

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: Pevensey and Eastbourne Coastal Management Scheme
Project Name: Options Appraisal
Project Number: ENV0002750C

Contract Type: Professional Service Contract
Option: Option C

Contract Number: 31855

Revision	Status	Originator	Reviewer	Date

**PROFESSIONAL SERVICE CONTRACT under the Collaborative Delivery Framework
CONTRACT DATA**

Project Name Pevensy and Eastbourne Coastal Management Scheme Options Appraisal

Project Number ENV0002750C

This contract is made on
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
PSC Scope_Eastbourne Pevensy Coastal Management_100521 v1.7 FINALi

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 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*
- 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 To produce the long and short list of options, and Strategic, Economic and Financial cases of the OBC to allow the client to obtain OBC approval.

The *Client* is Environment Agency

Address for communications Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The *Service Manager* is
Address for communications Environment Agency
Guildbourne House
Chatsworth Road
Worthing
BN11 1LD

Address for electronic communications

The *Scope* is in
PSC Scope_Eastbourne Pevensy Coastal Management_100521 v1.7 FINALi

The *partner contract* is
Not Used

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 *period for retention* is 6 years following Completion or earlier termination

The following matters will be included in the Early Warning Register

Not Used
Not Used
Not Used
Not Used

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
conditions to be met *key date*
'none set' not Used
'none set' not Used
'none set' not Used

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 28 June 2021

The *Client* provides access to the following persons, places and things
access *access date*
Fastdraft 28th June 2021
A site 28th June 2021
Sharepoint 28th June 2021

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

The *completion date* for the whole of the *service* is 03 November 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 *Client* set total of the *Prices* is £1,109,925.79

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

If Option C is used

The *Consultant's share percentages* and the *share ranges* are:
share range *Consultant's share percentage*
less than 80 % 80 % to 120 % 0 %
from 80 % to 120 % as set out in Schedule 17
greater than 120 % as set out in Schedule 17

6 Compensation events

These are additional compensation events

1. Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, between 1st April 2021 and 30th June 2021
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 SERVICE 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	£5,000,000	

Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Adjudicator* is 'to be confirmed'
Address for communications '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 result of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit

Z4 Share on termination

Delete existing clause 93.3 and 93.4 and replace with:

93.3 In the event of termination in respect of a contract relating to services there is no *Consultant's* share'

Z6 The Schedule of Cost Components

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

Z7 Aggregated Consultant's share

Delete existing clauses 54 and 93.3 and replace with:

54.1 The *Service Manager* assess the *Consultant's* share of the difference between the Aggregated Total of the Prices and the Aggregated Price for Service Provided to Date.

The difference is divided into increments falling within each of the *share ranges*. The limits of a share range are the Aggregated Price for Service Provided to Date divided by the Aggregated Total of the Prices, expressed as a percentage. The *Consultant's* share equals the sum of the products of the increment within each share range and the corresponding *Consultant's share percentage*.

54.2 If the Aggregated Price for Service Provided to Date is less than the Aggregated Total of the Prices, the *Consultant* is paid its share of the saving. If the Aggregated Price for Service Provided to Date is greater than the Aggregated Total of the Prices, the *Consultant* pays its share of the excess.

54.3 If, prior to the Completion Date, the Price for Service Provided to Date exceeds 110% of the total of the Prices, the amount in excess of 110% of the total of the Prices is retained from the *Consultant*.

54.4 The *Service Manager* makes a preliminary assessment of the *Consultant's* share at Completion of the Whole of the service using forecasts of the final Aggregated Price for Service Provided to Date and the final Aggregated Total of Prices. This share is included in the amount due following Completion of the whole of the services.

54.5 The *Service Manager* makes a final assessment of the *Consultant's* share, using the final Aggregated Price for Service Provided to Date and the final Aggregated Total of the Prices. This share is included in the final amount due.

93.3 If there is a termination except if Z4 applies, the *Service Manager* assesses the *Consultant's* share after certifying termination. The assessment uses as the Aggregated Price for Service Provided to Date the sum of

- the total of
 - the Defined Cost which the *Consultant* has paid and
 - which it is committed to pay for work done before termination

and

- the total of
 - the Defined Cost which the *Consultant* or *Contractor* has paid and
 - which it is committed to pay
- in the *partner contract* before the date the termination certificate is issued under this contract.

