

STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION SERVICES

This form contract is intended for use with professional construction services.

**STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION SERVICES
TABLE OF CONTENTS**

| | |
|---|-----------|
| 1. ENGAGEMENT AND ACCEPTANCE..... | 4 |
| 2. AGREEMENT TIME | 4 |
| 3. AGREEMENT SUM..... | 4 |
| 4. PAYMENT TERMS..... | 4 |
| 5. QUALITY OF WORK/WARRANTY | 5 |
| 6. MATERIALS..... | 6 |
| 7. ACCEPTANCE OF EXISTING CONDITIONS\NOTICE OF DEFECT..... | 6 |
| 8. COORDINATION OF WORK | 6 |
| 9. CHANGE ORDERS | 7 |
| 10. RECORD DOCUMENTATION / CLOSEOUT..... | 7 |
| 11. INDEPENDENT CONTRACTOR | 8 |
| 12. TAXES..... | 8 |
| 13. INDEMNIFICATION | 8 |
| 14. RISK OF LOSS AND LIABILITY | 9 |
| 15. PERMITS AND REGULATIONS..... | 10 |
| 16. AUDIT | 10 |
| 17. TERMINATION OF AGREEMENT | 10 |
| 18. DISPUTE RESOLUTION | 10 |
| 19. TRIBAL COURT JURISDICTION..... | 11 |
| 20. SERVICE OF PROCESS..... | 11 |
| 21. APPEALS..... | 11 |
| 22. TAXES, WORKMEN’S COMPENSATION, FRINGE BENEFITS..... | 12 |
| 23. NEW VENDOR INFORMATION FORM..... | 12 |
| 24. MINORITY BUSINESS ENTERPRISES | 12 |
| 25. COVENANTS AGAINST KICKBACKS..... | 12 |
| 26. INCORPORATION OF AGREEMENT TERMS INTO SUBCONTRACTOR AGREEMENTS | 13 |
| 27. ASSIGNMENT | 13 |

| | |
|--|-----------|
| 28. INTERPRETATION..... | 13 |
| 29. MPTN’S RIGHT TO STOP THE WORK | 13 |
| 30. MPTN’S RIGHT TO CARRY OUT THE WORK..... | 13 |
| 31. MODIFICATION..... | 14 |
| 32. EFFECTIVE DATE | 14 |
| 33. ENTIRE AGREEMENT..... | 14 |

**STANDARD TERMS AND CONDITIONS
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RECITATIONS

WHEREAS, the Mashantucket Pequot Tribal Nation, a federally recognized Indian Tribe (25 USC 1751) (“MPTN”), desires to engage the Contractor to perform certain services relating to the Project. The Project shall be described on the Purchase Order (the “PO”); and

WHEREAS, the Contractor is willing to accept such engagement and the parties now desire to set forth, in detail, the terms and conditions of their Agreement.

AGREEMENT

1. ENGAGEMENT AND ACCEPTANCE

MPTN hereby engages the Contractor, and the Contractor agrees to provide all labor, materials, equipment, and supervision for a Project as set forth in Attachment A (the “Work”) to a PO which shall be issued by MPTN and which shall make specific reference to this Agreement. The Work shall be performed in coordination with MPTN.

2. AGREEMENT TIME

The Work to be performed pursuant to this Agreement shall be completed pursuant to the time as set forth in the PO (“Contact Time”). Time is of the essence.

3. AGREEMENT SUM.

For the completion of the Work by Contractor under this Agreement, MPTN agrees to pay Contractor the amount as set forth on the PO (“Contract Sum”).

4. PAYMENT TERMS

4.1 Progress payments shall be made based on percentage of Work completed, subject to review and approval by the Authorized MPTN Representative (“AR”). The AR shall be named on the PO. Pay Applications on the approved MPTN form setting forth the statement of work completed shall be submitted to the AR for review and approval on a monthly basis. The Contractor shall, at its own expense, promptly correct Work rejected as provided herein. In the event that Contractor disputes the determination of the AR then such dispute shall be subject to mediation as provided herein. Payment of invoices shall be due within thirty (30) days of approval by the AR. Pending final resolution of an invoice, claim, or other dispute, the Contractor shall proceed diligently with performance of the Work and the MPTN shall continue to make payments in accordance with this Agreement.

