



Engineering and Construction Contract

OPTION A: FIXED PRICE

Contract Data Forms

June 2017

(with amendments January 2019)

Form of Agreement

This agreement is made on thebetween

The Environment Agency (*the Client*) of Horizon House, Deanery Road, Bristol, BS1 5AH

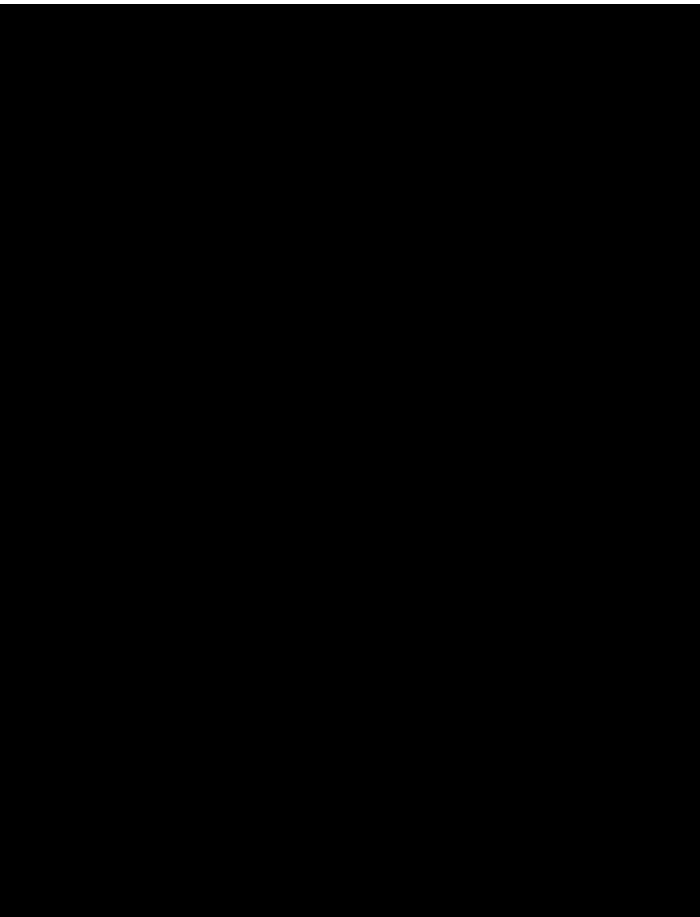
And

ECS Engineering Services Ltd, Fulwood Road South, Sutton in Ashfield, Notts , NG17 2JZ

Whereas the Client wants to have the following works provided: Minster Pumping Station

1. The Contractor will Provide the Works in accordance with the conditions of contract
2. The Client will pay the Contractor the amount due and carry out his duties in accordance with the conditions of contract.
3. The documents forming part of this agreement are;
 - a. the Contract Data part one
 - b. the Contract Data part two

Executed as a Under Hand by the **Client**



Contract Data

PART ONE – DATA PROVIDED BY THE *CLIENT*

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

1 General

The *conditions of contract* are the core clauses, the clauses for main Option A, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019)

Option for resolving and avoiding disputes

W2

Secondary Options

W2 Resolving and Avoiding Disputes
X2 – Changes in law
X7 – Delay Damages
X9 – Transfer of rights
X10 – Information Modelling
X11- Termination by the *Client*
X15 – The *Contractor's* design
X18 – Limitation of Liability
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 Works include mechanical, electrical, instrumentation, control, automation (MEICA) work and possible civil engineering (civils) works. The works are described as follows:

- Review all available pre-existing information held by the Environment Agency on this site (Appendix 2)
- Attend a site visit with the *Client*
- Carry out required tests and/or enquiries to confirm the pump curve of the existing pumps
- Carry out Computational Fluid Dynamics (CFD) modelling to assess the suitability of the existing pipework, as well as any other measurements deemed necessary, to determine the suitability for eels to pass through safely and level of pipework modification, if any, required to facilitate pump modification or replacement
- Carry out electrical and control equipment as well as air valve survey to understand grade and condition
- Carry out initial environmental surveys
- Create detailed design solution to achieve:
 - Compliance with the Eels (England and Wales) Regulations 2009
 - Compliance with the Environment Agency MEICA Standard for pumps

