

## **Creston Annex Head Start Stormwater Project**

### **General Conditions**

#### **1. General Provisions.**

- a. Contract Documents. The “Contract Documents” consist of the Contract, General Conditions, Drawings, Specifications, additions or deletions to, material changes in, or general interest explanations of a Solicitation Document (“Addenda”) (other than Addenda relating to bidding requirements) issued prior to the bid, other documents listed in the Contract, and Modifications issued after execution of the Contract. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
- b. Contract Schedule. The “Contract Schedule” is the graphical representation of the practical plan for carrying out the Work and completing the Work within the Contract Time as set forth in the Contract Documents. The Contract Schedule provides a list of intended events and times to complete each event as set forth in the Contract Documents.
- c. Drawings. The “Drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- d. Specifications. The “Specifications” are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work and performance of related services.
- e. Three Week Look Ahead Schedule. Each week the Contractor shall prepare and present an updated schedule showing the planned activities for the next three weeks and one week prior. The schedule shall be coordinated with the master schedule and accurately portray activities completed and activities planned for the upcoming weeks.
- f. Modification. A “Modification” is
  - 1. a written amendment to this Contract signed by both parties;
  - 2. a Change Order;
  - 3. a Construction Change Directive
- g. Project. The “Project” is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include separate Contractors.
- h. Project Site. The “Project Site” is the property upon which the Project lies and Portland Public School District’s (District) property that surrounds the Project, extending to the District’s property boundary.
- i. Business Days. Business days shall mean every day except Saturday, Sunday, and legal holidays.

#### **2. Estuary Partnership’s Responsibilities.**

- a. Authorized Representative. Estuary Partnership shall designate a person in writing to be the authorized representative with express authority to bind and communicate on behalf of Estuary Partnership with respect to all matters requiring Estuary Partnership’s approval or authorization (“Estuary Partnership Representative”). The terms “Estuary Partnership” and “Owner” include the Estuary Partnership Representative.
- b. Estuary Partnership will engage landscape architect Juncus Studio to assist Estuary Partnership during construction of the Project to interpret technical contract provisions and to determine the amount, quality,

acceptability, and fitness of the Work. Juncus Studio will be authorized to act on behalf of Estuary Partnership only to the extent expressly provided in the Contract Documents or as Estuary Partnership otherwise directs in writing.

c. Access to the Work. Estuary Partnership and its designated representatives shall have free access to the Work at all times. Contractor shall not carry on Work except with the knowledge of Estuary Partnership and its designated representatives. Estuary Partnership may require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Inspection or observation of Work shall not relieve Contractor from any obligation to fulfill the Contract.

d. Right to Stop or Reject Work. Estuary Partnership may reject Work that fails to conform to the Contract Documents, as determined by Estuary Partnership. If Contractor fails to promptly correct such defective Work, Estuary Partnership may issue a written order directing Contractor to stop the Work, or designated portion thereof, until the cause for such order is eliminated. The right of Estuary Partnership to stop the Work shall not give rise to a duty on the part of Estuary Partnership, or any of its representatives, to discover nonconforming Work or to exercise the right to stop the Work for the benefit of Contractor or any other person or entity.

e. Permits and Access. Except for permits and fees that are Contractor's responsibility under the Contract Documents, Estuary Partnership shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.

f. Subsurface Surveys. Estuary Partnership shall make available to Contractor, and Contractor shall study, the results of such test borings and information that Estuary Partnership has concerning subsurface conditions and site geology. Contractor shall inform Estuary Partnership of any other site investigation, analysis, study, or test conducted by or for Contractor or its agents and shall make the results available to Estuary Partnership upon Estuary Partnership's request.

### **3. Contractor's Responsibilities.**

#### **a. General Responsibilities.**

1. Authorized Representative. Contractor shall designate a person in writing to be the authorized representative with express authority to bind and communicate on behalf of Contractor with respect to all matters requiring Contractor's approval or authorization ("Contractor Representative"). The term "Contractor" means the Contractor or the Contractor Representative.
2. Materials, Equipment, and Services. The Contractor will provide all labor, materials, equipment, and services necessary to complete the Work, all of which will be provided in full accord with the Contract Documents.
3. Supervision and Coordination. Unless otherwise provided in the Contract Documents, the Contractor will be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized.
4. Project Correspondence. Contractor shall provide Estuary Partnership with a copy of all written communications between Contractor and Estuary Partnership's consultants at the same time as that communication is made to such consultants, including, without limitation, all requests for information, correspondence, submittals, notices, and change order proposals. Contractor shall confirm oral communications in writing.

