

ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework

CONTRACT DATA

Project Name FSA Expansion and Hildenborough

Project Number

This contract is made on 11 April 2022
between the *Client* and the *Contractor*

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

- Schedules 1 to 21 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference
- ENVIMSE100377-JBA-ZZ-ZZ-CD-Z-0001-A5-C01-NEC_ECC_Scope_LEHES

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 the secondary Options of the NEC4 Engineering and Construction Contract June 2017.

Main
Option

Option C

Option for resolving and
avoiding disputes

W2

Secondary Options

X2: Changes in the law
X5: Sectional Completion
X7: Delay damages
X9: Transfer of rights
X10: Information modelling
X11: Termination by the *Client*
X15: *Contractor's* design
X18 Limitation of Liability
X20: Key Performance Indicators
Y(UK)1: Project Bank Account
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 *works* are

The Leigh Expansion and Hildenborough Embankments Scheme (LEHES) is a partnership project led by The Environment Agency to; increase the storage capacity of the Leigh Flood Storage Area (FSA) on the River Medway, extend the lifespan and improve reliability of the Leigh FSA and construct a defence scheme in Hildenborough.

The *Client* is

Address for communications

Address for electronic communications

The *Project Manager* is

Address for communications

Address for electronic communications

The *Supervisor* is

Address for communications

Address for electronic communications

The Scope is in
ENVIMSE100377-JBA-ZZ-ZZ-CD-Z-0001-A5-C01-NEC_ECC_Scope_LEHES

The Site Information is in
ENVIMSE100377-JBA-00-ZZ-FN-Z-0100-A5-C01-Site_Information

The boundaries of the site are
ENVIMSE100377-JBA-00-00-DR-Z-1002-A5-C03

The language of the contract is English

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

The period for reply is 2 weeks

The following matters will be included in the Early Warning Register
None

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

2 The Contractor's main responsibilities

The key dates and conditions to be met are
condition to be met key date
None set None set

The Contractor prepares forecasts of the total Defined
Cost for the whole of the works at intervals no longer
than 4 weeks

3 Time

The starting date is 11 April 2022

The access dates are
part of the Site date
Asite 11 April 2022
Fastdraft 11 April 2022
Hildenborough 11 April 2022

The Contractor submits revised programmes at intervals
no longer than 4 weeks

The Completion Date for the whole of the works is 24 February 2026

The Client is not willing to take over the works before the Completion Date

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

4 Quality management

The period after the Contract Date within which the Contractor is to
submit a quality plan is 4 weeks

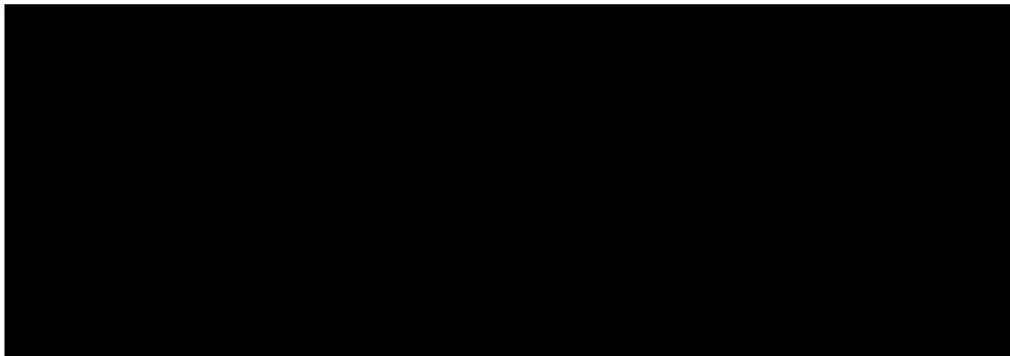
The period between Completion of the whole of the works and the
defects date is 52 weeks

The defect correction period is 2 weeks except that
• The defect correction period for issues of Health and Safety is 24 hours
• The defect correction period for issues relating to MEICA is 7 days

5 Payment

The currency of the contract is the £ sterling

The assessment interval is Monthly



6 Compensation events

The place where weather is to be recorded is Edenbridge

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 9.00 GMT hours GMT

and these measurements:

1. None

The *weather measurements* are supplied by Met Office

The *weather data* are the records of past weather measurement for each calendar month

which were recorded at the above locations

and which are available from the Met Office

Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are
N/A

These are additional compensation events

1. Hildenborough Construction Drawings Issued
2. Decision to complete 2 gates in one summer season
3. The Hildenborough Working Areas are flooded. Source is Hawden Stream, when the water level exceeds the height of the existing stream bank

8 Liabilities and insurance

These are additional *Client's* liabilities

- 1 Not used

The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is

£15,000,000

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

not less than the amount required by law

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

N/A

Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Senior Representatives* of the *Client* are

Address for communications

Address for electronic communications

Name

Address for communications

Address for electronic communications

The *Adjudicator* is

Address for communications

Address for electronic communications

The *Adjudicator nominating body* is

'to be confirmed'

The Institution of Civil Engineers

Z Clauses

Z1 Correctness of Site Information and other documents

Z1.1 Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the *Client*, but is not warranted correct. Clause 60.3 does not apply to such Site Information and the *Contractor* is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the works.

Z1.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the *Client* but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the *Contractor* is responsible for checking the correctness of any such information they rely on for the purpose of pricing for, or providing the works.

Z3 Prevention: No change to prices

Delete first sentence of clause 62.2 and replace with:

"Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. Quotations for the compensation event described in 60.1(19) comprise any delay to the Completion Date and Key Dates assessed by the *Contractor*."

Delete 'The' at start of clause 63.1 and replace with:

"For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the..."