- Maintains the current pumps pump-curve
- Takes into account results from the CFD model
- The project objectives of making the pumping station eel friendly through the modification or replacement of the three pumps
- Approval from *Client*, appointed Principal Designer (as per S301), the Environment Agency's Fisheries, Biodiversity and Geomorphology (FBG) team, the Environment Agency's Mechanical, Electrical, Instrumentation, Control and Automation (MEICA) team
- Programme all works
- Carry out all necessary surveys, consents and permission applications, ensuring all environmental constraints and regulations are considered
- Mobilisation
- Modification or replacement of pumps and any required pipework modification to adhere to the following MEICA requirements:
 - The eel friendly pumps require a flow rate of 0.4 m³/s per pump
 - The pumping station capacity to be 1.2 m³/s
 - Installation of associated items to facilitate the pump installation (blanking plates, stop logs, wall mounted variable frequency drive units)
- Testing and training
- Demobilisation, including waste management and site reinstatement
- Handover of asset to *Client*

The *Client* is

Name

Environment Agency

Address for communications

Address for electronic communications

The *Project Manager* is

Name

Address for communications

Address for electronic communications

The *Supervisor* is

Name

Address for communications

Address for electronic communications

The Scope is in

Minster PS CDT NEC4 ECC Scope Template V8.0

The Site Information is in

ENV0003783C-EA-00-00-AS-AM-K0200_2-Status-Rev-K0200-EA2-LOD2-Minster PS PCI FINAL.pdf

ENV0003783C-EA-00-00-DR-D-B1300_1-Status-Rev-B1300-EA2-LOD2-Pump drawings.zip

ENV0003783C-EA-00-00-PH-AM-A0100_1-Status-Rev-A0100-EA2-LOD2-Minster PS - Exterior 1.JPG

ENV0003783C-EA-00-00-PH-AM-A0100_2-Status-Rev-A0100-EA2-LOD2-Minster PS - pumps.JPG

ENV0003783C-EA-00-00-PH-AM-A0100_3-Status-Rev-A0100-EA2-LOD2-Minster PS - site layout.JPG

ENV0003783C-LAW-00-00-RP-AM-A1200_2-Status-Rev-A1200-EA2-LOD2-2021 Marsh Farm Road Bridge PI Report v2.pdf

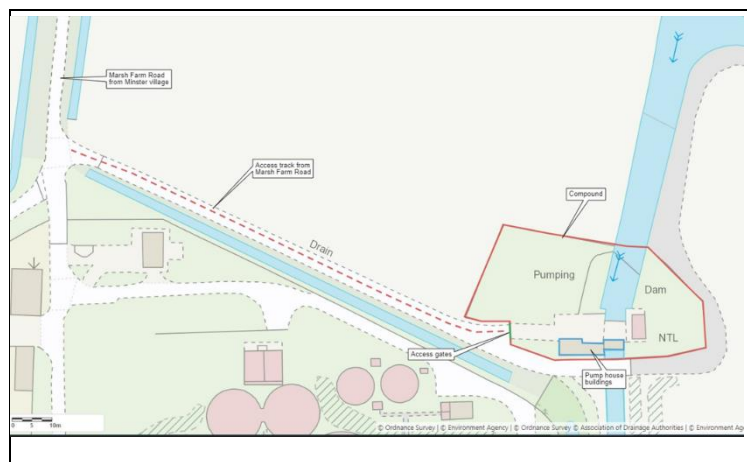
ENV0003783C-LAW-00-00-RP-AM-A1200_3-Status-Rev-A1200-EA2-LOD2-As Constructed Record Marsh Farm Road Bridge.pdf

ENV0003783C-LAW-00-00-RP-Z-A1200_1-Status-Rev-A1200-EA2-LOD2-Minster PS Initial Assessment Report rev 0.1.docx

Minster PS Service Searches - June 2023.zip

[Minster PS pre existing information.zip](#)

The boundaries of the site are



The language of the contract is

English

The law of the contract is the law of

England

The period for reply is

2 weeks

except that

The following matters will be included in the Early Warning Register

Not used

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

2 weeks

2 The *Contractor's* main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*

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

	<i>condition</i> to be met	Key date
(1)	Not used	
(2)		
(3)		

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

24/06/2024

The *access dates* are

part of the Site

date

(1)

The Site

08/07/2024

(2)

Asite

24/06/2024

(3)

The *Contractor* submits revised programmes at intervals no longer than

4 weeks

If the *Client* has decided the completion *date* for the whole of the *works*

The *completion date* for the whole of the *works* is

24/06/2025

Taking over the *works* before the Completion Date

The *Client* is not willing to take over the *works* before the Completion Date (Delete as applicable)

If no programme is identified in part two of the Contract Data

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

2 weeks

4 Quality management

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

4 weeks

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

104 weeks

The *defect correction period* is

2 weeks

except that

• The *defect correction period* for

Safety issue for the public

is

24 hours

• The *defect correction period* for

MEICA

is

7 days

5 Payment

The tendered total of the Prices is

£815,547.12

Minster PS Activity Schedule.xlsx

The *activity schedule* is

The *currency of the contract* is the

GBP Sterling

The *assessment interval* is

1 month

The *interest rate* is

2

% per annum (not less than 2) above the

Base rate (Bank Rate)

rate of the

Bank of England

bank

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is

The *Client* will make payment within 14 days of the date of the invoice.