5. Project Boundary. Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

b. Worksite Conditions.

1. Benchmarks and Monuments. Contractor shall protect and preserve established benchmarks and monuments and shall not change locations of benchmarks and monuments without Estuary Partnership's prior written approval. Contractor shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of Estuary Partnership and with Estuary Partnership's approval.

2. Field Verification. Prior to the commencement of the Work, Contractor shall review the Project Site with Estuary Partnership in detail and identify the area of the Work, staging areas, connections or interfacing with existing structures and operations, and restrictions on the Work site area. Contractor shall ensure that all forces on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the site. Contractor, with advance consent of Estuary Partnership, shall erect such barriers and devices as are necessary to restrict access within the Work site to authorized areas and to prevent unauthorized access to non-Work areas.

3. Utility Locates. Contractor will be responsible to locate existing utilities and underground facilities that are indicated in the Contract Documents or that are known or reasonably should be known to exist in proximity to the Work. Contractor shall provide timely notice and locate requests with any affected utility or through contact with appropriate notification centers before commencing excavation or demolition Work that Contractor knows or reasonably should know is in proximity to such utilities or facilities. Contractor assumes the sole risk and will be responsible for all delay and expense arising out of Contractor's failure to do so.

c. Responsibility for Performance.

1. Before beginning the Work, Contractor shall examine and compare the drawings and specifications with information furnished by Estuary Partnership that are Contract Documents, relevant filed measurements made by the Contractor, and any visible conditions at the worksite affecting the Work.

2. Request for Information (RFI). Contractor shall promptly report any errors, inconsistencies, or omissions it discovers, as a request for information, in such a form as defined in the Contract Documents. Contractor will not be entitled to any modification in Contract Sum or Contract Time solely by the request for information. Contractor shall carefully study and compare all Contract Documents, including Drawings, Specifications, and other instructions and shall at once report in writing to Estuary Partnership any error, inconsistency, or omission that Contractor or its employees or subcontractors may discover. Contractor shall indicate in the RFI if additional cost is anticipated and, upon receipt of response to the RFI, shall submit a rough order of magnitude (ROM) of said costs within five working days.

e. Construction Personnel and Supervision.

1. Acts or Omissions. Contractor is responsible to Estuary Partnership for acts and omissions of Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its subcontractors.

2. Identification Badges. The Contractor and its subcontractors, and the employees and the agents of any of them shall comply with District's policies and requirements to obtain, display, and return identification badges at any time while they are present on District's property.

f. Documents and Records.

1. Submittals. Contractor shall submit shop drawings, product data, samples and mock ups as required by the Contract Documents that have been verified and coordinated with the requirements of the Work and of the Contract Documents. Contractor shall not perform any portion of the Work until the submittals for that portion have been approved by Estuary Partnership.
2. Maintenance of Records; Access to Records. Contractor shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract: (a) all Daily Job Reports or other Project records of Contractor's project manager(s), construction superintendent(s), and/or project foreperson(s); (b) all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; (c) all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports, and other data of Contractor, any subcontractor, and/or supplier, including computations and projections related to bidding, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to Estuary Partnership. Estuary Partnership may, at its discretion, perform periodic audits of the aforementioned records.
3. Ownership of Documents. All copies of Drawings, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by Estuary Partnership or generated by Contractor, including those in electronic form, are the property of Estuary Partnership.

g. Work Under the Contract.

1. Defective Work. At Estuary Partnership's sole option, Contractor shall repair or replace any and all Work, together with any other Work that may be displaced in doing so, that may prove defective in workmanship and/or materials within a one (1) year period from Substantial Completion of the Work without expense whatsoever to Estuary Partnership. In the event Contractor fails to commence and diligently pursue such replacements or repairs within ten (10) days after being notified in writing, Contractor hereby acknowledges and agrees that Estuary Partnership may correct such defects, without voiding any guarantee or warranty, at Contractor's expense. Payment shall become due upon Estuary Partnership's demand.
2. Correction of Work. If, in the opinion of Estuary Partnership, defective Work creates an exigent or dangerous condition or requires immediate correction or attention to prevent injury to persons or property or to prevent interruption of District operations, Estuary Partnership may, upon making a good faith attempt to notify Contractor, proceed to make some or all replacements or repairs as may be reasonably required in the circumstances. The costs of such work will be charged against Contractor and shall become due upon Estuary Partnership's demand.
3. Manufacturer's Warranties. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to Estuary Partnership all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by Estuary Partnership. Contractor shall obtain and preserve for the benefit of Estuary Partnership, manufacturer's warranties on material, fixtures, and equipment incorporated into the Work. Contractor shall furnish Estuary Partnership with all guarantee or warranty certificates as indicated in the Specifications or upon Estuary Partnership's request.

