

# NEC4 Engineering and Construction Short Contract

EA National MEICA Framework – South East Hub

A contract between	The Environment Agency Horizon House Deanery Road Bristol BS1 5AH
And	ECS Engineering Services Ltd.
For	Gaters Mill Eel Pass
	<b>Contract Forms</b> <ul style="list-style-type: none"><li>- Contract Data</li><li>- The <i>Contractor's</i> Offer and <i>Client's</i> Acceptance</li><li>- Price List</li><li>- Scope</li><li>- Site Information</li></ul>

# Contract Data

## The *Client's* Contract Data

	The <i>Client</i> is	
Name	Environment Agency	
Address for communications	Canal Walk, Romsey, Hampshire, SO51 7LP	
Address for electronic communications		
The <i>works</i> are	Eel pass replacement at Gaters Mill, comprising: <ul style="list-style-type: none"> <li>• FRAP application, submission, and approval for the works.</li> <li>• The removal and legal disposal of existing eel pass and associated electrical components and other unused electrical components.</li> <li>• Fabrication of new eel pass.</li> <li>• Installation of new eel pass and associated electrical works in accordance with the MEICA scope provided.</li> <li>• Provision of all necessary CDM documentation and as-built drawings</li> </ul>	
The <i>site</i> is	Gaters Mill on the River Itchen at SU4539115650 (see Appendix 1 – Site Boundary)	
The <i>starting date</i> is	1 July 2024	
The <i>completion date</i> is	31 March 2025	
The <i>delay damages</i> are	nil	Per day
The <i>period</i> for reply is	2	weeks
The <i>defects date</i> is	52	weeks after Completion
The <i>defects correction period</i> is	4	weeks
The <i>assessment day</i> is	the last working day	of each month
The <i>retention</i> is	3	%
The United Kingdom Housing Grants, Construction and Regeneration Act (1996) <b>does</b> apply		
The <i>Adjudicator</i> is:		
In the event that a first dispute is referred to adjudication, the referring Party at the same time applies to the Institution of Engineering and Technology to appoint an <i>Adjudicator</i> . The application to the Institution includes a copy of this definition of the <i>Adjudicator</i> . The referring Party pays the administrative charge made by the Institution. The person appointed is also <i>Adjudicator</i> for later disputes.		

# Contract Data

## The *Client's* Contract Data

The interest rate on late payment is	0.5%	per complete week of delay.
For any one event, the liability of the Contractor to the Client for loss of or damage to the Client's property is limited to	£100,000	
The Client provides this insurance	None	
Insurance Table		
Event	Cover	Cover provided until
Loss of or damage to the works	The replacement cost	The Client's certificate of Completion has been issued
Loss of or damage to Equipment, Plant and Materials	The replacement cost	The defects Certificate has been issued
The Contractor's liability for loss of or damage to property (except the works, Plant and Materials and Equipment) and for bodily injury to or death of a person (not an employee of the Contractor) arising from or in connection with the Contractor's Providing the Works	£2,000,000 in respect of every claim without limit to the number of claims	
Liability for death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	
Failure of the Contractor to use the skill and care normally used by professionals providing works similar to the works	£1,000,000 in respect of every claim without limit to the number of claims	6 years following Completion of the whole of the works or earlier termination
The Adjudicator nominating body is	The Institution Engineering and Technology	
The tribunal is	litigation in the courts	