The *exchange rates* are those published in

Not used

on (date)

6 Compensation events

The place where weather is to be recorded is

The nearest calibrated Met Office Weather Station to the site
Manston

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

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

09:00

 hours GMT

and these measurements:

The *weather measurements* are supplied by

The Met Office

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

which were recorded at

Manston 51.3422 1.3461

and which are available from

The Met Office

Where no recorded data are available

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

Not used

These are additional compensation events
compensation events

Downstream water levels exceed 2 meters

8 Liabilities and insurance

If there are additional
Client's liabilities

These are additional *Client's* liabilities

(1) None

(2)

(3)

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

£5,000,000

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

£5,000,000

If the *Client* is to provide
Plant and Materials

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

Nil

If the *Client* is to provide
any of the insurances
stated in the Insurance
Table

The *Client* provides these Insurances from the Insurance Table

(1) Insurance against

Minimum amount of cover is

The deductibles are

(2) Insurance against

Minimum amount of cover is

The deductibles are

(3) Insurance against

Minimum amount of cover is

The deductibles are

Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

If Option W1 or W2 is used The *Senior Representatives* of the *Client* are

Name (1)

Address for communications

Address for electronic communication

Name (2)

Address for communications

Address for electronic communication

The *Adjudicator nominating body* is

X5: Sectional Completion

Not used

X6: Bonus for early Completion

Not used

X7: Delay damages

If Option X7 is used without Delay damages for completion of the whole of the *works* are £77.39 per day

Option X5

If Option X7 is used with Delay damages for each *section* of the *works* are
OptionX5

section	description	amount per day
(1)	<input type="text"/>	<input type="text"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>
(4)	<input type="text"/>	<input type="text"/>
The delay damages for the remainder of the <i>works</i> are		<input type="text"/>

X10: Information modelling

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first BIM 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 the skill and care normally used by professionals 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

6 years

X15: The Contractor's Design

The Contractor's
design

X15

X15.1 The Contractor is not liable for a Defect which arose from its design unless it failed to carry out that design using the skill and care normally used by professionals designing works similar to the works.

X15.2 If the Contractor corrects a Defect for which it is not liable under the contract it is a compensation event.

X15.3 The Contractor may use the material provided by it under the contract for other work unless

- the ownership of the material has been given to the Client or

- it is stated otherwise in the Scope.

X15.4 The Contractor retains copies of drawings, specifications, reports and other documents which record the Contractor's design for the period for retention. The copies are retained in the form stated in the Scope.

X15.5 The Contractor provides insurance for claims made against it arising out of its failure to use the skill and care normally used by professionals designing works similar to the works. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the starting date until the end of the period stated in the Contract Data.

X15.6 Before the starting date and on each renewal of the insurance policy until the defects date, the Contractor submits to the Project Manager for acceptance a certificate which states that the insurance required by this clause is in force.

After the defects date and on each renewal of the insurance policy until the end of the period stated in the Contract Data for which insurance is to be maintained, the Contractor submits to the Client for acceptance a certificate which states that the insurance required by this clause is in force. The certificate is signed by the Contractor's insurer or insurance broker. The Project Manager or the Client accepts the certificate if the insurance complies with this clause and if the insurer's commercial position is strong enough to carry the insured liability. The Client's acceptance of an insurance certificate provided by the Contractor does not change the responsibility of the Contractor to provide the insurance stated in this clause.

X16: Retention

Not used.