4. Cleaning up. Contractor shall keep the Project Site and surrounding area, including public rights of way, free from dust, mud, dirt, or accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, Contractor shall clean the site, streets, and sidewalks and shall remove from the Project waste materials, rubbish, Contractor's tools, construction equipment, machinery, and surplus materials.

5. Access to Work. Contractor shall provide Estuary Partnership and its representatives access to the Work in preparation and progress wherever located.

#### **4. Subcontractors.**

a. Subcontractor Disclosure. Contractor shall provide Estuary Partnership a list of all subcontractors and major suppliers with a name, address, and phone numbers, Oregon license number(s), classification, and monetary value of each subcontract for labor, material, or equipment. If Estuary Partnership objects, Estuary Partnership shall promptly provide a written notice of objection. Contractor shall not contract with a proposed person or entity to which Estuary Partnership reasonably objects or that is ineligible to receive a subcontract under ORS 279C.860, and shall procure a replacement subcontractor that is acceptable to Estuary Partnership. Estuary Partnership shall provide a Change Order before commencement of substitute subcontractor's Work for the increase or decrease in the Contract Sum and Contract Time occasioned by such change, unless the subcontractor is ineligible under ORS 279C.860, and Contractor shall be fully responsible for performance of the substituted subcontractor under the Contract Documents. Contractor shall be solely responsible to determine whether any proposed subcontractor is eligible.

b. Pass-Through. Contractor shall require each subcontractor, by written agreement, to be bound to Contractor by terms of this Contract to the extent it applies to the Work performed by subcontractor. Contractor shall provide copies of subcontract agreements upon Estuary Partnership's request.

c. Coordination of Work. Contractor shall coordinate the trades, subcontractors, sub-subcontractors and material or equipment suppliers working on the Project.

d. Subcontractor Dispute Resolution. Contractor shall settle any difference between Contractor and its subcontractor(s) or between subcontractors.

#### **6. Changes in the Work.**

##### **a. Change Orders.**

1. Change Order. A document prepared by the Estuary Partnership and signed by the Estuary Partnership, the Architect, and the Contractor, stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, including all costs, overhead and profit, if any; and (3) the extent of the adjustment in the Contract Time, if any, issued after the effective date of the Agreement.

2. Change Request (CR). A document prepared by the Contractor to seek additional compensation and/or time from the Estuary Partnership. The Contractor shall provide a written CR narrative explaining its reasons for requesting additional compensation or time. The written CR narrative shall reference all related schedule activities and contract specification sections and drawings directly pertaining to the CR, include all costs, overhead and profit.

3. Agreement on Change Order. Agreement on any Change Order is a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

b. Construction Change Directives. A Construction Change Directive is a written order signed by Estuary Partnership, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. Estuary Partnership may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract, the Contract Sum and Contract Time being adjusted accordingly. Estuary Partnership and Contractor may use a Construction Change Directive in the absence of total agreement on the terms of a Change Order. Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in Work directed and shall advise Estuary Partnership of Contractor's agreement or disagreement with the proposed method, if any, provided in the Construction Change Directive for adjustment in the Contract Sum or Contract Time.

## **7. Time.**

a. Time is of the Essence. Time limits stated in the Contract Documents are of the essence of the Contract. Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

b. No Work Without Insurance. Contractor shall not, except by written direction by Estuary Partnership, prematurely commence operations on the site or elsewhere prior to the effective date of insurance to be furnished by Estuary Partnership and Contractor. The date of commencement of the Work is not changed by the effective date of insurance.

c. Notice to Proceed. Estuary Partnership shall issue a Notice to Proceed within a reasonable time following the date of execution of this Contract. Contractor is not entitled to any claim of additional compensation as a result of postponement of the issuance of Notice to Proceed, but if postponement will cause a hardship to Contractor, Contractor may terminate this Contract by written notice. Estuary Partnership may then award this Contract to the next highest scoring responsible bidder.

d. Working Hours. Contractor shall perform Work during regular working hours as permitted by Estuary Partnership. Contractor shall, when required to achieve Substantial Completion within the Contract Time, Work outside of regular working hours such as evenings and/or weekends at no additional cost to Estuary Partnership. Contractor shall perform all evening and/or weekend work only upon Estuary Partnership's advance approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations.