The <i>conditions of contract</i> are the NEC4 Engineering and Construction Short Contract June 2017 and the following additional conditions	
<b>Z1.0</b>	<b>Sub-contracting (clause 21, additional clauses as 21.4 and 21.5)</b>
Z1.1	The <i>Contractor</i> submits the name of each proposed subcontractor to the <i>Client</i> for acceptance. A reason for not accepting the subcontractor is that their appointment will not allow the <i>Contractor</i> to Provide the Works. The <i>Contractor</i> does not appoint a proposed subcontractor until the <i>Client</i> has accepted them.
Z1.2	Payment to subcontractors and suppliers will be no more than 30 days from receipt of invoice.
<b>Z2.0</b>	<b>Environment Agency as a regulatory authority (new clause)</b>
Z2.1	The Environment Agency's position as a regulatory authority and as <i>Client</i> under the contract is separate and distinct. Actions taken in one capacity are deemed not to be taken in the other.
Z2.2	Where statutory consents must be obtained from the Environment Agency in its capacity as a regulatory authority, the <i>Contractor</i> is responsible for obtaining these and paying fees (unless stated otherwise in the Scope). The <i>Client's</i> acceptance of a tender and the <i>Client's</i> instruction or variation of the works does not constitute statutory approval or consent.
Z2.3	An action by the Environment Agency as regulatory authority is not in its capacity as <i>Client</i> and is not a compensation event.
<b>Z3.0</b>	<b>Confidentiality &amp; Publicity (new clause)</b>
Z3.1	The <i>Contractor</i> may publicise the works only with the <i>Client's</i> written agreement.
<b>Z4.0</b>	<b>Correctness of Site Information (to be inserted as 60.3)</b>
Z4.1	Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the <i>Client</i> but is not warranted correct. The <i>Contractor</i> checks the correctness of any such Site Information they rely on for the purpose of Providing the Works.
<b>Z6.0</b>	<b>Design</b> Insert as Clause 20.2 Existing Clause 20.2 renumbered as 20.3 <ul style="list-style-type: none"> <li>• The <i>Contractor</i> designs the parts of the works which the Scope states they are to design.</li> <li>• The <i>Contractor</i> submits the particulars of their design as the Scope requires to the <i>Client</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that it does not comply with either the Scope or the applicable law. The <i>Contractor</i> does not proceed with the relevant work until the <i>Client</i> has accepted this design.</li> <li>• The <i>Contractor</i> may submit their design for acceptance in parts if the design of each part can be assessed fully.</li> <li>• Where design is undertaken, it is the obligation of the <i>Contractor</i> to ensure the use of skill and care normally used by professionals providing similar design services</li> </ul>
<b>Z7.0</b>	<b>Compensation Events (clause 60)</b>
Z7.1	Delete the text of Clause 60.1(11) and replace by: The <i>works</i> are affected by any one of the following events <ul style="list-style-type: none"> <li>• War, civil war, rebellion revolution, insurrection, military or usurped power</li> <li>• Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-contractors</li> <li>• Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel</li> <li>• Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device</li> <li>• Natural disaster</li> <li>• Fire and explosion</li> <li>• Impact by aircraft or other device or thing dropped from them</li> </ul>
<b>Z8.0</b>	<b>Framework Agreement (new clause)</b>
Z8.1	The <i>Contractor</i> shall comply with all the obligations and conditions of the Framework Agreement made with the <i>Client</i> .
<b>Z9.0</b>	<b>Payment on Termination (clause 92)</b>
Z9.1	Delete the text of Clause 92.3 and replace with: If the <i>Contractor</i> terminates for Reasons 1, 5, 6 or 9 the amount due on termination also includes 5% of any excess of a forecast of the amount due at Completion had there been no termination over the amount due on termination assessed as for normal payments.
<b>Z10.0</b>	<b>Data Protection (new clause)</b>
Z10.1	The requirements of the Data Protection Schedule shall be incorporated into this contract
<b>Z11.0</b>	<b>Insurance Cover (Insert as 83.4)</b>
Z11.1	Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.

# Contract Data

## The *Contractor's* Contract Data

	The <i>Contractor</i> is	
Name	ECS Engineering Services Ltd	
Address for communications	Fulwood Road South, Sutton in Ashfield, Nottinghamshire NG17 2JZ	
Address for electronic communications		
The <i>fee</i> percentage is		%
The <i>people rates</i> are	As per Framework Agreement	
category of person	unit	rate
The <i>published list of Equipment</i> is		
The <i>percentage for adjustment for Equipment</i> is		

# Contract Data

## The *Contractor's* Offer and *Client's* Acceptance

The *Contractor* offers to Provide the Works in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*.