4.2 If, at any time, Contractor believes that MPTN’s actions result in additional cost or time not otherwise set forth in the Contract, Contractor must provide written notice within two (2) days of the event giving rise to the claim describing the basis for the claim and Contractor’s best current, reasonable cost estimate. Contractor acknowledges that

this provision is required to mitigate costs and time impact on performance in MPTN's best interests. Contractor's failure to give timely and complete notice in accordance with this paragraph will serve as Contractor's waiver of rights to such claim.

4.3 MPTN may withhold no more than ten (10%) percent of the Contract Sum as retainage. Retainage may be imposed on each invoice.

4.4 The Contractor shall notify the AR when the Work is substantially complete. The Work is substantially complete when the Work is sufficiently complete in accordance with this Agreement so that the Owner can occupy or utilize the Work for its intended use ("Substantially Complete"). Upon such notification, the AR shall inspect the Work and shall develop a punch list of items that do not conform to the requirements of this Agreement. Upon resolution of any disagreements and upon agreement of a date when all punch list items will be resolved, the Work may be certified by the AR to be Substantially Complete.

4.5 Contractor shall, prior to final payment, provide Payment Certifications on forms approved by the MPTN and/or such other proof as may be reasonably required by the AR, that all payrolls, bills for materials and equipment and other indebtedness connected with the Work for which the MPTN or the property of MPTN might be responsible have been satisfied by the Contractor.

4.6 Acceptance of the final payment shall constitute a full and final waiver of all claims of Contractor against MPTN for performance of the Work.

5. QUALITY OF WORKWARRANTY

MPTN, through its AR, shall have the right to reject any and all Work or services, which it deems unacceptable in their reasonable determination. Any determination of unacceptable completion of any portion of the Work may be deemed an event of default by MPTN at its election. All materials furnished by Contractor under this Agreement shall be new and of a first rate quality. No substitution or alternative materials may be made without the express written approval of the AR. If, within two (2) years of Substantial Completion of the Work, any defect in materials or workmanship is discovered by MPTN then Contractor, after receiving written notice from MPTN of such defect, shall correct it promptly. If Contractor fails to correct any defect within thirty (30) days following the receipt of written notice by MPTN, then MPTN may proceed to have such defective work or materials corrected at the expense of Contractor and Contractor agrees to pay the cost of such protections. The provisions of this paragraph shall be in addition to any express warranties provided by or through Contractor for materials delivered to MPTN under this Agreement. All such warranties are hereby assigned to MPTN and all work performed shall be done in a manner that shall preserve such warranties. All warranties shall be deemed an integral part of this Agreement. The Work shall be performed skillfully, carefully, diligently and in a workmanlike manner and shall be fit for the purpose intended.

6. MATERIALS

6.1 Contractor shall install only new materials and equipment to be furnished under the Agreement unless otherwise allowed by MPTN, and that all Work shall be of good quality, free from faults and defects and in conformance with this Agreement.

6.2 In the event the naming of one (1) or more materials or equipment is followed by the phrase "or approved equal", substitutions of materials or equipment, similar and equal in quality and utility to the items specifically named, may be made only after written approval by MPTN. Under no circumstances shall any substitutions requested by Contractor result in any additional cost to MPTN. Any savings resulting from Contractor including such approved substitution shall inure to the benefit of MPTN.

6.3 Contractor warrants that title to all Work, including but not limited to all materials and equipment, covered by an Application for Payment shall pass to MPTN, free and clear of all liens, claims, security interests or encumbrances, and sales tax upon the sooner of the tender of payment of the applicable Application for Payment by MPTN to Contractor or delivery of Work to the Job Site; and that no Work, materials or equipment covered by an Application for Payment shall have been acquired, whether by Contractor or by any other person performing a portion of the Work or furnishing materials and equipment for the Work, subject to an agreement under which an interest in or an encumbrance on is retained by the seller or otherwise imposed by the Contractor or any other person.

6.4 The passage of title to MPTN shall not alter or limit the obligations and duties of Contractor with respect to the Work and the materials or equipment incorporated in or used in connection with the Work as described in these Contract Documents.