X18: Limitation of liability

If Option X18 is used

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

£1,000,000

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

£1,000,000

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

£1,000,000

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

£1,000,000

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

Y(UK)1: Project Bank Account

Not Used

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

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due

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

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

If Option Y(UK)3 is used

term

beneficiary

<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3

term

beneficiary

<input type="text"/>	<input type="text"/>
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Z: Additional conditions of contract

If Option Z is used

The *additional conditions of contract* are

Clause No.	Clause
Z1	<p>Z1 Environment Agency as regulatory authority</p> <p>Z1.1 The Environment Agency's role as a regulatory authority and as Client under the contract is separate and distinct. Actions taken in one capacity are deemed not to be taken in the other.</p> <p>Z1.2 Where statutory consents must be obtained from the Environment Agency in its capacity as a regulatory authority, the Contractor is responsible for obtaining these and paying fees. The Client's acceptance of a tender and the Client's instruction or variation of the works does not constitute statutory approval or consent.</p> <p>Z1.3 An action by the Environment Agency as regulatory authority is the action of Other.</p>
Z2	<p>Z2 Framework Agreement</p> <p>Z2.1 The Contractor shall ensure at all times during this contract it complies with all the obligations and conditions of the PAGABO Framework Agreement.</p>
Z3	<p>Z3 Data Protection</p> <p>Z3.1 The requirements of the Data Protection Schedule shall be incorporated into this contract</p>
Z4	<p>Z4 Liabilities and insurance</p> <p>Z4.1 Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.</p>
	<p>Z5 Risks and insurance</p> <p>Z5.1 Replace clause 84.1 with the following Insurance certificates are to be submitted to the <i>Service Manager</i> on an annual basis.</p>
Z6	<p>Z6 Resolving Disputes</p> <p>Z6.1 Delete clause W2.1</p>
Z7	<p>Z7 Correctness of Site Information and other documents</p> <p>Z7.1 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. Clause 60.3 does not apply to such site information and the <i>Contractor</i> is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the works.</p> <p>Z7.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the <i>Client</i> but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the <i>Contractor</i> is responsible for checking the correctness of any such information he relies on for the purpose of pricing for, or providing the <i>works</i>.</p>
Z8	<p>Z8 Prevention: No change to prices</p> <p>"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....."</p>

Z9 Disallowed Costs

"Add the following bullet to clause 11.2 (26) Disallowed costs

- 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 result of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit."

Z10 Termination

Delete the text of Clause 92.3 and replace with:

If the *Contractor* terminates for Reason 1 or 6, 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.

Z31 ECC – Price Adjustment for Inflation

The Client recognises the ongoing pricing uncertainty with regards to inflation. The Client will mitigate this uncertainty through this clause.

Z31.1 Defined terms:

- a) The index is Office for National Statistics (ONS) CPI (UK, 2015=100).
- b) The Base Date Index (B) is the latest available index published by ONS prior to the Contract Date.
- c) The Latest Index (L) is the latest available index published by ONS before the date of assessment of an amount due.
- d) The Price Adjustment Factor (PAF) at each date of assessment of an amount due is $0.9((L-B)/B)$.

Z31.2 Application rules.

The provisions of this clause [Z31] shall apply provided that:

- a) The Price for Work Done to Date is less than or equal to the total of the Prices
and
- b) Inflation remains positive i.e. L is greater than B.

Z31.3 Price Adjustment Factor.

If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the Completion Date for the whole of the works is used for calculating an amount for price adjustment after that date.

Z31.4 Price adjustment for Options A and B

Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$.

Z31.5 Price adjustment for Options C and D

NOT USED

Z31.6 Compensation events

NOT USED

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

ECS Engineering Services Ltd

Address for communications

Address for electronic communications

The fee percentage is

The working areas are

Site

The key persons are

Name (1)

Job

Responsibilities

Qualification

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

2 The Contractor's main responsibilities

If the Contractor is to
provide Scope for its design

The Scope provided by the Contractor for its design is in

3 Time

Resolving and avoiding disputes

If Option W1 or W2 is used The Senior Representatives of the Contractor

Name (1)

Address for communications

Address for electronic communication

Name (2)

Address for communications

Address for electronic communication

If Option W3 is

Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The project bank is

named suppliers are

Data for the Schedule of Cost Components

The listed items of Equipment purchased for work on the contract, with an on cost charge, are

Equipment

<input type="text"/>
<input type="text"/>
<input type="text"/>

Time-related on cost charge

<input type="text"/>
<input type="text"/>
<input type="text"/>

Per time period

<input type="text"/>
<input type="text"/>
<input type="text"/>

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The rates for special Equipment are

Equipment	rate

The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Contractor* are

category of person	rate

The rates for Defined Cost of design outside the Working Areas are

category of person	rate

The categories of design people whose travelling expenses to and from the Working Areas are included as a cost of design of the *works* and Equipment done outside the Working Areas are

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