

STANDARD TERMS AND CONDITIONS

FOR

ARCHITECTURAL AND ENGINEERING SERVICES

This form contract is intended for use with professional Architectural and Engineering Services.

**STANDARD TERMS AND CONDITIONS
ARCHITECTURAL AND ENGINEERING SERVICES**

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RECITATIONS

WHEREAS, the Mashantucket Pequot Tribal Nation, or any instrumentality thereof, including, but not limited to, the Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino and d/b/a MGM Grand at Foxwoods (collectively referred to hereafter as “MPTN”) has numerous projects that require the services of an Architect or an Engineer (or other design professional) (the “A/E”); and

WHEREAS, the MPTN has certain contractual standard terms and conditions that will apply to these projects; and

WHEREAS, the MPTN has issued a Purchase Order (the “PO”) which describes in full the scope of services and which will incorporate the contractual terms and conditions of this web page (except as where specifically modified in the PO); and

WHEREAS, the A/E is willing to accept an engagement pursuant to the terms and conditions of this web page.

AGREEMENT

1. SERVICES

1.1 A/E Services for individual projects will be identified and authorized in a PO. The PO shall establish the scope of the Services, any special services or payment terms and any other unique aspects of each project (the “Services”). Services shall be performed in accordance with the provisions of the PO and the contractual terms and conditions of this web page (the “Agreement”).

1.2 No Services shall be performed until the A/E signs and returns the approved PO.

1.3 In the event of conflict between this Agreement and the provisions of a PO, the provisions of the PO shall govern.

1.4 The A/E shall provide the Services in coordination with an MPTN Project Manager who shall be named on the PO. The A/E shall designate in writing the name of a contact person. The A/E contact person shall remain subject to approval of MPTN.

1.5 The A/E agrees to provide all qualified professionals and specialist consultants, reasonably acceptable to MPTN, who are necessary to successfully complete a project as more particularly described in Attachment A to the PO (the “Project”). In addition to services customarily provided by an architect and as more fully set forth herein, the A/E services may, depending upon the needs of the Project and as more specifically mandated by the Project Manager, include, but not be limited to, services provided by interior designers, code consultants, structural, mechanical, and electrical engineers, food service consultants as well as lighting, acoustical, audiovisual and signage consultants. The A/E shall also supply necessary supervision for the Project as more particularly set forth herein.

1.6 The A/E shall perform the Services during the Schematic Design Phase, the Design Development Phase, the Construction Development Phase, the Construction Bid Phases, and the Construction Administration Phase.

1.7 The A/E agrees to perform the Services in accordance with the schedule as set forth in the PO (the "Project Schedule"). The A/E agrees to perform the services in the manner, sequence, and timing necessary for full compliance with the Project Schedule and consistent with the standards required under this Agreement. The A/E shall perform the Services diligently, expeditiously, and with adequate resources to complete all of the Services by the date determined in the Project Schedule. Time is of the essence in the completion of each and every provision or condition of this Agreement. The A/E shall not be responsible for delays caused by reasons outside the control of the A/E as further set forth in Article 16.3 herein.

1.8 Should the A/E fall behind schedule it shall, at its own cost, do whatever is necessary, including but not limited to, increase staffing of the job and overtime costs to get back on the Project Schedule and provide MPTN with a recovery plan satisfactory to MPTN.

1.9 The A/E design team is responsible for designing within the budget for completion of the Project as more particularly set forth in the PO (the "Project Budget"). The A/E shall work with the MPTN Projects Department to control project costs to ensure that the Project Budget is not exceeded. At various phases during construction an independent cost consultant retained by MPTN may prepare a "Statement of Probable Construction Costs." If, during the course of the Project, the design team believes that the construction cost will exceed the Project Budget or that the construction cost will exceed the amount set forth in the latest "Statement of Probable Construction Costs," the design team shall immediately notify MPTN in writing.

1.10 Establishment of one or more Statements of Probable Construction Cost by A/E and MPTN shall not constitute A/E's guaranty or warranty that the actual construction cost shall not exceed the estimates but such Statement shall be the basis for A/E's obligations for re-design.

1.11 The A/E shall perform the Services consistent with the highest standards of practice applicable to similar Services provided for first-class casino, entertainment, and resort destination venues nationally.

2. SCHEMATIC DESIGN PHASE

2.1 The A/E shall meet with MPTN representatives to review the Project and to prepare a preliminary evaluation of the Project Schedule and Budget (the "Schematic Design Phase"). The A/E will then work with the MPTN Project Manager to finalize the program requirements of the various end users affected by the Project.

2.2 The A/E shall review and obtain Record Drawings of the existing architectural layout within the area of the Project, as well as any surrounding existing construction and building systems that may be impacted by the Project. These may include, but shall not be limited to, structural, mechanical, electrical, plumbing low voltage and other building systems.

2.3 During the Schematic Design Phase, the A/E shall prepare for review and approval by MPTN, the schematic design documents which shall consist of drawings, sketches, renderings and other documents illustrating the scale and relationship of the components of the Project (the "Schematics"). Upon direction of MPTN, no more than three (3) alternative Schematics may be presented without additional cost to MPTN. All specifications shall be prepared in accordance with the Construction Specifications Institute ("CSI").