7. ACCEPTANCE OF EXISTING CONDITIONS\NOTICE OF DEFECT

7.1 Contractor has been given an opportunity to examine the Work site. The Contractor shall verify the interconnection of its Work with existing or other work as well as site dimensions, elevations or locations. The exactness of such information or its representation on any drawings, plans or specifications issued by the MPTN is the responsibility of the Contractor and is not guaranteed by the MPTN.

7.2 In the event that Contractor discovers any errors, inconsistencies or problems regarding the drawings, plans or specifications, then the Contractor shall send written notice to the MPTN detailing such problems and possible solutions.

8. COORDINATION OF WORK

Contractor shall perform the Work so as to minimize any impact upon the conduct of the business activities of MPTN. Contractor shall schedule the Work subject to the approval of MPTN.

9. CHANGE ORDERS

9.1 No modification to the Work, Contract Sum or Contract Time may be made, nor shall the scope of the Work 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 PO by the AR reflecting the following: a) change in the Work; b) the amount of the adjustment, if any; c) the Contract Sum; and d) the extent of adjustment, if any in the Contract Time. Changes made without approval as set forth in this paragraph shall be of no force or effect.

9.2 MPTN may add to or deduct from the Work by issuing a Directive. A Directive shall mean a written document containing additions, deletions, revisions, clarifications, or other written instructions issued by MPTN regarding the performance of the Work. A Directive shall be signed by the MPTN Authorized Representative. Unless the Directive indicates that it is for a quote only, Contractor will immediately proceed with the performance of the Scope Change. Within the time allotted in the Directive or within ten (10) days if no time is set. Contractor will immediately provide, in writing, a reasonable estimate of the cost and time to complete the Directive or the amount of a reasonable credit for any reduced scope. MPTN may request that Contractor utilize Unit Prices, if any, to price the Directive in MPTN's sole discretion. If the parties agree to the amount of the addition or deduction, they will each sign a written Change Order to the Contract. If the parties cannot agree, they will continue to work diligently to resolve the dispute. Unsettled Directives shall not be incorporated into a Change Order for payment until settlement. Any Directive undertaken is governed by the terms and conditions of this Contract, as amended by Change Order.

10. RECORD DOCUMENTATION / CLOSEOUT

10.1 At the conclusion of the project, the Contractor shall provide a set of "corrected" x-reference base drawing plans in a format as provided on the MPTN Record Drawing Standards (the "Record Drawings"). The MPTN Record Drawings standards are available for review at the MPTN web page www.mptnprocurement.com.

10.2 The Record Drawings shall reflect all architectural and engineering (all disciplines) changes that took place during construction and incorporate all field sketches that were generated. Once the Contractor has completed the preparation of its Record Drawings on the x-reference provided, the Contractor shall review the Record Drawings for accuracy and provide its comments to the MPTN and the Architect.

10.3 The Contractor will also assist MPTN in reviewing the contract closeout information to ensure compliance with the requirements of the construction specifications. Such information will include, but not be limited to: test and balance reports, on-line system diagrams, startup and shutdown sequences, product manuals, operations and maintenance and spare parts list and inventories.

11. INDEPENDENT CONTRACTOR

Contractor recognizes that it is an independent contractor and will be paid as such. Neither party shall have the right to bind the other. Contractor will be responsible for all deductions and/or withholdings for any and all federal or state taxes for itself and its employees. Further, Contractor 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 Contractor or MPTN and related to Contractor's performance of services for MPTN under this Contract.

12. TAXES

MPTN shall be responsible for all applicable taxes for all Work performed to real property located off the MPTN Reservation. The Contract Sum shall not include any sales or use tax for work performed on the MPTN Reservation for property intended to be used on the reservation. Contractor acknowledges that MPTN is generally not subject to most state sales, use and personal property taxes for materials used on the MPTN Reservation or for services rendered on the MPTN Reservation. Contractor acknowledges that Connecticut has established certain reporting and/or registration requirements that must be complied with in order for the State of Connecticut to acknowledge the tax exempt status of MPTN purchases, or purchases by Contractor or its subcontractors for MPTN projects. Contractor shall complete and furnish all necessary reports and forms required by the State of Connecticut (including but not limited to CERT 128 and CERT 132) to assure that the MPTN exemption is recognized. Contractor and its subcontractors shall only store process, fabricate or manufacture material for the Work off of the MPTN reservation in compliance with the requirements of C.G.S. 12-407(6) and C.G.S. 12-408 c(b)(1) or any other applicable Connecticut statutes that will ensure that MPTN's tax exempt status is properly recognized. In the event that Contractor fails to meet or exceed the requirements of Connecticut law with regard to the tax exempt status of the MPTN then Contractor shall indemnify, hold harmless, and release MPTN from any and all taxes, costs and expenses incurred as a result of Contractor's failure to meet or exceed Connecticut law.