## **8. Protection of Persons, Property, and the Environment**

a. Safety Program. Contractor shall initiate, maintain, and supervise all safety precautions and programs in connection with performance of the Contract. Contractor acknowledges the unique safety risks associated with construction of school facilities in the presence of faculty, students, staff, and visitors. Contractor is solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and is not limited to normal working hours.

b. District's Policies. This Contract and all individual contracts and purchase orders incorporate by this reference District's safety policies current as of the date of commencement of Work, which have been or will be made available to Contractor. Contractor shall schedule and attend a preconstruction meeting with Estuary Partnership to review compliance with District's Contractor Safety and Hazard Notification Policy and District's Risk Management and Environmental Safety and Pollution Policy. Contractor, as a condition to commencement of the Work, shall instruct all personnel of Contractor and its subcontractors, prior to their performing any of the Work, of the elements of these policies with which the personnel will be required to comply.

c. Subcontractor Safety. In addition to the policies identified above, Contractor shall review with all subcontractors the methods, materials, tools, and equipment to be used to verify their compliance with all safety

standards and laws and Contractor shall comply with them, to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site and District's adjoining facilities. Contractor shall implement and maintain a safety program that is specifically adapted for the Project and complies with all applicable requirements of Oregon OSHA. Contractor shall furnish a copy of the safety program to Estuary Partnership before commencing Work.

d. Barricades and Signage. Contractor shall post necessary warning signs and barricades to ensure the safety of all school occupants. Contractor shall not display any signs not required by law or the Contract Documents without Estuary Partnership's prior written approval.

e. Storage. Contractor shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Estuary Partnership, and shall not interfere with the Work or unreasonably encumber the Project Site or overload any structure with materials. Contractor shall enforce all instructions of Estuary Partnership regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.

f. Protection of Work. Contractor shall protect the Work, including stored materials and equipment, from all damage or harm, including damage from heat, cold, rain, snow, wind, flooding, and dampness. Contractor shall provide and maintain temporary roofs, window and door coverings, enclosures, or other construction reasonably required to protect the Work at all times during the course of construction. Contractor shall take all additional steps reasonably necessary, or as directed by Estuary Partnership, to protect the Project, the Site, and the Work from damage associated with anticipated extreme weather events. Contractor shall not be entitled to additional payment or time to the extent its costs or delays would have been avoided if Contractor had complied.

g. Protection of Existing Structures. Contractor shall protect existing structures, walks, curbs, pavements, roads, trees, landscaping, survey markers, monuments, or other devices marking property boundaries or corners, and/or improvements in working areas, utilities, and adjoining property (including, without limitation, protection from settlement or loss of lateral support). Contractor shall replace same at his expense with same kind, quality, and size of Work or item if temporary removal is necessary, or damage occurs due to the Work.

h. Water Quality. Contractor shall comply with all applicable water quality laws and regulations, including permitting, monitoring, and reporting of storm water discharge applicable to the Work, at no additional cost to Estuary Partnership. Contractor shall indemnify and hold Estuary Partnership harmless from loss, cost, or liability arising out of Contractor's violation of such laws or regulations.

i. Neighborhood Impacts. Contractor shall take all reasonable precautions to protect neighborhood property from damage or nuisance associated with the Work. Contractor shall promptly respond to complaints by neighbors or authorities concerning impacts to neighboring properties and public facilities and shall be solely responsible for cleaning, repair, or replacement of property soiled or damaged by Contractor's operations and settlement of claims or demands of neighbors associated with conduct of its personnel.

j. Housekeeping. Contractor shall maintain good housekeeping practices to reduce the risk of fire damage and shall make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

k. Appropriate Behavior. Contractor's conduct will be appropriate for a school site and in accordance with Portland Public School District policies. Contractor shall not engage in profanity or verbal or physical contact with neighbors, students, or faculty.

l. Security and Site Access. Contractor shall ensure that all existing or operating systems, utilities, existing on-site services and access avenues are on and in operating condition before leaving the Project Site each day. If any

system, utility, or access avenue is not operable, Contractor shall notify Estuary Partnership before Contractor leaves the Project Site that day.

## **10. Insurance.**

### **a. Insurance Coverage.**

1. During the term of this Agreement, or during the term as required by Estuary Partnership, Contractor shall maintain in force at its own expense the insurance noted below, and Contractor's insurance shall apply to the acts and omissions of Contractor. Contractor agrees to maintain continuous uninterrupted coverage during the term of this Agreement, or during the term as required by Estuary Partnership. Failure to maintain this insurance will be cause for immediate termination of this Agreement by Estuary Partnership.

2. The insurance coverage obtained by Contractor will not be affected by any insurance coverage otherwise existing.

3. On all types of insurance, there will be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days' written notice from Contractor to Estuary Partnership.