The offered total of the Prices is £242,735.10

Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

Position

Signature

Date

The *Client* accepts the *Contractor's* Offer to Provide the Works

Signed on behalf of the *Client*

Name

Position

Signature

Date

# Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
1.	<p>Fishtek Consulting Unit 1A Webbers Way, Dartington, Devon, TQ9 6JY</p> <p>Form of Contract: NEC4</p>	Fabrication and installation of new Eel Pass
2.	<p>MCS Subsea Unit 35 Teignbridge Business Centre (Rear building), Cavalier Road, Heathfield, TQ12 6TZ</p> <p>Form of Contract: NEC4</p>	General diving activities - Installation and removal of submerged apparatus corresponding to existing and new eel pass.
3.	<p>Maidenhead Electrical Ltd. The Studio, Cedar Court, Grove Business Park, Maidenhead, SL6 3LW</p> <p>Form of Contract: NEC4</p>	Electrical works - Installation of specified MEICA electrical components associated with the works package
4.	<p>Rotorflush</p> <p>Form of Contract:</p>	Supply of pump
5.	Other	Pontoon hire provider – safety pontoon for installation works



# Price List

The *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes. The tenderer enters the amount in the Price Column only: the Unit, Quantity and rate columns being left blank.

Item Number	Description	Unit	Quantity	Rate	Price
01	Flood Risk Activity Permit (FRAP) application, submission, and approval for the works	Sum	1		
02	Mobilisation, including welfare provision	Sum	1		
03	The removal and legal disposal of existing eel pass and associated electrical items.	Sum	1		
04	Fabrication of new eel pass and storage of eel pass until time of installation	Sum	1		
05	Installation of new eel pass and associated electrical work	Sum	1		
06	Demobilisation	Sum	1		
07	Provision of all necessary CDM documentation and as-built drawings	Sum	1		
08	Temporary works design, checks and details	Sum	1		
09	Materials and Equipment	Sum	1		
<b>The total of the Prices</b>					<b>£242,735.10</b>

The method and rules used to compile the Price List are:

Staff rates must be in line with the agreed Framework Pricing Schedule.

Quotes for materials and works are in line with quotation provided.



# Scope

## 1. Description of the *works*

The objective of this project is to install a replacement eel pass at Gaters Mill on the River Itchen in Southampton as per the approved designs and MEICA scope (as per MEICA Specification in Section 3 - Specifications).

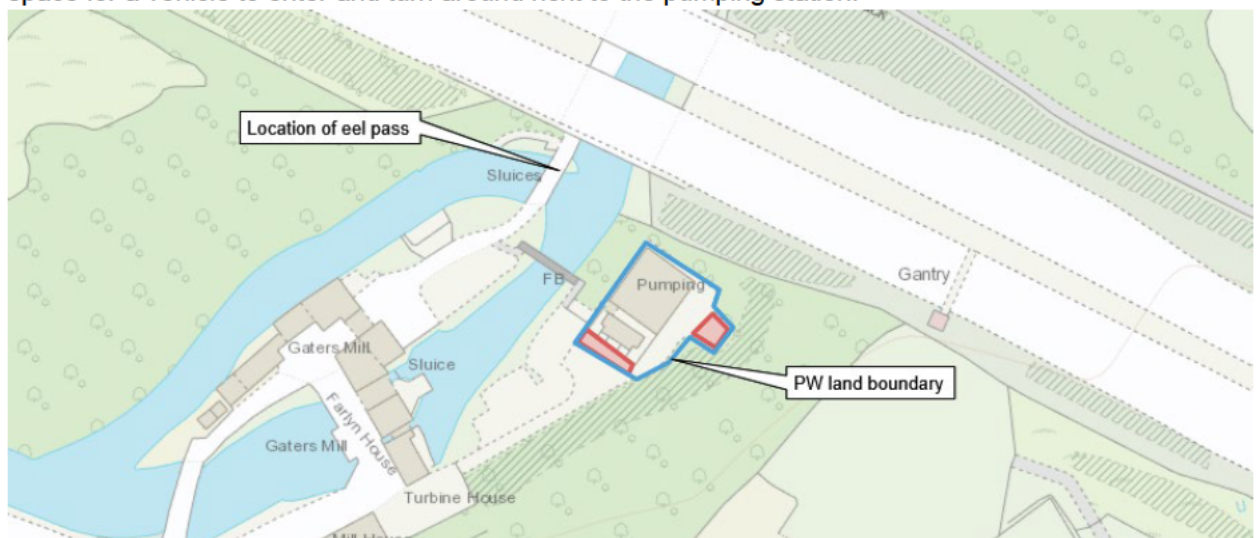
The site is Gaters Mill (NGR SU4539115650) which is a 3<sup>rd</sup> party asset on the River Itchen (GB107042022580). It is the site of the Lower Itchen Fishery, a popular brown trout, salmon, grayling and sea trout fishery. Eel (specifically elver) are also known to be present. The river passes under the M27 motorway before passing through a multi-arched/culverted bridge, which acts as a migration barrier for fish including eel. An eel pass already exists on-site, but it is no longer fit for purpose. A decision has been made that in order to comply fully with the Eel Regulations (2009) and Environment Agency Health and Safety policy a new eel pass is required.