2.4 Along with each Schematic, the A/E shall present a preliminary cost estimate. The A/E shall make sufficiently accurate estimates to determine the feasibility of constructing the Project within the Project Budget and Project Schedule.

2.5 The A/E shall review each Schematic approach with the MPTN, as provided herein, until such time as an approach reasonably acceptable to MPTN is selected.

2.6 The Schematics shall conform to all MPTN Land Use requirements. MPTN Land Use requirements are published on the MPTN Procurement Web Page. If the Project is located off the MPTN reservation, the Schematics shall conform to all applicable local, state, or federal statutes or regulations relative to building, zoning, historic preservation, wetland, or other environmental statutes which would customarily govern the Project and the Services.

3. DESIGN DEVELOPMENT PHASE

3.1 The A/E must receive written notice from the MPTN Project Manager to proceed with the design development drawings before commencing the said phase. The design development phase drawings shall show the extent of the site, location of the Project on the site and the general disposition of the principle features and equipment embodied in the Project, and shall be sufficiently developed so as to fix and illustrate the size and character of the Project in all of its essential basic particulars as to kinds of materials, finishes, types of structure, mechanical and electrical systems, special systems, and such other elements as may be necessary to complete the Project (the "Design Development Drawings").

3.2 The A/E shall field verify the accuracy of the existing Record Drawings in order to gain a thorough understanding of the various architectural, structural, mechanical, electrical and plumbing and other building system issues that will affect the design of the Project. This shall include a review of the available capacity of the affected building systems (chilled water, electrical panels and feeds etc.), and structural capacity, as may be required. The A/E shall then prepare Design Development Drawings of the existing conditions as required to establish an accurate baseline for the planned construction.

3.3 The A/E shall finalize programming requirements with each of the affected MPTN end users (as identified by the MPTN Project Manager) to confirm architectural details and associated mechanical, electrical and plumbing, product and equipment selections, as well as data requirements. All such meetings shall be coordinated through the MPTN Project Manager.

3.4 The A/E is responsible for ensuring that the Services comply with the MPTN building codes (see the MPTN Procurement Home Page, Specifications and References: TOSHA/Land Use Requirements), if the Project is located on the MPTN Reservation. If the Project is located off the MPTN Reservation, then the Services shall conform to the building code requirements of the jurisdiction in which the Project is located. In order to verify applicable code and egress requirements, the A/E may be required by MPTN to meet with the Chief Land Use Inspector of the Land Use Department at the beginning of the design development phase. The A/E shall prepare a thorough and complete code analysis and verify that the project design meets applicable building and life safety codes and TOSHA/OSHA requirements. An egress analysis shall be included directly on the Design Development Drawings and be completed in a manner and presented in a format acceptable to the MPTN Land Use Department. Where the project will impact the egress conditions of the facility as a whole, the A/E will share and coordinate occupancy and egress information with the MPTN egress/code consultant for his/her review and action.

3.5 For projects located on the MPTN Reservation, the A/E may be required by the MPTN Project Manager to meet with the Mashantucket Pequot Fire Department, the MPGE Health Department and other authorities having jurisdiction to review their specific applicable codes, standards, and special requirements. The A/E may also be required by the MPTN Project Manager to meet with the MPTN Utilities Department to maximize the benefit derived from energy incentive programs offered by the utility companies providing service to the facility. It shall be the responsibility of the A/E, subject to the approval of the Project Manager, to determine which MPTN Departments ought to be consulted. The determination of the Project Manager, with respect to which Departments need to be consulted, shall relieve the A/E from any redesign costs necessitated by a subsequently determined failure to consult with a particular MPTN Department.

3.6 The A/E is to utilize and tie-in to existing mechanical, electrical, plumbing and other building systems to the maximum extent possible, so as to make the most efficient use of existing systems and minimize new construction costs unless otherwise directed by the MPTN.

3.7 During the Design Development Phase, the A/E shall, as necessary, prepare demolition drawings showing all existing construction to be removed as a part of the Project. The demolition drawings shall identify all existing building systems that will need to be demolished, capped, re-routed, or modified.

3.8 The A/E shall submit for review and approval the number of sets of Design Development Drawings, Specifications and detailed cost estimates specified in the PO for the Project. All specifications shall be prepared in accordance with the

CSI format. All drawings are to be prepared in accordance with the MPTN Procedures for Architectural & Engineering services as published on the MPTN Procurement Web Page (see Specifications and References: Design and Record Drawings Procedures).

3.9 An estimate of the costs of construction shall be submitted with the Design Development Drawings and Specifications and broken down into the major subtrades for the construction of the Project, with separate figures for special items such as equipment, site work, and utility lines or as more fully specified by the MPTN Project Manager. Such estimate shall be predicated upon completion within the Project Budget and Schedule. The A/E shall review each Design Development Drawing with the MPTN, as provided herein, until such time as an approach reasonably acceptable to MPTN is selected. The A/E shall modify the Design Development Drawings and estimates, at no additional cost to MPTN, up to a maximum of three (3) major revisions or until such time as the Project Budget and Schedule is met whichever is less. Failure to comply with the provisions of this paragraph may be considered by MPTN as an event of default.

3.10 Basic engineering and other drawings and specifications shall, as part of the Design Development Drawings, also be provided at this time by the engineers and other consultants working under the direction of the A/E.

