

This document is executed as a deed and is delivered and takes effect at
the date written at the beginning of it



Framework:	Collaborative Delivery Framework
Supplier:	Jeremy Benn Associates Ltd
Company Number:	03246693
Geographical Area:	South East
Contract Name:	Farlington Marshes Detailed Design (OBC-FBC) Phase 1
Project Number:	ENV0002137C
Contract Type:	Professional Service Contract
Option:	Option E
Contract Number:	C17433
Contract Date:	09th June 2023
Stage:	OBC_to_FBC

Revision	Status		Originator		Reviewer		Date

PROFESSIONAL SERVICE CONTRACT under the Collaborative Delivery Framework
CONTRACT DATA

Project Name Farlington Marshes Detailed Design (OBC-FBC) Phase 1

Project Number ENV0002137C

This contract is made on 09th June
between the *Client* and the *Consultant*

This contract is made pursuant to the Framework Agreement (the “Agreement”) dated 01st day of April 2019 between the *Client* and the *Consultant* in relation to the Collaborative Delivery Framework. The entire agreement and the following Schedules are incorporated into this Contract by reference

- Schedules 1 to 22 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference
LIT 13262 - NGSA OBC-FBC PSC Standard Scope- Detailed design - Farlington Option E - V1.5

Part One - Data provided by the *Client*
Statements given
in all Contracts

1 General The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017.

Main Option	Option E	Option for resolving and avoiding disputes	W2
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Secondary Options

- X2: Changes in the law
- X9: Transfer of rights
- X10: Information modelling
- X11: Termination by the *Client*
- X18: Limitation of liability
- X20: Key Performance Indicators
- Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996
- Y(UK)3: The Contracts (Rights of Third Parties) Act 1999
- Z: *Additional conditions of contract*

The *service* is Consultant to produce an Adaptive Approach Strategy which will enable the Client to seek agreement on the future adaptive transition of the site and the identification and development of suitable land to provide compensatory habitat for the habitat lost as an impact of the project. For the Consultant to develop an outline design of the RTE and detailed design of the main embankment (option 4b) that optimises the project objectives and outcomes and to provide the evidence required to enable the Client to produce a Scope for the delivery of Phase 2 of the project including the key deliverables.

The <i>Client</i> is	Environment Agency
Address for communications	Horizon House, Deanery Road Bristol BS1 5AH
Address for electronic communications	
The <i>Service Manager</i> is	
Address for communications	Environment Agency Guildbourne House, Chatsworth Road Worthing BN11 1LD
Address for electronic communications	

The Scope is in
LIT 13262 - NGSA OBC-FBC PSC Standard Scope- Detailed design - Farlington Option E - V1.5

The *language of the contract* is English

The *law of the contract* is
the law of Enqland and Wales, subject to the jurisdiction of the courts of England and Wales

The period for reply is 2 weeks

The *period for retention* is 12 years following Completion or earlier termination

The following matters will be included in the Early Warning Register

Early warning meetings are to be held at intervals no longer than 2 weeks

2 The *Consultant's* main responsibilities

The *key dates* and *conditions* to be met are

<i>conditions</i> to be met	<i>key date</i>
'none set'	'none set'
'none set'	'none set'
'none set'	'none set'

The *Consultant* prepares forecasts of the total Defined Cost plus Fee and *expenses* at intervals no longer than 4 weeks

3 Time

The *starting date* is 12 June 2023

The *Client* provides access to the following persons, places and things

access	<i>access date</i>
Asite	12 June 2023
Fastdraft	12 June 2023
Collaborative Delivery Community SharePoint Access	12 June 2023

The *Consultant* submits revised programmes at intervals no longer than 4 weeks

The *completion date* for the whole of the *service* is 22 December 2023

The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is 4 weeks

4 Quality management

The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is 4 weeks

The period between Completion of the whole of the *service* and the *defects date* is 26 weeks

5 Payment

The *currency of the contract* is the £ sterling

The *assessment interval* is Monthly

The forecast of the Prices is £454,823.07

The *expenses* stated by the *Client* are as stated in Schedule 9

The *interest rate* is 2.00% per annum (not less than 2) above the Base rate of the Bank of England

The locations for which the *Consultant* provides a charge for the cost of support people and office overhead are All UK Offices

6 Compensation events

These are additional compensation events

1.