13. INDEMNIFICATION

13.1 Each party hereby agrees to defend, indemnify, and hold the other party (including the indemnitee's Tribal Council Members, officers, employees, and agents) harmless from and against any and all claims, suits, damages, awards, losses, fines, liabilities of any nature arising out of the negligent or willful acts, wrongdoing or omissions of the other including, without limitation, any of the foregoing as they relate to any and all third parties (including reasonable attorney's fees, whether for MPTN staff attorney or outside counsel). The provisions of this subparagraph shall survive the termination of this Agreement.

13.2 Without limiting the indemnification provided by Contractor under this Agreement, Contractor, at its sole cost and expense, prior to taking any action in connection with this Agreement, shall procure and, thereafter, shall maintain in full force and effect:

- 13.2.1** for all of its employees workers' compensation insurance with statutory limits coverage and employer's liability coverage of not less than \$1,000,000 per occurrence; and
- 13.2.2** commercial general liability insurance with limits of liability not less than \$1,000,000 for each occurrence of bodily injury and property damage, and \$2,000,000 in the aggregate including products/completed operations, and contractual liability in an amount not less than \$1,000,000; and
- 13.2.3** automobile liability insurance with a combined single limit of \$1,000,000, and hired /non-owned coverage of \$1,000,000; and
- 13.2.4** excess liability in the amount of not less than \$1,000,000; and
- 13.2.5** professional liability in the amount of not less than \$1,000,000 per claim and not less than \$3,000,000 aggregate.

All such policies to be placed with AM Best, A VII rated companies, Weiss ratings B or better and licensed to conduct business in the State of Connecticut.

13.3 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 as respects to the General Liability Insurance, 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.

13.4 All policy certificates shall be supplied to MPTN and shall specifically include the relevant RFP number or 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. RISK OF LOSS AND LIABILITY

Contractor assumes and shall be solely and exclusively responsible and liable for any and all loss, costs, expenses, damages, destruction, or injury including, without limitation, bodily injury or death of any person or persons and damage or destruction of any property or properties, in connection with Contractor's performance of its obligations under this Agreement including, without limitation, any of the foregoing with respect to any equipment or materials used by Contractor, suppliers or subcontractors in connection with this Agreement.

15. PERMITS AND REGULATIONS

Contractor is responsible for meeting all applicable federal, state or local permits for Work occurring off the MPTN Reservation. For Work performed within the boundaries of the MPTN Reservation Contractor shall obtain MPTN permits and shall conform to MPTN regulations. These include permits from MPTN Land Use and TOSHA regulations (see the MPTN Procurement Home Page, Specifications and References: TOSHA/Land Use Requirements). Contractor represents and warrants that it will comply with all lawful orders of the Land Use and TOSHA representatives

16. AUDIT

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 expiration or earlier termination of this Agreement. The MPTN reserves the right to conduct an Audit as provided herein irrespective of the lump sum nature of the contract. Contractor shall maintain accurate records at all times and shall continue to maintain such records for six (6) years from the end of this Contract. Upon three (3) days notice Contractor shall provide MPTN reasonable access to Contractor's records to verify that pricing, billing and changes in Work 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 Work performed pursuant to this Agreement. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

17. TERMINATION OF AGREEMENT

17.1 Should MPTN for any reason and at any time in its judgment determine to discontinue the services of Contractor, MPTN will have the right to terminate this Agreement with or without cause by issuing a written Notice of Termination. In such event, MPTN will pay Contractor for reasonable costs incurred and its profits lost thereon for any Work authorized and performed prior to the termination (unless the reason for the termination is caused by Contractor's breach, in which case MPTN has no obligation to pay direct or indirect costs or lost profit, if any, and may off-set its increased cost to correct or complete the Work from the Contract Sum, in addition to such other remedies as are provided by law). In no event, however, shall the amount due Contractor exceed the Contract Sum plus authorized Reimbursables.