3.11 As the Design Development Drawings submitted during this phase are to form the basis of the whole concept of the Project, they shall be reviewed and approved by MPTN for conformance to functional and technical requirements of the Project before the A/E proceeds to the next phase. Such review and approval does not relieve the A/E of any responsibility arising out of the MPTN's reliance on the A/E's professional skill and ability to discharge A/E's Services as required by this Agreement.

4. CONSTRUCTION DOCUMENTS PHASE

4.1 The A/E must receive written notice from the MPTN Project Manager to proceed with the Construction Documents Phase before commencing the said phase. The documents to be provided in this phase are a part of the construction contract and, as such, shall consist of complete and fully coordinated construction drawings and specifications setting forth in detail the requirements for the construction of the Project (the "Construction Drawings").

4.2 The A/E shall provide a detailed code analysis on the cover sheet of the Construction Drawings, in a format acceptable to the MPTN Land Use Department. The analysis shall include at a minimum; the building type, use/occupancy group, construction type, applicable codes and any relevant information about maximum occupancy, travel distances, egress paths, and fixture counts. The cover sheet shall also include a list of all the project drawings, a list of the design professionals working on the Project, and a location key plan.

4.3 The A/E shall ensure that the drawings of all the architectural and engineering disciplines are coordinated to express the complete and accurate scope of the

work, and to eliminate conflicts between the various disciplines.

4.4 The A/E shall include MPGE “owner specified equipment” in the Construction Drawings and be responsible for coordinating the equipment and wiring with the rest of the Project.

4.5 The A/E will meet with the MPTN Land Use Department (and other MPTN authorities having jurisdiction) as required to review additional code issues that arise as the documents are developed, and if necessary, amend the plans accordingly without additional cost to MPTN.

4.6 During the Construction Documents Phase, the A/E shall review and revise its cost estimate periodically and advise MPTN if scope modifications or reductions are necessary to bring the Project back in line with the Project Budget and Schedule.

4.7 All Construction Drawings shall conform to the MPTN Record Drawing Standards. All specifications shall conform to CSI standards. Review and approval by the MPTN of the Construction Documents does not relieve the A/E of any responsibility arising out of the MPTN’s reliance on the A/E’s professional skill and ability to discharge the services required by this Agreement.

4.8 At the completion of the Construction Documents Phase, the A/E shall submit one (1) unstamped set of the final construction drawings and specifications to the MPTN Land Use Department for review. Upon completion of review by the MPTN Land Use Department, the A/E shall, at no further cost to MPTN, incorporate all required changes to the said drawings and specifications. The A/E shall then provide four (4) stamped sets of the completed construction documents to the MPTN Land Use Commission for approval of a building permit. The A/E shall provide up to ten (10) unstamped sets (per directive of the MPTN Project Manager) for use by the MPTN Projects Department. In addition, the A/E shall provide two (2) CD-ROM’s containing the Project Drawings and Project Manual that comprise the construction documents. The CD-ROM drawings as required by this sub-paragraph shall be in an AutoCAD version, and in a format as required by the MPTN Record Drawing Standards. The MPTN project number and name is to be listed on each drawing title block, the cover of the Project Manual, and each individual page of the documents.

4.9 The A/E shall provide to the MPTN, for all projects located outside of the boundaries of the MPTN Reservation, a “Certificate of Substantial Compliance with the Connecticut Building and Fire Safety Codes” bearing original signatures and seals, stating: “This is to certify that the design of the referenced structure is in compliance with the Connecticut Building and Fire Safety Codes adopted by the State of Connecticut, including the following approved modifications of code (list if any).” In the event that the Project is to be constructed on the MPTN Reservation the Certificate shall state: “This is to certify that the design of the referenced structure is in compliance with the MPTN Land Use Commission requirements.” The A/E shall provide the Certificate to the MPTN’s Project Manager when the completed Construction documents are submitted to the

MPTN Land Use Commission for approval.

5. BIDDING / REQUEST FOR PROPOSAL / NEGOTIATION PROCESS

The A/E shall assist the MPTN in evaluating the bids for all aspects of the Project. This may include; assisting in the preparation of the necessary bidding information; attending and assisting in the conduct of the pre-bid meeting; preparing written responses and issuing addenda as necessary, clarify questions brought up by the bidders; providing written analysis of value engineering suggestions proposed by the bidders; and reviewing schedules of values submitted by bidders and advising MPTN as to any discrepancies in the pricing submitted.

6. CONSTRUCTION ADMINISTRATION

6.1 The A/E will be required to attend weekly project progress meetings for the duration of the Project and to respond promptly to any issues that arise during the course of construction. Administrative duties to be performed during construction include, but are not limited to:

6.1.1 Reviewing and taking appropriate action on Submittals (maximum five (5) calendar day turnaround time); and

6.1.2 Reviewing and responding to Requests for Information (“RFI”) from the Project Contractors (maximum five (5) calendar day turnaround time); and

6.1.3 Reviewing and responding to Field Correction Notices (“FCN”) generated by the MPTN Land Use and Fire Departments (maximum five (5) calendar day turnaround time); and

6.1.4 Generating Field Sketches (“FSK”) as necessary to clarify details and record changes (maximum five (5) calendar day turnaround time); and

6.1.5 Maintaining up to date logs of all construction administration documentation (submittals, RFI’s, FSK’s etc.); and

6.1.6 Visiting the Project site at intervals appropriate to the stage of construction, or as required by the MPTN Project Manager, to review the progress and quality of the Project. The purpose and intent of the site visits are to enable the A/E to notify the Owner of any substantive variation of the Project from the Construction Drawings and Specifications. Within five (5) days of each visit, the A/E shall provide MPTN with a written report which shall set forth the progress and quality of the Project and shall further advise MPTN of any observed substantive variations of the Project from the Construction Drawings and specifications. The A/E shall not be required to guarantee the performance of the general contractor or the subcontractors of the general contractor but is under a professional obligation, as provided in Article 1.11, to observe the progress of the Project and report as set forth herein.