The assessment uses as the Aggregated Total of the Prices the sum of

- the total of
 - the lump sum price for each activity which has been completed and
 - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed

and

- the total of
 - the lump sum price for each activity which has been completed and
 - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed

in the *partner contract* before the date the termination certificate is issued under this contract.

Add:

11.2(25) The Aggregated Total of the Prices is sum of

- the total of the Prices and
- the total of the Prices in the partner contract

11.2(26) The Aggregated Price for Service Provided to Date is the sum of

- the Price for Service Provided to Date and
- the Price for Service Provided to Date or the Price for Work Done to Date in the partner contract.

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

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

<i>section</i>	<i>description</i>	<i>completion date</i>
1	Draft OBC for Client review	11 April 2023

X7 plus X5

<i>section</i>	<i>description</i>	<i>amount per day</i>
1	Draft OBC for Client review	£23.50

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

		<i>amount per day</i>
		£161.43

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

	£1,000,000.00
--	---------------

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

	£5,000,000.00
--	---------------

The *end of liability* date is

6 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

<i>term</i>	<i>beneficiary</i>
	Not Used
	Not Used
	Not Used
	Not Used

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

[REDACTED]

The *fee percentage* is

Option C

[REDACTED]

The *key persons* are

Name (1)

[REDACTED]

Job

Principal Engineer

Responsibilities

Project Manager for JBA

Qualifications

BEng, CEng MICE

Experience

21 years experience in FCERM and project management

Name (2)

[REDACTED]

Job

Technical Director

Responsibilities

Project Director for JBA / Principal Designer lead

Qualifications

BA, MA, CEng FICE, MAPM

Experience

30 years experience in FCERM and project management

Name (3)

[REDACTED]

Job

Senior Engineer

Responsibilities

Appraisal Lead

Qualifications

BEng, Registered Practitioner for Better Business Cases

Experience

20 years' experience of design, construction, appraisal and project management of FCERM Schemes

Name (4)

[REDACTED]

Job

Technical Director

Responsibilities

Engineering Lead

Qualifications

MSc (Eng), BSc, CEng MICE, CEnv MCIWEM C.WEM

Experience

20+ years' experience in the appraisal and design of coastal and maritime schemes

Name (5)

[REDACTED]

Job

Principal Environmental Consultant

Responsibilities

Environment Lead

Qualifications

BSc, PhD, Cenv MCIEEM

Experience

17 years' experience in ecological and environmental management, assessment and mitigation.

Name (6)

[REDACTED]

Job

Assistant Civil Engineer

Responsibilities

Assistant Project Manager for JBA

Qualifications

BSc, EngTech MICE

Experience

4 years experience in FCERM design, asset management and appraisal.

Name (7) -
Job -
Responsibilities -
Qualifications -
Experience -

The following matters will be included in the Early Warning Register

Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, between 1st July 2021 and 31st August 2021

-
-
-
-
-
-

3 Time

The programme identified in the Contract Data is

ENV0002750C-JBA-XX-XX-PG-Z-0001-S3-P19-Programme OBC - Rev A

5 Payment

The *activity schedule* is
N/A - Client set target

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1) Jeremy Benn (CDF Framework Director)
Address for communications
JBA Consulting
1 Broughton Park
Old Lane North
Broughton
Skipton
North Yorkshire, BD23 3FD

Address for electronic communications

Name (2) [REDACTED]
Address for communications
JBA Consulting
West Point
Peterborough Business Park
Lynchwood
Peterborough
PE2 6GG

Address for electronic communications

X10: Information Modelling

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

N/A

Contract Execution

Client execution

Signed as a Deed by

for and on behalf of **the Environment Agency**

Signature

Role

In the presence of:

Signature

Role


Name [Print]

Address

Consultant execution


Signed as a Deed by

for and on behalf of **Jeremy Benn Associates Ltd**



Signature

Managing Director
Role

In the presence of:


Signature

Director
Role


Name [Print]

Address

On Behalf of Jeremy Benn Associates Limited

1 Broughton Park

Old Lane North, Broughton

Skipton, North Yorkshire

BD23 3FD