Z 4 The Schedule of Cost Components

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

Z 6 Payment for Work

Delete existing clause 11.2 (31) and replace with:

"11.2 (31) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee, not exceeding the forecast provided under clause 20.4 and accepted by the *Client*."

Z7 Contractor's share

After c154.2 and before c154.3, insert the following additional clause:

54.2A If, prior to Completion of the whole of the works, the Price for Work Done to Date exceeds 111% of the total of the Prices, the amount in excess of 111% of the total of the Prices is retained from the Contractor.

Z10 Payments to subcontractors, sub consultants and

Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works. Payment to subcontractors will be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these time scales then the *Client* reserves the right to delay payments to the *Contractor* in respect of subcontracted work, services and supplies.

Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the *Contractor's* opportunities to work on framework contracts.

Z11Y(UK) 3 The Contracts (Rights of Third Parties) Act

The design consultant employed by the *Contractor* is required to fulfil the obligations of the warrantor under the primary contract for design works that they complete. This includes:

Transfer of rights clause Z11

Professional Indemnity Insurance cover to same cover as that specified for the *Contractor*

Z11.1 The *Client* ('the third party') may in its own right enforce the provisions of this clause, subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 and the following provisions:

Z11.1.1 the parties may not rescind or vary any provision(s) of this agreement, including this clause, at any time without the consent of the third party; and

Z11.1.2 each third party's rights against party A under this agreement shall be subject to the same conditions, limitations and exclusions as apply to party B's rights against party A under this agreement.

Z11.2 Except as provided in clause Z11.1, this agreement does not create any right enforceable by any person who is not a party to it (Other Party') under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a other party which exists or is available apart from that Act.

Z16 Disallowed Costs

Add the following bullets to clause 11.2 (26) Disallowed costs

- was incurred due to a breach of safety requirements, or due to 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 result of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit.

Z19 Linked contracts

Delays and additional cost on this contract resulting from the *Contractor's* fault or error on a previous contract on this project or programme will be a Disallowable cost under this contract and not be a Compensation event under this contract.

Z20 Defect Dates for Sections

Where a section of the works is defined and is located in a separate area of the Site, the time to the defects date for that section is the defined period after the Completion of that section, and is defined in the Contract Data.

Z21 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 *Project Manager's* certificate.

Delete existing clause 51.2:

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 *Project 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

Z22 Resolving Disputes

Delete W2.1

Z23 Risks and insurance

Replace clause 84.1 with the following

Insurance certificates are to be submitted to the *Client* on an annual basis.

Z30 Material Price Volatility - NOT USED

Z100 – Critical Item Delivery Schedule;

Z100.1 – add clause 11.2(36) - Delivery Schedule - is a separate list of programme critical items identified by the Contractor and accepted by the Project Manager under clause 31.3.

Z100.2 - add clause 60.1 (22) - A change to the delivery date for an item set out in the latest accepted Delivery Schedule.

Z100.3 - add to clause 62.2 'Quotations for a compensation event under clause 60.1 (22) shall exclude any increase in the direct cost for the item'.

Z100.4 - add fifth bullet point to clause 31.3;

o 'The Project Manager determines that the Delivery Schedule is not compiled correctly'

Part Two - Data provided by the Contractor

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

1 General

The Contractor is

Name VolkerStevin Ltd

Address for communications



Address for electronic communications

vs-cdf@volkerstevin.co.uk

The fee percentage is

Option C

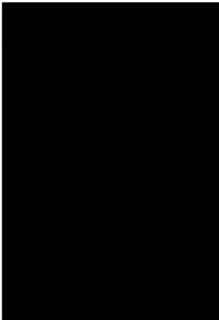


The working areas are

the site, VolkerStevin offices and personnel home offices

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

2 The Contractor's main responsibilities

The Scope provided by the *Contractor* for its design is in

3 Time

The programme identified in the Contract Data is

5 Payment

The *activity schedule* is

Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1)
Address fo

Address fo

Name (2)
Address fo

Address fo

X10: Information Modelling

The *information execution plan* identified in the Contract Data is

Y(UK)1: Project Bank Account

named suppliers are
TBC

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 X5: Sectional Completion

The *completion date* for each *section* of the *works* is

<i>section</i>	<i>description</i>	<i>completion date</i>
1	Winches installed on North and Centre Gates	19 May 2023
2	Leigh main Control Structure - South Gate	30 September 2023
3	Leigh main Control Structure - Centre Gate	30 September 2024

X7 plus X5

Delay damages for each *section* of the *works* are

<i>section</i>	<i>description</i>
1	Winches installed on North and Centre Gates
2	Leigh main Control Structure - South Gate
3	Leigh main Control Structure - Centre Gate

The delay damages for the remainder of the *works* are

OPTION X10: Information modelling

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

2 weeks

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professional providing information similar to the Project Information is, in respect of each claim

£5,000,000

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

12 years

OPTION X15: The Contractor's design

The *period for retention* following Completion of the whole of the *works* or earlier termination is

12 years

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim

£10,000,000.00

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

12 years

OPTION X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to

£5,000,000

For any one event, the *Contractor's* liability to the *Client* for loss or damage to the *Client's* property is limited to

£5,000,000

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to

£5,000,000

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to

£5,000,000.00

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

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)1: Project Bank Account

The Contractor is to pay any bank charges made and to be paid any interest paid by the
project bank

Y(UK2): The Housing Grants, Construction and Regeneration Act 1996

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

Y(UK3): The Contracts (Rights of Third Parties Act) 1999

term *beneficiary*

term *beneficiary*

The provisions of
Y(UK)1

Contract Execution

Client execution

Signed as a Deed by [PRINT NAME] for and on behalf of the Environment Agency

In

Signature Date Role

Address

Name [Print]

Contractor execution

Signed as a Deed by [PRINT NAME] for and on behalf of VolkerStevin Ltd

Rev