6.1.7 Perform final inspection at the conclusion of the Project and prepare the Certificate of Substantial Compliance for submission to the Land Use Commission or other appropriate entity.

6.1.8 Generate and administer the punchlist at conclusion of the Project or upon request of the MPTN Project Manager, whichever is earlier.

6.2 In the event that the time period of the construction contract is exceeded by more than 25% (the “CTO”), due to no fault of the A/E, the A/E shall be paid a reasonable fee for any additional services required beyond the CTO. The amount of increase to be reasonably determined by the MPTN. The question of fault on the part of the A/E shall also be reasonably determined by the MPTN.

7. RECORD DOCUMENTATION / CLOSEOUT

7.1 At the conclusion of the project, the A/E team shall provide a set of “corrected” xreference base drawing plans in a format as provided on the MPTN Record Drawing Standards (the “Record Drawings”).

7.2 The Record Drawings shall reflect all architectural and engineering (all disciplines) changes that took place during construction and incorporate all FSK that were generated. Once the Contractor/Construction Manager has completed the preparation of its Record Drawings on the x-reference provided, the A/E shall review the Record Drawings for accuracy and provide its comments to the MPTN and the Contractor.

7.3 The A/E will also assist the MPTN Projects Department in reviewing the contract closeout information provided by the Contract/Construction Manager to ensure compliance with the requirements of the construction specifications. Such information will include, but not be limited to: test and balance reports, one-line system diagrams, startup and shutdown sequences, product manuals, FF&E information, signage drawings, equipment/parts cut sheets, operations and maintenance and spare parts list and inventories.

8. HAZARDOUS WASTE

The A/E shall notify the MPTN in writing of any materials encountered in any assignments that appear to consist of or contain asbestos, p.c.b.’s, lead-containing materials, or other hazardous materials (“Hazardous Materials”). It is understood that the A/E’s responsibility shall not extend beyond attempting to identify those Hazardous Materials present and informing the MPTN when such materials are noted. In those cases where Hazardous Materials are present but are not detected by the A/E, the A/E will not be held liable. All work involving the location, encapsulation, removal, disposal, etc., of asbestos or asbestos-containing material, p.c.b.’s, lead-containing materials, or other Hazardous Materials will be performed by specialists hired by the MPTN. Neither party shall be responsible for delay or suspension of work as a result of the discovery of Hazardous Materials.

9. AUDIT

9.1 MPTN reserves the right to perform an audit at any time during the term of this Agreement and up to six (6) years from the substantial completion (as defined in the construction documents) of the Project. A/E shall maintain accurate records at all times and shall continue to maintain such records for the same six (6) year period. Upon seven (7) days notice A/E shall provide MPTN reasonable access to A/E's records to verify that pricing, billing and changes in Service conform to the terms of this Agreement. MPTN will be permitted to conduct these audits with its own internal resources or by securing the services of a third party accounting/audit firm, solely at MPTN's election. MPTN shall have the right to copy, at its own expense, any record related to the Services performed pursuant to this Agreement. The A/E further agrees to include in all of its subcontracts hereunder the same requirement of this subparagraph. The provisions of this paragraph shall survive the termination of this Agreement.

9.2 The periods of access and examination described above, for records which relate to (1) appeals or disputes, (2) litigation of or the settlement of claims arising out of the performance of this Agreement, or (3) costs and expenses of this Agreement as to which exception has been taken by the MPTN, or any of their duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

10. PROGRESS PAYMENTS

10.1 Progress payments shall be made based on percentage of the Project completed, subject to review and approval by the MPTN Project Manager. Invoices accompanied by detailed statements setting forth the statement of work completed shall be submitted to the Project Manager for review and approval on a monthly basis. Payment of invoices shall be due within thirty (30) days receipt by the Project Manager. Invoices not paid as provided herein shall be subject to a one (1%) percent per month interest charge on any unpaid balance. MPTN shall not be obligated to pay, and no interest shall accrue on any invoice, unless and until the detailed statement is received. Pending final resolution of an Invoice, claim, or other dispute, the A/E shall proceed diligently with performance of the Services and the MPTN shall continue to make payments on the undisputed portion of the invoice in accordance with this Agreement.

10.2 All travel time and expense shall be included as a part of the fee for Services as provided in the PO.

10.3 The A/E shall, prior to final payment, provide lien waivers and/or such other proof as may be reasonably required by the Project Manager, that all payrolls, bills for materials and equipment and other indebtedness connected with the Services for which the MPTN or the property of MPTN might be responsible have been satisfied by the A/E.

10.4 The MPTN will make final payment to the A/E subsequent to the completion and

acceptance of the Services.