4. Contractor shall name Estuary Partnership, City of Portland, Portland Public Schools, and Juncus Studio and its officers, employees, and agents as additional insureds:

Lower Columbia Estuary Partnership  
400 NE 11<sup>th</sup> Ave  
Portland, OR 97232

City of Portland Bureau of Environmental Services  
1120 SW 5<sup>th</sup> Ave, Ste 613  
Portland, OR 97204

Portland Public Schools  
501 N Dixon St  
Portland, OR 97227

Juncus Studio  
5200 S Macadam Ave, Suite 210  
Portland, OR 97239

5. Insurance coverage obtained by Contractor shall protect each insured in the same manner as though a separate policy had been issued to each, notwithstanding the naming of any number of additional insureds. However, this requirement is not intended to increase the insurer's liability as set forth in the policy beyond the amount, or amounts, for which the insurer would have been liable if only one person or entity had been named as the insured.

### **b. Workers' Compensation and related insurance**

1. Contractor shall obtain at their expense and keep in effect during the term of this Agreement, workers' compensation coverage on a statutory basis for all persons employed in performing services under this Agreement, in accordance with ORS Chapter 656, either as:

A. A carrier insured employer; or



B. A self-insured employer.

2. Evidence of such coverage will be filed with Estuary Partnership and maintained for the duration of this Agreement. The coverage will include employer's liability insurance with coverage limits of not less than \$100,000 for each accident, a \$500,000 disease "policy" limit, and \$100,000 disease "each employee" limit.

3. Contractor shall provide evidence of subcontractor's workers' compensation insurance by receiving and keeping on file a certificate of insurance from each subcontractor or anyone else directly employed by either Contractor or its subcontractors.

c. Commercial General Liability Insurance Coverage

1. Contractor shall obtain at their expense and keep in effect during the term of this Agreement or during the term as required by Estuary Partnership, commercial general liability insurance covering bodily injury, personal injury, premises/operations, products and completed operations, and contractual liability. Combined single limit per occurrence will not be less than \$1,000,000 for each occurrence, \$1,000,000 personal injury, \$1,000,000 products/completed operations and \$2,000,000 general aggregate. The policy must be endorsed to extend the completed operations for 24 months after issuance of the Notice of Completion of Construction.

d. Automobile Liability

1. Contractor shall obtain at their expense and keep in effect during the term of this Agreement, or during the term as required by Estuary Partnership, automobile liability insurance covering owned, non-owned, and hired vehicles. This coverage may be combined with the commercial general liability insurance policy. The combined single limit per occurrence will not be less than \$1,000,000 for each accident.

**Uncovering and Correction of Work.**

a. Uncovering of Work. If a portion of the Work is covered without Project Inspector and/or Architect approval or not in compliance with the Contract Documents, Contractor shall, if required in writing by Estuary Partnership, Project Inspector, or Architect, uncover the Work for observation and replace it at Contractor's expense without change in Contract Sum or Contract Time.

b. Correction of Work. Contractor shall, at its own expense, promptly correct Work that is rejected by Estuary Partnership, Architect, or any governmental authority or otherwise fails to conform to the requirements of the Contract Documents, regardless of when it is discovered and regardless of whether the Work is fabricated, installed or completed. Contractor shall pay for all additional testing, inspection, or other compensation including Estuary Partnership and Architect's additional services required for the correction of Work.

c. Correction of Work after Substantial Completion. If, after Substantial Completion, any Work is not in accordance with the requirements of the Contract Documents, Estuary Partnership shall provide Contractor with written notice to correct the Work promptly after discovery of the condition. Contractor shall correct the nonconforming Work within a reasonable time after receipt of notice.

**15. Termination or Suspension by Contractor.**

a. Termination by Contractor for Work Stoppage. Contractor may terminate this Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of Contractor, subcontractor, or sub subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, for any of the following reasons: (a) issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; (b) an act of

government, such as a declaration of a national emergency which requires all Work to be stopped; (c) because Estuary Partnership has not issued a Certificate of Payment and has not notified Contractor of the reason for withholding certification, or because Estuary Partnership has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or (d) Estuary Partnership failed to furnish to Contractor reasonable evidence that financial arrangements have been made to fulfill Estuary Partnership's obligations under this Contract.

b. Termination by Contractor for Work Interruption. Contractor may terminate this Contract if, through no act or fault of Contractor, subcontractor, or sub subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, repeated suspensions, delays or interruptions of the entire Work by Estuary Partnership constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365 day period, whichever is less, or if Work is stopped for a period of sixty (60) consecutive days.

c. Compensation. Contractor may recover from Estuary Partnership payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery including reasonable profit and overhead if it provides seven (7) days' written notice to Architect and Estuary Partnership prior to termination for the reasons set forth above.