Service Manager’s instruction to implement Z120 on this Contract following final CDFM approval of methodology and the agreed Performance Table for the PSC JBA Lot 1 OBC to FBC Contract.
2.

'not used'
3.

'not used'
4.

'not used'
5.

'not used'

8 Liabilities and insurance

These are additional *Client's* liabilities

1.

'not used'
2.

'not used'
3.

'not used'

The minimum amount of cover and the periods for which the *Consultant* maintains insurance are

EVENT	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE <i>SERVICE</i> OR TERMINATION
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i>	£5,000,000 in respect of each claim, without limit to the number of claims	12 years after Completion
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the Service	£15,000,000 in respect of each claim, without limit to the number of claims	12 years after Completion
Death of or bodily injury to the employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	<i>Legal minimum</i> in respect of each claim, without limit to the number of claims	<i>For the period required by law</i>
The <i>Consultant's</i> total liability to the <i>Client</i> for all matters arising under or in connection with the contract, other than the excluded matters is limited to	£10,000,000	

Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Adjudicator* is

Address for communications

'to be confirmed'

'to be confirmed'

Address for electronic communications

['to be confirmed'](#)

The *Adjudicator nominating body* is

The Institution of Civil Engineers

Z Clauses

Z1 Disputes

Delete existing clause W2.1

Z2 Prevention

The text of clause 18 Prevention is deleted.

Delete the text of clause 60.1(12) and replaced by:

The *service* is affected by any of the following events

- War, civil war, rebellion, revolution, insurrection, military or usurped power;
- Strikes, riots and civil commotion not confined to the employees of the *Consultant* and sub consultants,
- Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel,
- Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device,
- Natural disaster,
- Fire and explosion,
- Impact by aircraft or other aerial device or thing dropped from them.

Z3 Disallowed Costs

- Add the following in second bullet of 11.2 (18) add:
(including compensation events with the Subcontractor, i.e. payment for work that should not have been undertaken).
Add the following additional bullets after 'and the cost of ' :
- Mistakes or delays caused by the *Consultant’s* failure to follow standards in Scopes/quality plans
 - Reorganisation of the *Consultant’s* project team
 - Additional costs or delays incurred due to *Consultant’s* failure to comply with published and known guidance or document formats
 - Exceeding the Scope without prior instruction that leads to abortive cost
 - Re-working of documents due to inadequate QA prior to submission, i.e. grammatical, factual arithmetical or design errors
 - Production or preparation of self-promotional material
 - Excessive charges for project management time on a commission for secondments or full time appointments (greater than 5% of commission value)
 - Any hours exceeding 8 per day unless with prior written agreement of the *Service Manager*
 - Any hours for travel beyond the location of the nearest consultant office to the project unless previously agreed with the *Service Manager*
 - Attendance of additional individuals to meetings/ workshops etc who have not been previously invited by the *Service Manager*
 - Costs associated with the attendance at additional meetings after programmed Completion, if delay is due to *Consultant* performance
 - Costs associated with rectifications that are due to *Consultant* error or omission
 - Costs associated with the identification of opportunities to improve our processes and procedures for project delivery through the *Consultant’s* involvement
 - Was incurred due to a breach of safety requirements, or due additional work to comply with safety requirements
 - Was incurred as a result of the *Client* issuing a Yellow or Red Card to prepare a Performance Improvement Plan
 - Was incurred as a resulting of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit

Z6 The Schedule of Cost Components

The Schedule of Cost Components are as detailed in the Framework Schedule 9.