10.5 Acceptance of the final payment shall constitute a full and final waiver of all claims of A/E against MPTN for performance of the Services.

11. SUBCONTRACTING

11.1 The A/E shall not subcontract any portion of the Services without the approval of the MPTN Project Manager. The form of the Subcontractor's Agreement shall be as developed by the A/E and shall include all relevant sections of this Agreement and shall be approved in writing by the MPTN.

11.2 Should the A/E require the services of registered subcontractors at any time during the duration of this Agreement, their names and qualifications shall be submitted to the MPTN for approval. Such subcontractors shall provide evidence of their competence by affixing their seals, if applicable, on any drawings or specifications prepared by them or under their supervision. The A/E shall not receive any additional payment from the MPTN in regard to such subcontractors unless expressly permitted under the terms of the PO. Any such services shall be provided pursuant to hourly rates as may be provided in the PO.

12. CHANGE ORDERS

12.1 No modification to the Services may be made nor shall the scope of the Services be modified except pursuant to a written Change Order signed by both Parties. Change Orders shall be effective only upon the issuance of a revised Purchase Order by the MPTN Procurement Department reflecting the following: a) change in the services; b) the amount of the adjustment, if any, to the Project Budget; and c) the extent of adjustment, if any, in the Project time. Changes made without approval as set forth in this paragraph shall be of no force or effect.

12.2 If at any time during the term of this Agreement, the MPTN should request the A/E to change the scope of the services originally agreed upon for any PO issued pursuant to this Agreement, the A/E shall then adjust said scope of services as requested and the A/E's fees for such Project shall be adjusted by a fair and equitable amount as determined by the mutual agreement of the MPTN and the A/E.

13. INTELLECTUAL PROPERTY

13.1 MPTN owns all Intellectual Property developed or provided by A/E under this Agreement. For purposes of this Agreement, "Intellectual Property" means all calculations, software, concepts, renderings, designs, drawings, ideas, inventions, models, molds, original artwork, plans, reports, source codes, specifications, sketches, and any intangible and tangible deliverables developed or provided by A/E (and any of A/E's Subcontractors of any tier or employees) as part of the Services to be performed under this Agreement including, without limitation, any Intellectual Property which is or may become subject to a copyright or patent.

13.2 MPTN owns all of the rights in and to all of the results and proceeds of the Services or portion thereof, performed by A/E, developed pursuant to this Agreement, including any Intellectual Property resulting from the Services, to use in any medium whether now existing or developed in the future, throughout the universe in perpetuity. MPTN shall own all rights pertaining to this Intellectual Property as “works for hire” and MPTN shall have the right to obtain in its name or in the name of its designee(s) all copyrights and copyright renewals and any other protections in connection with the protection of these copyrights (including the United States Copyright Act of 1976), as such author, creator, or inventor upon creation. If the Intellectual Property does not constitute “works for hire”, then A/E expressly assigns to MPTN any and all rights and ownership in and to the Intellectual Property to use in any medium whether now existing or developed in the future, throughout the universe in perpetuity. If the Services performed under this Agreement produce or include patentable inventions or other Intellectual Property, these deliverables are owned exclusively by and title vests in MPTN from the time of invention. A/E acknowledges that MPTN is the motivating force and factor for this Agreement, and for purposes of Intellectual Property, has the exclusive right to these Intellectual Property deliverables produced by A/E under this Agreement.

13.3 A/E shall secure appropriate written Contracts with each of its employees and Subcontractors of any tier assigned to the Project to confirm that each agrees to the obligations described in this paragraph. Any provisions in such subcontracts which conflict with the requirements of this paragraph shall be unenforceable.

13.4 The A/E is hereby cautioned that unless specifically authorized in writing by the MPTN’s Procurement Department Representative on a case by case basis, the A/E shall have no right to use and shall not use, in any manner, the name of the MPTN, its officials or employees, or the Seal of the MPTN: (i) in any advertising, Publicity, Promotion; nor (ii) to express or to imply any endorsement of A/E’s work product or services.

13.5 A/E shall use MPTN’s standard title block on any documents which illustrate or describe any part of the Services, which shall include MPTN’s copyright notice which shall be provided to A/E by MPTN.

13.6 A/E represents that it is the author, creator, or inventor of the Services, that it has the authority to make, use, or sell all rights granted to MPTN under this Agreement; that no claim, litigation or proceeding is pending or threatened with respect to the Services or any component of the Services, and the Services and its components do not infringe or violate any copyrights, trademarks, trade secrets, or other proprietary rights of any third party.

13.7 MPTN agrees to restrict use of the Construction Documents to the Project.

14. INSURANCE; INDEMNIFICATION

14.1 A/E shall carry, maintain in full force and effect, and shall require all Subconsultants of any tier to carry and maintain in full force and effect the

following insurance coverages on the forms and in amounts not less than specified during the term of the Contract:

14.1.1 Statutory Workers' Compensation with limits as set forth under the laws of the State of Connecticut and Employer's Liability insurance with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence;

14.1.2 Commercial General Liability insurance with limits of liability not less than One Million Dollars (\$1,000,000) for each occurrence of bodily injury and property damage and not less than Two Million Dollars (\$2,000,000) in the aggregate including contractual liability and Products and Completed Operations in an amount not less than One Million Dollars (\$1,000,000);

14.1.3 Commercial Automobile Liability coverage for all owned, hired, and nonowned, vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) each occurrence for Bodily Injury and Property Damage;

14.1.4 Excess Liability in an amount not less than One Million Dollars (\$1,000,000);

14.1.5 To the extent A/E is required by MPTN to provide Professional Liability/Errors and Omissions insurance to cover the design portion of A/E's services for the Project, A/E shall provide a minimum limit of liability of One Million Dollars (\$1,000,000 per claim and Three Million Dollars (\$3,000,000) in Policy Aggregate, specific to this contract and not a shared Aggregate. A/E's Professional Liability/Errors and Omissions coverage shall remain in effect for six (6) years after completion of the Project.