## **16. Termination or Suspension by Estuary Partnership.**

a. Termination by Estuary Partnership for Cause. Estuary Partnership may terminate Contract and/or terminate Contractor's right to perform the Work of this Contract without prejudice to any other rights or remedies by providing seven (7) days' written notice to Contractor if Contractor:

1. refuses or fails to execute the Work or any separable part with sufficient diligence to ensure its completion within the time specified or any extension;
2. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
3. fails to make payment to subcontractors in accordance with respective agreements;
4. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
5. files a petition for relief as a debtor, or a petition is filed against Contractor without its consent, and the petition is not dismissed within sixty (60) days;
6. makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
7. is otherwise guilty of a substantial breach of a provision of the Contract Documents or fails to observe the training, safety, and other precautions including Estuary Partnership's policies and Contractor's own safety policies for the Project.

b. Estuary Partnership's Right to Take Possession. Upon termination for cause, Estuary Partnership may take possession of the site and of all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor, accept assignment of subcontracts, and finish the Work by whatever reasonable method Estuary Partnership may deem expedient. Upon request, Estuary Partnership shall provide Contractor a detailed accounting of the costs incurred in finishing the Work.

c. Compensation. Contractor will not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds Estuary Partnership's costs to finishing the Work, including

compensation for Estuary Partnership's consultants and representatives for services made necessary by Contractor's default, and other damages incurred by Estuary Partnership which have not been expressly waived, Estuary Partnership shall pay the excess to Contractor. If Estuary Partnership's costs and damages exceed the unpaid balance, Contractor shall pay the difference to Estuary Partnership.

d. Suspension for Convenience. Estuary Partnership may, without cause, order Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as Estuary Partnership may determine. Estuary Partnership shall adjust Contract Sum and Contract Time for increases in the cost (including profit) and time caused by the suspension, delay, or interruption referenced in Section 16.c, so long as the performance would not have been suspended, delayed, or interrupted by another cause for which Contractor is responsible and Estuary Partnership has not already made or denied another equitable adjustment under another provision of this Contract for the suspension, delay, or interruption.

e. Termination for Convenience. Estuary Partnership may terminate all or part of this Contract for Estuary Partnership's convenience at any time and without cause. Contractor shall, upon written notice of such termination, cease operations as directed by Estuary Partnership, take actions necessary to protect and preserve the Work, and terminate all existing subcontracts and purchase orders that are not required to perform the Work up to the effective date of termination and the portion of Work not terminated, and enter into no further subcontracts or purchase orders for the portion of this Contract that was terminated. Estuary Partnership shall pay Contractor for Work executed and costs reasonably incurred by reason of such termination, along with reasonable overhead and profit on the Work completed. Estuary Partnership will not pay profit or overhead allocable to Work which is not performed at the time of termination.

## **17. Force Majeure; Suspension of Work; Compensation**

a. A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. In the event of a Force Majeure act, event, or occurrence:

1. Estuary Partnership may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract; or

2. Estuary Partnership may suspend portions of or all of the Work.

b. If Estuary Partnership suspends a portion or all of the Work by reason of Force Majeure, Estuary Partnership shall notify Contractor in writing of the effective date and time of the suspension and shall notify Contractor and its surety in writing to resume Work.

c. During the period of the suspension, Estuary Partnership and Contractor will sign a Letter Agreement that (a) identifies those portions of the Work that may proceed during the suspension; (b) specifies how such Work will be documented, invoiced, and paid; and (c) provides additional operational details during the suspension, including but not limited to site security and materials acquisition and storage. Such Letter Agreement is intended to be a binding statement of the parties' intentions and agreements during the suspension and is incorporated by reference in this Contract.

d. During the period of the suspension, Contractor is responsible to continue maintenance at the project site just as if the Work were in progress. This maintenance includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

e. When the Work is recommenced after the suspension, Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

f. When a suspension is required by reason of Force Majeure, through no fault of Contractor or the Estuary Partnership, neither party owes the other for the impact of the suspension.