Z23 Linked contracts

Issues requiring redesign or rework on this contract due to a fault or error of the *Consultant* will neither be an allowable cost under this contract or any subsequent contract, nor will it be a Compensation event under this contract or any subsequent contract under this project or programme.

Z24 Requirement for Invoice

Add the following sentence to the end of clause 51.1:
The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Service Manager’s* certificate.
Delete existing clause 51.2 and replace with:
51.2 Each certified payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

If a certified payment is late, or if a payment is late because the *Service Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made

Z25 Risks and insurance

The *Consultant* is required to submit insurances annually as Clause Z4 of the Framework Agreement

Z 29 Payment for Service Provided to Date

Delete existing clause 11.2 (21) and replace with:
"11.2 (21) The Price for Service Provided to Date is the total Defined Cost which the *Service Manager* forecasts will have been paid by the *Consultant* before the next assessment date plus the Fee. The Price for Service Provided to Date shall not exceed the forecast for the same as provided under clause 20.5"

Z111 PSC - Fee adjustment for non compliance with Scope

Delete existing 11.2 (8) and replace with the following clause
The Fee is the amount calculated by applying the fee percentage to the amount of the Defined Cost excluding the cost of Subcontractors that have not complied with procurement by best value processes as defined in the Scope. 80% of the fee percentage is applied to the amount of the Defined Cost for Subcontractors that have not complied with procurement by best value processes as defined in the Scope.

Z120 PSC – Carbon reduction

Ref. (Clause No.)	Clause words
11.2 Definitions	Add as Clause 11.2(36) (36) The Performance Table states the targets the <i>Consultant</i> is to achieve in Providing the Service and sets out the adjustment to payment if a measured performance is higher, the same or lower than its target. The Performance Table is the <i>performance table</i> unless later changed in accordance with the contract.
15.1 Early Warning	In Clause 15.1 add as a new bullet between the second and third bullet: "• result in a target in the Performance Table not being met.
42.2 Accepting Defects	Delete Clause 42.2 and replace with: 'If the <i>Consultant</i> and the <i>Service Manager</i> are prepared to consider the change, the <i>Consultant</i> submits a quotation to the <i>Service Manager</i> for acceptance including any combination of: • E duced Prices • A n earlier Completion Date • R evised programme • C hanges to the Performance Table If the quotation is accepted, the <i>Service Manager</i> changes the Scope, the Prices, the Completion Date and the Performance Table accordingly and accepts the revised programme.
Performance Measuremen	

57	Add as Clause 57:
57.1	From the starting date until the Completion Date, the <i>Consultant</i> reports to the <i>Service Manager</i> its performance against the targets in the Performance Table. Reports are provided at the intervals stated in the Performance Table.
57.2	<p>If the <i>Consultant's</i> performance against a target in the Performance Table is not achieving or is forecast not to achieve the performance target stated, it submits to the <i>Service Manager</i> for acceptance its proposals for improving performance.</p> <p>A reason for not accepting the proposals is that they will not provide the improvement in performance needed to achieve the target in the Performance Table.</p>
57.3	<p>At the dates stated in the Performance Table,</p> <ul style="list-style-type: none">• if the relevant performance does not meet the target stated in the Performance Table, the <i>Consultant</i> pays the amount stated in the Performance Table,• if the relevant performance exceeds or meets the target stated in the Performance Table, the <i>Consultant</i> is paid the amount stated in the Performance Table.
57.4	Information in the Performance Table is not Scope.