14.1.6 Contractor shall provide the MPTN with a certificate of said insurance naming the "Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino" and "the Mashantucket Pequot Tribal Nation and its Council", and their respective officers, employees and agents as additional insureds on the General Liability Policy. The General Liability Policy shall include a waiver of subrogation in favor of the additional insureds, contain a severability of interest clause, and contain conditions requiring insurers to notify additional insureds not less than thirty (30) days in advance of cancellation or non-renewal

14.2 The coverage and limits of insurance required in the Contract shall not be construed as a limitation of A/E's liability to MPTN. A/E's failure to deliver satisfactory evidence of coverage shall not be construed as a waiver of A/E's obligation to provide the required insurance coverages.

14.3 To the extent covered by insurance, A/E waives all right to claim against MPTN with respect to any bodily injury, personal injury or losses or damage to real or

personal property. A/E waives all rights of subrogation on behalf of any insurance company insuring its interests. A/E shall require all Subconsultants of any tier to comply with this Paragraph and include this waiver in all Contracts and insurance policies obtained by the respective Subconsultant at any tier.

14.4 All policy certificates shall be supplied to MPTN and shall specifically include the relevant RFP number and PO number and a brief description of the covered scope of work. Policy certificates shall be mailed to:

MPTN Risk Management Department
P.O. Box 3255
Mashantucket, CT 06338

14.5 A/E agrees to defend at its sole cost and expense (if requested by MPTN), release, indemnify and hold MPTN, Tribal Council Members, officers, directors, agents and employees of each, harmless from and against any and all claims, suits, judgments, damages, losses and expenses (including MPTN attorney's fees or outside counsel's fees), or demands, including those demands arising from injuries or death of persons (A/E's employees included) and damage to property (collectively "Claims") arising out of any portion of: (i) A/E and its Subconsultants', of any tier, performance of the Services; (ii) any negligent acts, errors, omissions or willful misconduct of A/E or its Subconsultants of any tier; or (iii) any Claims arising from the presence on MPTN's property of A/E, A/E's Subconsultants of any tier, A/E's employees, officers, directors, agents, licensees or invitees in connection with the Services, and shall make good to and reimburse MPTN for any expenses incurred by MPTN by reason of the Claims. Notwithstanding the above, A/E's indemnity obligations to MPTN shall be limited to the extent of the fault attributable to A/E.

14.6 In any and all claims against those indemnified under this Contract by any employee of A/E, any Subconsultants of any tier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limit on the amount or type of damage, compensation or benefits payable by or for A/E or any Subconsultants of any tier or under any Workers' Compensation Acts, disability benefit acts or other employee benefit acts. The provisions of this paragraph shall survive the expiration or sooner termination of this Contract. The indemnification set forth in this paragraph shall be in addition to and shall not limit any other indemnification required in this Contract.

15. TERMINATION

15.1 The MPTN, by written notice to the A/E, may abandon or terminate this Agreement for the convenience of the MPTN, for violation by the A/E of any provision contained in this Agreement or for any failure by the A/E to render to the reasonable satisfaction of the MPTN the Services required under this Agreement. Such action on the part of the MPTN shall in no event be deemed a breach of this Agreement. Upon receipt of written notification from the MPTN that this Agreement is to be abandoned or terminated, the A/E shall immediately cease operations on Services required under this Agreement. Upon receipt of

written notification that this Agreement is to be abandoned or terminated, the A/E shall also immediately assemble all documents, information and materials which are in its possession or custody and which have been prepared, developed, furnished, or obtained under the terms of this Agreement and shall transmit the same, together with the A/E's evaluation of the costs of the Services performed, to the MPTN on or before the fifteenth (15th) day following the receipt of written notice of abandonment or termination. All such materials shall become the property of the MPTN upon receipt of payment for such Services by A/E. Said materials shall include, but not be limited to, Schematics, Design Development Drawings, Construction Drawings, documents, plans, computations, sketches, drawings, notes, records, and correspondence.

15.2 If the Agreement is abandoned or terminated for the convenience of the MPTN, the A/E shall be entitled to receive reasonable compensation for services already satisfactorily performed and accepted, but no amount shall be allowed for anticipated profit on unperformed services. The MPTN shall determine the amount of such compensation based upon the amount of Services performed and reimbursable expenses incurred by the A/E.

15.3 If the termination is for reason of failure of the A/E to fulfill Agreement obligations, the MPTN may take over the work and prosecute the same to completion by agreement or otherwise. In such event, the A/E shall be liable to the MPTN for any additional costs occasioned to the MPTN thereby.