Photos showing the culverted bridge and existing eel pass.

A new eel pass has been designed by FishTek Ltd. This design is now available for construction. The *Contractor* shall:

- Undertake a site visit prior to works to satisfy the *Contractor* about the buildability of the designs, and if the *Contractor* has concerns about buildability, drawing up questions and/or queries as Early Warnings.
- The *Contractor* will arrange specifically for a technical meeting with the *Client* and the Designers, the result of which will be an agreed technical procedure for the pebble and resin installation. As part of this, prior to installation, the *Contractor* will provide a 1m sample of the pebble/resin section to the *Client* to show the transition from the pebble to the apex. This is aimed at reducing potential installation issues later in the project.
- Apply for the Flood Risk Activity Permit (FRAP), including payment of required fees to the Environment Agency. Application to include temporary works as well as works required to remove the existing eel pass and install the new pass. No other permits are required. Please note: all FRAPs are now being processed by the Environment Agency's National Permitting Service and not local PSO teams. The *Contractor* may assume that the FRAP will take a minimum of 12 weeks to be determined from the day the application is Duly Made.
- Comply with CDM regulations.
- Commission the fabrication of the eel pass as per the Design and Designer's comments and provide storage for the eel pass until installation commences.
- Review and update CDM documents and check services. Approve CDM documents with the *Client* and Principal Designer.
- Produce a photographic diary of the construction site before, during and after works. This shall include as a minimum:
  - access track, the Site, and nearby structures that could be affected by the works, for the purposes of re-instatement / making good.
- Access to be agreed and approved by the landowner (Lower Itchen Fishery) in writing prior to works commencing. There are two bridges and an archway therefore, the *Contractor* will need to satisfy themselves of the weight/height restrictions prior to accessing the land when works commence.
- Make arrangements with the landowner/riparian owners/businesses within the site for the placement of compound(s) and the facility of deliveries to site. The number of vehicles needs to be kept to an absolute minimum and parking for staff off site may be necessary. At present, Portsmouth Water (PW) have provisionally suggested that part of their adjacent land can be used for the compound (red boxes within the area outlined in blue on the map below). PW have confirmed that they will require 24 hr access and enough space for a vehicle to enter and turn around next to the pumping station.



- Note that Portsmouth Water (PW) have an intake at SU4535615636 which is on the true left bank downstream of the work area. PW have concerns that this work may cause some pollution which could affect their intake. Therefore, any RAMS must be shared with PW and must be approved in writing by Portsmouth Water prior to works starting.
- Undertake site mobilisation, including welfare provision and site security if deemed necessary.
- Undertake removal of existing eel pass and other site preparatory works including the removal of all historic and unused electrical items (as per MEICA Specification in Section 3 - Specifications). This will include some form of conduit for the new wires and existing wires on site from outside to the inside of the hut.



- Arrange for legal disposal of old existing eel pass and unused electrical items, in accordance with the waste plan.
- Install new eel pass according to the design provided by FishTek, considering the buildability statement and designers risk assessment. This includes all the electric components (as per MEICA Specification in Section 3 - Specifications).
- The key clamp will need to be painted green. Specific colour to be agreed with the landowner.
- The header tank will need to be painted black. Specific colour to be agreed with the landowner.
- Works can only take place from October 3<sup>rd</sup> until March 1<sup>st</sup> to avoid salmon fishing season. However, fishing takes place all year round so the *Contractor* must be mindful of this. The *Contractor's* RAMS shall include what actions will be put in place to protect migratory salmonids during the *works*. Coarse anglers fish on the true right bank downstream of the fish counter hut so any working area or setting down needs to allow for access for anglers at all times.
- Access for EA staff to the fish counter/counter hut must be maintained at all times.
- Use of the sluices to dewater the archway is acceptable to the landowner during the working period but the landowner would like them reinstated outside of these times.
- Prior to demobilisation, the *Contractor* will be required to check the functional operation of the pass to ensure the delivery of water to the apex of the pass is functioning as designed and there are no leaks throughout the length of the pass.
- Produce a post-delivery photographic diary of the site, to be shared with the *Client*.
- Undertake demobilisation, including making good any damage caused by the *Contractor* in delivering the works to the property of the landowners.
- Obtain *Client* sign-off the works as per the design to confirm it has been installed to the designer specification.