The *performance table* is

Ref	Subject/ issue to be addressed	Target	Units	Measurement rules	Reporting frequency	If performance does not meet the target stated in the Performance Table, the <i>Consultant</i> pays the amount stated	Limit on sum to be paid by the <i>Consultant</i> (if any)	If performance exceeds or meets the target stated in the Performance Table, the <i>Consultant</i> is paid the amount stated	Limit on sum to be paid by the <i>Consultant</i> (if any)
					(weekly / monthly / at completion)	(Sum or rate)		(Sum or rate)	
1	Carbon	Verified Carbon Budget	tCO ₂ e	FCRM Appraisal Guidance verified in accordance with EN15978	Monthly	To be developed and agreed as part of compensation event above ref Service Manager's instruction	5% of Price	To be developed and agreed as part of compensation event above ref Service Manager's instruction	5% of Price
	TOTAL Limit on SUM TO BE PAID								

Z125 Limitation of Liability

Under clause 87.1
after the fourth bullet point
insert the additional bullet points:

- loss of or damage to the *Client's* property, to the sum that the *Consultant* is required to insure under the contract in respect of such loss or damage,
- death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with the contract, to the sum that the *Consultant* is required to insure under the contract in respect of such death or bodily injury.

Secondary Options

OPTION X2: Changes in the law

The *law of the project* is the law of England and Wales, subject to the jurisdiction of the courts of England and Wales

OPTION X10: Information modelling

The period after the Contract Date within which the *Consultant* is to submit a first Information Execution Plan for acceptance is 2 weeks

OPTION X18: Limitation of liability

The *Consultant's* liability to the *Client* for indirect or consequential loss is limited to £5,000,000

The *Consultant's* liability to the *Client* for Defects that are not found until after the *defects date* is limited to £5,000,000

The *end of liability* date is 12 years after the Completion of the whole of the *service*

OPTION X20: Key Performance Indicators (not used with Option X12)

The *incentive schedule* for Key Performance Indicators is in Schedule 17

A report of performance against each Key Performance Indicator is provided at intervals of 3 months

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

The period for payment is 14 days after the date on which payment becomes due

Y(UK)3: The Contracts (Rights of Third Parties Act) 1999

term beneficiary

Part Two - Data provided by the Consultant

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The Consultant is
Name

Jeremy Benn Associates Ltd

Address for communications

1 Broughton Park Old Lane North
Broughton
Skipton
North Yorkshire
BD23 3FD

Address for electronic communications

The fee percentage is

Option E

The key persons are

Name (1)
Job
Responsibilities
Qualifications
Experience

Name (2)
Job
Responsibilities
Qualifications

Experience

Name (3)
Job
Responsibilities
Qualifications

Experience

Name (4)
Job
Responsibilities
Qualifications
Experience

The following matters will be included in the Early Warning Register

Approval of the adaptive approach strategy by key stakeholders is required to enable the continuation of the project to the next stage of delivery. Delay to this approval will impact the Completion of the FBC and construction phase

3 Time

The programme identified in the Contract Data is

not referenced

Resolving and avoiding disputes

The Senior Representatives of the Consultant are

Name (1)

Address for communications

1 Broughton Park Old Lane North
Broughton
Skipton
North Yorkshire
BD23 3FD

Address for electronic communications

Name (2)

Address for communications

1 Broughton Park Old Lane North
Broughton
Skipton
North Yorkshire
BD23 3FD

Address for electronic communications

X10: Information Modelling

The information execution plan identified in the Contract Data is
not referenced

Contract Execution

Client execution

Signed as a Deed by [PRINT NAME]

[Redacted Signature]

09/06/2023

Signature

Date

for and on behalf of the Environment Agency

Senior Lawyer (Team Leader)

Role

In the presence of:

[Redacted Signature]

09/06/2023

Signature

Date

Costs Manager

Role

[Redacted Name]

Name [Print]

Address

c / o Manley House, Kestrel Way

Exeter EX2 7LQ

Consultant execution

Signed as a Deed by [PRINT NAME]

[Redacted Signature]

[Redacted Signature]

06/06/2023

Signature

Date

for and on behalf of Jeremy Benn Associates Ltd

DIRECTOR

Role

In the presence of:

[Redacted Signature]

06/06/2006

Signature

Date

TECHNICAL DIRECTOR

Role

[Redacted Name]

Name [Print]

Address

JBA Consulting, 35 Perrymount Road, Haywards Heath

West Sussex, RH16 3BW