15.4 If after notice of termination for failure of the A/E to fulfill Agreement obligations it is determined that the A/E had not so failed, the termination shall be deemed to have been effected for the convenience of the MPTN. In such event, the A/E shall be entitled to reasonable compensation as set forth herein.

16. SUSPENSION

16.1 The MPTN, by written notice to the A/E, may delay or suspend this Agreement for the convenience of the MPTN for no more than ninety (90) calendar days (the "Convenience Delay Period"). The A/E shall not be entitled to any damages or increased costs provided the A/E receives a written notice from MPTN to proceed within the Convenience Delay Period.

16.2 In the event that the written notice to proceed is received by the A/E after the Convenience Delay Period then the MPTN and the A/E shall negotiate any increased costs associated with the delay beyond the Convenience Delay Period. In the event that no agreement can be reached, the MPTN may elect to terminate the contract as provided herein.

16.3 Neither party shall be responsible for delays or failure in performance resulting from acts beyond its control. Such acts shall include but not be limited to, Acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations, fire, earthquakes, or other disasters.

17. ASSIGNMENT

17.1 A/E agrees that this Agreement is personal to A/E and, except as specifically provided in this Agreement, cannot be assigned to any other party in whole or in part.

17.2 In the event that the A/E is a sole proprietor and the A/E should die, during the term of this Agreement, this Agreement shall be considered terminated. In the event of such termination, the A/E's estate shall be entitled to reasonable payment for any uncompensated work performed prior to the date of death. The MPTN shall reasonably determine the amount of such payment.

18. TAXES

18.1 Connecticut currently does not impose a sales and use tax on architectural services. However if the architectural services become subject to sales and use taxes, the A/E shall notify the MPTN and shall take necessary steps to ensure that MPTN is recognized and treated as not subject to the state sales and use tax to the maximum extent provided by law. In the event A/E causes a tax to be paid which is not due and payable then, A/E shall indemnify, hold harmless, and release MPTN from any and all taxes, costs and expenses incurred as a result of A/E's failure to meet or exceed Connecticut law.

18.2 A/E agrees that it is the A/E's legal responsibility to pay all applicable federal, foreign, state and local income taxes and self-employment taxes with respect to any amounts received by A/E (and all personnel hired by A/E for A/E's individual practice) under the terms of this Agreement. Unless otherwise required by applicable law, Owner shall not withhold from the amounts paid to A/E (or any personnel hired by A/E for A/E's individual practice) any amounts for federal, foreign or state income taxes or self-employment taxes. Owner shall not provide any fringe benefits to A/E (or any personnel hired by A/E for A/E's individual practice) including, but not limited to, vacation or sick pay, bonuses, life insurance, health insurance, or retirement benefits. Owner will not cover A/E (or any personnel hired by A/E for A/E's individual practice) under state unemployment compensation laws or state workmen's compensation laws.

19. DISPUTE RESOLUTION

19.1 Any claim arising out of or related to this Agreement, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The parties shall endeavor in good faith to resolve their claim(s) by mediation. Mediation shall be conducted so as to minimize impact upon the Agreement Time. A/E shall continue to complete the Services. Litigation shall be stayed for a period of forty-five (45) days pending the outcome of the mediation provided A/E has continued to complete the Services and provided that MPTN has continued to pay for Services performed in compliance with the requirements of this Agreement. Should either party fail to perform then the mediation requirement may be deemed waived by the performing party. The

parties shall share the mediator's fee equally. The mediator shall not be called to testify or otherwise provide evidence by either party in any subsequent legal action. Agreements reached in mediation shall be enforceable as settlements in any court having jurisdiction thereof.

19.2 All claims, disputes or other matters in question between the MPTN and the A/E arising out of or relating to this Agreement, or the breach thereof, which cannot be resolved through mediation, shall be heard by the Mashantucket Pequot Tribal Court ("Tribal Court"), which shall have exclusive jurisdiction to adjudicate such disputes. The laws of the MPTN shall apply. Final judgments of the Tribal Court may be entered in any court having jurisdiction thereof. No additional parties shall be joined to such proceedings without the written consent of the MPTN.

19.3 Nothing in this Paragraph 19 or in this Agreement shall prohibit or in any way limit MPTN's right to seek reimbursement of monies paid for Workers Compensation benefits or Health Benefits, whether MPTN seeks such reimbursement by intervening in a lawsuit pending in a state or federal court or by bringing an independent action in any court having jurisdiction thereof, including state and federal courts.

19.4 MPTN agrees to accept the service of process by certified mail at the following address:

Jackson T. King, Jr., General Counsel
Mashantucket Pequot Tribal Nation
Office of Legal Counsel
2 Matt's Path, P.O. Box 3060
Mashantucket, CT 06338

The A/E agrees to accept service of process pursuant to the rules of the Tribal Court at the mailing address set forth on the PO.

19.5 Any award rendered by the Tribal Court may be appealed in the Tribal Appeals Court pursuant to the applicable rules, and the award rendered by the Tribal Appeals Court shall be final. It is the intention of the parties that once the final award is rendered by the Tribal Court, judgment may be entered upon it in accordance with applicable law in any appropriate State or Federal Court.

