under the General Contractor’s general liability insurance policy.

**7 Hidden Conditions and Hazardous Materials:** A condition is hidden if it cannot be investigated by reasonable visual observation or records reviewed as customary in the performance of the services being rendered. If MCG has reason to believe that such a condition may exist, MCG shall notify the CLIENT who shall authorize and pay for costs associated with the investigation of such a condition and, if necessary, costs necessary to correct said condition. If (1) the CLIENT fails to authorize such investigation or correction after due notification, or (2) MCG has no reason to believe that such a condition exists, the CLIENT is responsible for all risks associated with this condition, and MCG shall not be responsible for the existing condition nor any resulting damages to persons or property. Unless specifically agreed upon prior to the commencement of service, MCG shall have no responsibility for the discovery, presence, handling, removal, disposal, or exposure of persons to hazardous materials of any form.

**8. Buried Utilities:**  MCG and/or its authorized subconsultant will conduct the research that in its professional opinion is necessary with respect to the assumed locations of underground improvements. Such services by MCG or its subconsultant will be performed in a manner consistent with the ordinary standard of care. The CLIENT recognizes that the research may not identify all underground improvements and that the information upon which MCG relies may contain errors or may not be complete. The CLIENT agrees, to the fullest extent permitted by law, to waive all claims and causes of action against MCG and anyone for whom MCG may be legally liable, for damages to underground improvements resulting from subsurface penetration locations established by MCG.

**9. Construction Observation:** The CLIENT hereby retains MCG to visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the CLIENT and MCG, in order to observe the progress and quality of the work completed by Contractor. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of the Contractor’s work but rather are to allow MCG to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the design.

**10. Defects in Service:** The CLIENT shall promptly report to MCG any defects or suspected defects in MCG’s services of which the CLIENT becomes aware, so that MCG may take measures to minimize the consequences of the defect. Failure by the CLIENT and the CLIENT’s contractors and subcontractors to notify MCG shall relieve MCG of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

**11. Indemnifications:** MCG and the CLIENT mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorneys’ fees and defense costs) to the extent caused by their own negligent acts, errors or omissions and those of anyone for whom they are legally liable, and arising from the project that is the subject of this agreement. Neither party is obligated to indemnify the other in any manner whatsoever for the other’s own negligence.

**12. Risk Allocation:**  To the maximum extent permitted by law, MCG’s total liability to the CLIENT for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this Agreement, from any cause or causes, shall not exceed the total amount of $100,000 or MCG’s fee, whichever is greater. Such causes include, but are not limited to, MCG’s negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

**13. Consequential Damages:** Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the CLIENT or MCG, their employees, agents, subconsultants, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

**14. Dispute Resolution:** Any claim or dispute between the CLIENT and MCG shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator(s).

**15. Ownership of Documents:** All documents produced by MCG under this Agreement shall remain the property of MCG and will not be used by the CLIENT for any other endeavor without the consent of MCG. CLIENT agrees to indemnify and hold harmless MCG from any claims that arise due to the reuse, or misuse of the work documents.

**16. Electronic Documents:** If any information hereunder is provided in electronic format, the CLIENT recognizes that such plans, documents or other information recorded on or transmitted as electronic media, including CAD documents (“Electronic Documents”) are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the Electronic Documents are provided to the CLIENT for informational purposes only and not as record documents.

**17. Unauthorized Changes:** In the event that the CLIENT consents to, allows, authorizes, or approves of changes to any plans, specifications, or other documents, and MCG does not approve these changes in writing, the CLIENT recognizes that such changes and results thereof are not the responsibility of MCG. Therefore, the CLIENT agrees to release MCG from any liability arising from the construction, use, or result of such changes.

**18. Governing Law:** The CLIENT and MCG agree that all disputes arising out of or in any way connected to this Agreement, its validity, interpretation and performance, and remedies for breach of contract, or any other claims related to this Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

**19. Assignment:** Neither party to this Agreement shall transfer, sublet, or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

**20. Subconsultants:** MCG may use the services of subconsultants when, in MCG’s sole opinion; it is appropriate and customary to do so.

**21. Extent of Agreement:** This Agreement comprises the final and complete agreement between the CLIENT and MCG. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly, has had any questions explained by independent counsel, and is satisfied. Amendments to this Agreement shall not be binding unless made in writing and signed by both the CLIENT and MCG.

**22. Additional Services:**  Services not explicitly detailed in this Agreement will be considered additional and subject to increased project fees. Additional services will not be provided without the CLIENT’s prior authorization to proceed.

**23. Termination:** Either party may terminate this Agreement upon 10 calendar day’s written notice. In the event of termination, the CLIENT shall pay MCG for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

**24. Severability:** Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

**25. Timeliness:** MCG will perform its services with due and reasonable diligence consistent with sound professional practices.

**26. Delays:** MCG is not responsible for delays caused by factors beyond MCG’s reasonable control. When such delays beyond MCG’s reasonable control occur, the CLIENT agrees MCG is not responsible for damages, nor shall MCG be deemed to be in default of this Agreement. Such delays include but are not limited to, change in scope of services, riots, civil disturbances, fires, acts of God, inclement weather, delays in receipt of information from others, or delays of payments by the Client.

**27. Titles:** The titles used in this Agreement are for general reference only and are not part of the Agreement.