17.2 MPTN may, for any reason, suspend the Work for sixty (60) days without any obligation to pay any indirect costs whatsoever including but not limited to delay, impact, lost productivity, acceleration, or other such indirect costs, which Contractor may assert to be associated with such suspension of work.

18. DISPUTE RESOLUTION

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 Contract Time. Contractor shall continue to complete the Work as set forth under this Agreement. Litigation shall be stayed for a period of forty-five (45) days pending the outcome of mediation provided Contractor has continued to complete the Work and provided that MPTN has continued to pay for Work 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. TRIBAL COURT JURISDICTION

All claims, disputes or other matters in question between the MPTN and the Contractor 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. No additional parties shall be joined to such proceedings without the written consent of MPTN. 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.

20. SERVICE OF PROCESS

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

Jackson T. King, Jr., General Counsel
Office of Legal Counsel
Mashantucket Pequot Tribal Nation
2 Matt's Path
P.O. Box 3060
Mashantucket, CT 06339-3060

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

21. APPEALS

Any award rendered by the Tribal Court may be appealed to the Mashantucket Pequot Court of Appeals pursuant to applicable rules, and the award rendered by the Mashantucket Pequot Court of Appeals shall be final. It is the intention of the parties that once a final judgment is entered by the Tribal Court and/or Tribal Court of Appeals, that judgment may be enforced, if necessary, in any state or federal court as may be appropriate and in accordance with any applicable law.

22. TAXES, WORKMEN'S COMPENSATION, FRINGE BENEFITS

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

23. NEW VENDOR INFORMATION FORM

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

24. MINORITY BUSINESS ENTERPRISES

Contractor 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"). Contractor 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 subcontractor selection. Contractor's performance regarding MBE placements will be considered as evaluative criteria for this contract and for future contract awards. Contractor shall not discriminate against any subcontractors or employee regarding race, religion, color, sex, age, physical condition or national origin.

25. COVENANTS AGAINST KICKBACKS

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

25.2 For purposes of this subsection a "Tribal Contract" means a written contract with the MPTN, Foxwoods, PRxN, or any other political subdivision of the Tribe or with any Tribally owned business.

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

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

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

26. INCORPORATION OF AGREEMENT TERMS INTO SUBCONTRACTOR AGREEMENTS

Contractor agrees to incorporate all provisions of this Agreement into any and all subcontracts by reference so that these provisions shall apply as if fully incorporated into each subcontractor contract. The more stringent provisions favoring MPTN shall govern any inconsistent provisions contained in any subcontractor contract

27. ASSIGNMENT

Contractor agrees that this Agreement is personal to Contractor and cannot be assigned to any other party in whole or in part. If a subcontractor is necessary the MPTN requires prior approval for the use of said subcontractor.

28. 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.

29. MPTN'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of this Agreement, or persistently fails to carry out the Work, the AR may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such an order has been eliminated. The right of the MPTN to stop the Work shall not give rise to a duty on the part of the MPTN to exercise this right for the benefit of the Contractor or any other person or entity.

30. MPTN'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults, or neglects to carry out the Work in accordance with this Agreement within a ten (10) day period after receipt of the written notice from the MPTN to correct such default or neglect, the MPTN may, after such ten day period and without prejudice to other remedies the MPTN may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter

due the Contractor for the reasonable cost of correcting such deficiencies, including MPTN's expenses and compensation for additional Work, made necessary by such default, neglect or failure.

31. MODIFICATION

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 Contractor and by the authorized representative of MPTN.

32. EFFECTIVE DATE

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

33. ENTIRE AGREEMENT

This Agreement and the PO and any attachments thereto issued by MPTN shall constitute the entire Agreement between Contractor and MPTN. It shall supersede all contracts, Agreements or understandings between the parties hereto respecting the subject matter hereof. In the event of any conflict between the terms of this Agreement, and any PO, the terms of the PO shall govern and control.