20. NEW VENDOR INFORMATION

A/E shall accurately complete and submit, at the direction of the MPTN Procurement Department, a "New Vendor Information Form" (NVIF). A/E shall notify MPTN Procurement in writing of any changes in the information supplied on the NVIF. A/E shall cooperate in any investigation conducted by the Mashantucket Pequot Gaming Commission or the Office of the MPTN Inspector General or such other entity as may be assigned by the MPTN. Failure to abide by the requirements of this paragraph is an event of default and may result in the immediate termination of this Agreement.

21. REPRESENTATIONS AND WARRANTIES

21.1 A/E represents and warrants that:

21.1.1 It has the valid and legal right to enter into this Agreement and that the performance of its obligations hereunder will not violate the terms of any other agreement or understanding to which it is a party, nor conflict with the rights of any third party.

21.1.2 A/E agrees to comply with all applicable tribal laws (including, but not limited to, Land Use and TOSHA) or with federal, state and local laws pertinent to performance of the Services under this Agreement. A/E further agrees to include the substance of this paragraph in all subcontracts entered into by A/E.

21.1.3 A/E will not become engaged during the term of this Agreement with any third party contracts that will interfere with the performance of A/E's obligations hereunder.

21.2 A/E shall promptly replace any A/E personnel whose work or conduct MPTN deems unsatisfactory.

22. MINORITY BUSINESS ENTERPRISE

22.1 A/E shall target 15% of all subcontract work, of any tier, to be awarded to Native American Business Enterprises, Minority Business Enterprises, and/or Woman Owned Business Enterprises ("MBE"). A/E shall report quarterly and shall submit a summary report prior to final payment in a format as specified by the Purchasing Agent. No price factoring is to be considered in subcontract selection. A/E's performance regarding MBE placements will be considered as evaluative criteria for this Agreement and for future contract awards.

22.2 A/E shall not discriminate against any subcontractors or employee regarding race, religion, color, sex, age, physical condition or national origin.

23. COVENANTS AGAINST KICKBACKS

23.1 For purposes of this subsection "Money" means any cash, fee, commission, credit, gift, gratuity, thing of value or compensation of any kind.

23.2 For purposes of this subsection "Kickback" means any Money which is provided or is offered, as herein provided, for the purpose of obtaining or maintaining this Agreement or for rewarding favorable treatment in connection with this Agreement.

23.3 A/E represents, warrants, covenants and agrees that neither A/E nor its subcontractors (including any of their officers or employees) has provided or attempted to provide, either directly or indirectly, a Kickback to any employee of the MPTN or to any member of the MPTN. A/E further warrants, covenants, and agrees that neither A/E nor its affiliates nor any subcontractors (including any of their officer or employees) will, in the future, provide, attempt to provide, either directly or indirectly, any Kickback to any employee of the MPTN or to any

member of the MPTN.

23.4 Failure to abide by the provisions of this section may, without further notice, result in the immediate termination of this Agreement.

24. WAIVER

MPTN may, at any time, insist upon strict compliance with the terms and conditions of this Agreement in spite of custom, practice, or course of dealing to the contrary. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy, shall be considered a waiver of any other breach, failure of any condition, or any right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing specifies.

25. INDEPENDENT CONTRACTOR

A/E acknowledges that it is an independent contractor and will be paid as such. Neither party shall have the right to bind the other. A/E will be responsible for all deductions and/or withholdings for any and all federal or state taxes for itself and its employees. Further, A/E recognizes and agrees that as an independent contractor it is not entitled to and will not raise any issue or defense based upon or related to the sovereign status of MPTN in the context of third party claims asserted against A/E or MPTN and related to A/E's performance of services for MPTN under this Contract.

26. INTERPRETATION

Ambiguities, inconsistencies, or conflicts arising out of or related to this Agreement shall not be strictly construed against MPTN; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.

27. EFFECTIVE DATE

This Agreement has been entered into as of the day and year as set forth on the Purchase Order or upon the issuance date of the letter to proceed, whichever is earlier.

28. ENTIRE AGREEMENT

This Agreement and the Purchase Order and any attachments hereto shall constitute the entire Agreement between A/E and the MPTN. It shall supersede all contracts, Agreements or understandings between the parties respecting the subject matter of the PO. In the event of any conflict between the terms of this Agreement and any PO, the terms of the PO shall govern and control. This Agreement may be modified only by and with the mutual consent of both parties. Any modification must be in writing and must be signed by an authorized representative of the A/E and the MPTN.

29. OFFICIAL ADDRESS

A/E recognizes that Mashantucket is a separate and sovereign jurisdiction and as such that the correct addresses will be appropriately utilized for all shipments and communications in the course of doing business with each of MPTN’s properties, as well as the Mashantucket Pequot Tribal Nation. Where applicable to the subject transaction, A/E must recognize Mashantucket, CT as a separate and distinct “service area”. A/E agrees to reflect (as appropriate) MPTN’s addresses as follows:

Official Address:

Shipping Address:

Foxwoods Resort Casino
350 Trolley Line Boulevard
PO Box 3777
Mashantucket CT 06338-3777

As specified on Purchase Order

MGM Grand at Foxwoods
240 MGM Grand Drive
PO Box 3777
Mashantucket CT 06338-3777

As specified on Purchase Order

Note: The proper format for correspondence and shipments destined for the ***Mashantucket Pequot Tribal Nation*** government departments are to follow the following format:

Name- Department
Street Address
P. O. Box Number
Mashantucket, CT 06338-Box Number

END OF AGREEMENT