## 2. Drawings

Drawing Number	Revision	Title
400-03085-V04		Designer Risk Assessment_Gaters Mill_V04
402-03085-V04		400-03085_RAG List_Gaters Mill_V04
401 – 03085 – V04		401 - 03085_ Buildability Statement_Gaters Mill_V04
03085_200_C04		GA and Sectional Elevation
03085_201_C04		Eel Pass Units Pump and Sectional Elevation
03085_202_C04		Flow Splitter Box & Eel Pass Plan & Sections
03085_203_C04		Header Tank & Bracket

## 3. Specifications

Title	Date or Rev	Publicly available?
<a href="#">LIT 16559 - Safety, Health, Environment and Wellbeing (SHEW) Code of Practice.docx</a>	v5, Jan 2023	
<a href="#">LIT 13258 - Minimum Technical Requirements.docx</a>	v12, Dec 2021	
MEICA Operating Instruction 369_13 (LIT13219)	03 Jan 2024	
Gaters Mill Elver Pass Refurbishment – MEICA Specification FINAL VERSION	13/12/2023	
LIT 13228- MEICA – Specification - Pumps	05/10/2021	

## 4. Constraints on how the *Contractor* Provides the Works

The confined space activities must be carried out in accordance with the Confined Space Regulations and HSE guidance document INDG258: 'Safe Work in Confined Spaces'. There must also be evidence available that persons undertaking work in a confined space have adequate training, equipment, supervision and authorization to enter. Should the *Contractor* need to enter a confined space, the confined space entry RAMS must be approved by an Environment Agency specialist before such works may proceed.

Should diving be a chosen activity at this site then it must be carried out in Line with the EA SHEW CoP.

Diving operations undertaken on behalf of the Environment Agency must meet certain minimum standards, these include:

- A minimum 5-person team
- The use of surface supplied diving equipment.
- Compliance with the HSE ACoP L104 diving projects inland/inshore.
- Diving contractors to be full members of the Association of Diving Contractors (ADC)
- To be aware of and eliminate or effectively control the risks from differential pressure.

The *Contractor* is to prepare, for the *Client's* acceptance, the Construction Phase Plan (CPP) and RAMS prior to starting the works at either site.

Access on site is over private land owned and managed by the Lower Itchen Fishery. Access arrangements must be agreed with the landowner prior to the works starting.

### Working times

The *Contractor* will be permitted to work between 7.30am and 6.00pm on weekdays (Monday to Friday)

## 5. Requirements for the programme

The *Contractor* submits his programme with the *Contractor's* Offer for acceptance. The *Contractor* shows on each programme which he submits for acceptance (in form of Gantt chart showing the critical path, proposed order and timing to undertake the works and proposed plant and labour resources) the following:

- (a) Period required for mobilisation/ planning & post contract award
- (b) starting date
- (c) Each of the activities listed within the Price List
- (d) Any key third party interfaces: lead in periods for materials and sub-contractors; time required to obtain consents/waste permits; stated constraints; *Contractor's* risks.
- (e) Completion date

## 6. Services and other things provided by the *Client*

Item	Date by which it will be provided
None	

# Site Information

This is on private land which is accessed all year round by anglers. Access for anglers through the area needs to be maintained at all times. Details of this must be agreed with the landowner.

Site is close to M27 road bridge. No objection to the works from National Highways.

PCI included

Adjacent hatches can be managed by the fishery to accommodate the works. Details of this need to be agreed with the fishery owner.

Minimum number of vehicles is required at this site. Vehicle numbers must be kept to a minimum. Other parking sites have been identified in the local area. Welfare location needs to be agreed with adjacent businesses/fishery owner/Portsmouth water. An area has been provisionally agreed which needs to be viewed by the contractor to understand space restrictions.

Service searches – August 2023. (BT, SGN (gas), Southern Electric, Virgin Media, Southern Water (2 docs.)).

There is a Portsmouth Water intake downstream of the working area.

## Appendix 1 – Site Boundary

Map showing site including access routes, with red dashed line indicating the boundary of the Site.