## **18. Payments and Completion**

a. Contract Sum. The Contract Sum is stated in the Contract, and including authorized adjustments, is the total amount payable by Estuary Partnership to Contractor for performance of Work under the Contract Documents.

b. Price Schedule. The Price Schedule on the Bid Form shall serve as the basis for progress payments during construction.

c. Applications for Payment. Contractor shall submit an itemized and notarized application for payment for operations completed in accordance with the Price Schedule and reflecting applicable retainage ("Application for Payment"). Contractor shall submit data substantiating Contractor's right to payment where required, such as copies of requisitions from subcontractors and material suppliers, Construction Change Directives, Change Orders, and MWESB utilization data. Contractor shall provide:

1. The amount paid to the date of the Application for Payment to Contractor;
2. The amount being requested by Contractor;
3. The balance that is due to Contractor after payment is made;
4. Material invoices, evidence of equipment purchases, rentals, and other support Estuary Partnership may request;
5. Percentage complete of Contractor's Work by line item;
6. A Price Schedule updated from the preceding Application for Payment; and
7. Contractors' Certified Payroll.

d. Certificates for Payment.

1. Estuary Partnership shall review the Contractor's Application for Payment within a reasonable time after receipt not to exceed seven (7) days for the purpose of determining that it is properly submitted. Estuary Partnership shall either return the Application for Payment to Contractor with a document setting forth the reasons why the Application for Payment is not proper, or shall issue a Certificate for Payment for the amounts properly due.

2. Estuary Partnership's issuance of a Certificate for Payment is a representation by Estuary Partnership, based upon Estuary Partnership's evaluation of the Work and the data comprising the Application for Payment, that Contractor is entitled to payment in the amount certified because the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. Estuary Partnership's approval of the certified Application for Payment is based on Contractor complying with all requirements for a fully complete and valid certified Application for Payment.

3. Thirty (30) days after Estuary Partnership issues a Certificate of Payment, payment shall become due and shall be paid by Estuary Partnership to Contractor.

e. Decisions to Withhold Certification.

1. Estuary Partnership shall notify Contractor in writing if any amounts are not due, and the reasons for withholding certification in whole or in part. If Contractor and Estuary Partnership cannot agree on a revised amount, Estuary Partnership shall promptly issue a Certificate for Payment for the amount for

which Estuary Partnership determines that Contractor is entitled to payment. Estuary Partnership may withhold Certificate for Payment or nullify the whole or part of a Certificate for Payment previously issued, to such extent as may be reasonably necessary to protect Estuary Partnership from loss for which Contractor is responsible, including loss resulting from acts and omissions because of defective Work not remedied, third party claims filed or reasonable evidence indicating probable filing of such claim unless security acceptable to Estuary Partnership is provided by Contractor, failure of Contractor to make payments properly to subcontractors or for labor, materials, or equipment, reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, damage to Estuary Partnership or another contractor, reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, persistent failure to carry out the Work in accordance with the Contract Documents, or failure to maintain Record Documents.

2. Contractor shall not receive any interest on any retainage or amounts withheld due to the failure of Contractor to perform in accordance with the Contract Documents.

3. Estuary Partnership may apply any withheld amount to pay outstanding claims or obligations on behalf of Contractor, without prior judicial determination of the claim or obligation. If any payment is made by Estuary Partnership, that amount is deemed a payment made under this Contract by Estuary Partnership to Contractor.

4. Estuary Partnership shall promptly issue a Certificate for Payment for amounts previously withheld when the reasons for withholding certification are removed.

**f. Substantial Completion.**

1. Substantial Completion. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that Work can be utilized for its intended purpose.

2. Punch List. When Contractor considers the Work or a designated portion of the Work to be substantially complete, Contractor shall prepare and submit to Estuary Partnership a comprehensive list of items to be completed or corrected prior to final payment ("Punch List"). The Punch List does not alter Contractor's responsibility to complete the Work in accordance with the Contract Documents.

**g. Final Completion.**

1. The Work will be deemed finally complete when all conditions set out in the Contract Documents are satisfied and Estuary Partnership accepts such Work. Final completion is achieved when all punch list work is complete, all close-out documentation has been received, all final testing, equipment calibration and training have been completed, and the Contractor is entitled to Final Payment. Unless special circumstances exist that are defined at the time of Punch List creation, Contractor shall achieve Final Completion within 30 days of Substantial Completion.

2. Final Inspection. When Contractor considers all of the Punch List Work to be complete, Contractor shall notify Estuary Partnership which shall inspect such Work.

3. Final Application for Payment. If Estuary Partnership finds the Punch List Work complete and acceptable under the Contract Documents, Estuary Partnership shall notify Contractor, who shall then submit its Final Application for Payment.

**19. Indemnity and Liability.**

a. To the fullest extent permitted by Oregon law, Contractor shall indemnify, defend with legal counsel reasonably acceptable to Estuary Partnership, and hold harmless Estuary Partnership and its consultants and separate contractors, and their respective board members, officers, representatives, agents, trustees, volunteers, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by Contractor, its subcontractors, vendors, or suppliers, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself) including the loss of use resulting therefrom, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnitees, and/or to any extent that would render these provisions void or unenforceable. This agreement and obligation of Contractor will not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms.

b. Contractor shall fully indemnify, defend, and hold harmless Estuary Partnership, and each person, entity, firm, or agency that owns or has any interest in adjacent property in any action arising out of any agreement between Contractor and adjacent property owners that is made for the purpose of entering upon the adjacent property to perform the Work. Contractor shall obtain Estuary Partnership's approval of the form and content of the agreement prior to the commencement of any Work on or about the adjacent property.

c. Severability of Indemnity Provisions. Contractor shall give prompt notice to Estuary Partnership in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees will to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances will not otherwise affect the validity or enforceability of Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

d. In any and all claims against any of the Indemnitees by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts, unless it is limited by ORS 30.140.

e. Contractor's defense and indemnification obligations survive the completion of Work, including any warranty period and/or termination of this Contract.

f. Nothing in Article 18 above requires Contractor or Contractor's surety or insurers to indemnify Estuary Partnership, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property caused in whole or in part by the negligence of Estuary Partnership, its officers, agents, and employees. Nothing in the foregoing Estuary Partnership limits or otherwise affects any requirement in Article 18 above that requires Contractor to indemnify Estuary Partnership, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property arising from the fault of Contractor or Contractor's agents, representatives, employees, or subcontractors.

## 20. Special Provisions Relating to Construction on School District Property.

a. Work Performed on District Property. Contractor performing Work on District property or for District shall comply with District policies at all times. In all cases personnel on school property shall carry photo identification, acceptable to District, and shall present such identification to anyone on request. Contractor shall ensure that all Project personnel are in compliance with applicable identification, uniform, and badge requirements for all Project personnel at no cost to District.

1. As required by schools and other District locations, District may require personnel to sign in before entering District properties.
2. No Smoking. Smoking or other use of tobacco is prohibited on all District property.
3. No Drugs. District's property sites are all designated drug-free zones, which designation is enforced by the Portland Police Bureau.
4. No Weapons or Firearms. Except as provided by Oregon statutes and District policy, weapons and firearms are prohibited on District's property.

b. Confidentiality. **Family Education Rights and Privacy Act ("FERPA") prohibits the re-disclosure of confidential student information.** Contractor agrees to protect the confidentiality of student education records, including personally identifiable information found in education records, in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99), collectively "FERPA." Contractor acknowledges that information disclosed to Contractor by District may include records that are subject to FERPA, and that to the extent this is the case, Contractor will be considered a "school official" as that term is used in FERPA. As such, Contractor agrees that it will hold all information disclosed to it in strict confidence and will not use such information except as required to perform its obligations under this Contract. Contractor further agrees that it will not disclose or re-disclose any such information except (a) with the express written authorization of District, or (b) as required by law but only to the extent permitted by law and only in the manner prescribed by law. If Contractor receives a court order or subpoena seeking education records or information contained in education records, it shall immediately notify District in writing. If Contractor re-discloses personally identifiable information from education records on behalf of District in response to an order or subpoena under 34 C.F.R. § 99.31(a)(9), Contractor must provide the notification required under 34 C.F.R. § 99.31(a)(9)(ii). District will assist Contractor with complying with this notification requirement.

c. Security. Contractor shall not use or disturb District's property, materials or documents except for the purpose of responding to District's request for proposal or invitation to bid or pursuant to completion of the Work under this Contract. Contractor shall treat all documents as confidential and shall not disclose such documents without approval from District. Any unauthorized disclosure of documents or removal of District property will be deemed a substantial breach of this Contract. Contractor shall bear sole responsibility for any liability including, but not limited to, attorneys' fees, resulting from any action or suit brought against District as a result of Contractor's willful or negligent release of information, documents, or property contained in or on District property. District hereby deems all information, documents, and property contained in or on District property privileged and confidential.

d. Child Abuse Reporting Act. Contractor shall comply with the child abuse reporting law (ORS 419B.005 through 419B.050) as if Contractor were a mandatory abuse reporter. Contractor shall immediately report to the proper state or law enforcement agency circumstances supporting reasonable cause to believe that any child has been abused. Contractor shall report to the Principal or designated school authority the circumstances supporting reasonable cause to believe that any child has been abused.

e. Employee Removal. At District's request, Contractor shall immediately remove any employee from all District properties in cases where District determines in its sole discretion that removal of that employee is in District's best interests.