

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – South East Hub

A contract between

**The Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH**

And

For

Eynsham Mill Fish Pass Project

Contract Forms

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- **The *Contractor's* Offer and *Client's* Acceptance**
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Contract Data

The *Client's* Contract Data

	The <i>Client</i> is	
Name	Environment Agency	
Address for communications	Red Kite House, Howbery Park, Wallingford, Oxon, OX10 8BD	
Address for electronic communications	[REDACTED]	
The <i>works</i> are	Construction of a technical fish pass and eel pass within an existing structure at Eynsham Mill side weir on the River Evenlode. Construction of a walkway and new stop log arrangement at the side weir to facilitate flow control and safe access.	
The <i>site</i> is	Eynsham Mill side weir - SP4391411093	
The <i>starting date</i> is	15/11/21	
The <i>completion date</i> is	31/08/22	
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	Nil	%
The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does 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 Civil Engineers 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 <i>Contractor</i> to the <i>Client</i> for loss of or damage to the <i>Client's</i> property is limited to	£100,000	
The <i>Client</i> provides this insurance	None	
Insurance Table		
Event	Cover	Cover provided until
Loss of or damage to the <i>works</i>	The replacement cost	The <i>Client's</i> 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 <i>Contractor's</i> 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 <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Works	Minimum £5,000,000 in respect of every claim without limit to the number of claims	
Liability for death of or bodily injury to employees of the <i>Contractor</i> 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 <i>Contractor</i> to use the skill and care normally used by professionals providing works similar to the works	Minimum £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 <i>Adjudicator nominating body</i> is	The Institution of Civil Engineers	
The <i>tribunal</i> 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		
Z1.0	Sub-contracting	
Z1.1	The <i>Contractor</i> submits the name of each proposed sub-contractor to the <i>Client</i> for acceptance. A reason for not accepting the sub-contractor is that their appointment will not allow the <i>Contractor</i> to Provide the Works. The <i>Contractor</i> does not appoint a proposed sub-contractor until the <i>Client</i> has accepted them.	

Z1.2	Payment to sub-contractors and suppliers will be no more than 30 days from receipt of invoice.
Z2.0	Environment Agency as a regulatory authority
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.
Z3.0	Confidentiality & Publicity
Z3.1	The <i>Contractor</i> may publicise the works only with the <i>Client's</i> written agreement.
Z4.0	Correctness of Site Information
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.
Z5.0	The Contracts (Rights of Third Parties) Act 1999
Z5.1	For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this contract confers or purports to confer on a third party any benefit or any right to enforce a term of this contract.
Z6.0	Design
Z6.1	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.
Z6.2	The <i>Contractor</i> designs the parts of the works which the Scope states they are to design.
Z6.3	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.
Z6.4	The <i>Contractor</i> may submit their design for acceptance in parts if the design of each part can be assessed fully.
Z7.0	Change to Compensation Events
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"> • War, civil war, rebellion revolution, insurrection, military or usurped power • Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-contractors • 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 device or thing dropped from them
Z7.2	Additional Compensation Event COVID-19 Managing and mitigating the impact of Covid 19 and work in accordance with Public Health England guidance, as may vary from time to time, from 1st July to 31st August 2021.
Z8.0	Framework Agreement
Z8.1	The <i>Contractor</i> shall ensure at all times during this contract it complies with all the obligations and conditions of the Framework Agreement made with the <i>Client</i> .

Z9.0	Termination
Z9.1	<p>Delete the text of Clause 92.3 and replace with:</p> <p>If the <i>Contractor</i> 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.</p>
Z10.0	Data Protection
Z10.1	The requirements of the Data Protection Schedule shall be incorporated into this contract
Z11.0	Liabilities and Insurance
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	Land & Water Services Ltd	
Address for communications	Weston Yard, Albury, Guildford GU5 9A	
Address for electronic communications		
The <i>fee</i> percentage is	As framework	%
The <i>people rates</i> are	As framework	
category of person	Unit	rate
The <i>published list of Equipment</i> is		As framework
The <i>percentage for adjustment for Equipment</i> is		As framework

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



Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

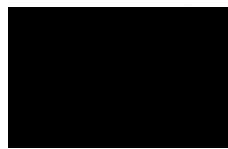
Name



Position



Signature



Date 12/11/2021

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

Signed on behalf of the *Client*

Name



Position



Signature



Date 15/11/21

Price List

Item Number	Description	Unit	Quantity	Rate	Price
Phase 1					
1	Receive and review 'For Construction' issue designs	Sum			
2	Check that pre-fabricated HDPE Larinier fish pass and eel pass components purchased by the EA are fit for purpose.	Sum			
3	Provision and submission of FRAP for permanent and temporary works.	Sum			
4	Production of Flood Risk Assessment (FRA) for temporary works and Environment Action Plan (EAP) for both the permeant and temporary works.	Sum			
5	Design full details of walkway replacement ensuring safe access for operation of stop logs	Sum			
6	Design of Temporary Works based on the draft buildability statement provided	Sum			
7	Completion of construction phase plan				
The total of the Prices					
Phase 2					
7a	Management, welfare and prelims				
8	Site Mobilisation, including provision of access track way	Sum			
9	Fabrication of stop logs	Sum			
10	Vegetation clearance	Day			
11	Supply and Installation of Temporary Works				
12	Install pilling at upstream and downstream of weir face and around the area of the new fish pass.	Sum			
13	Break out of existing concrete weir to formation level, construction new weir, concrete channels and wing walls to support pre-fabricated Larinier and eel pass.	Sum			
14	Install new fish pass within concrete channel	Sum			
15	Installation of new eel pass within concrete channel	Sum			
16	Install new rebate and stop log arrangement	Sum			
17	Construct rip-rap erosion protection and reinstate both banks immediately downstream of weir	Sum			
18	Installation of replacement walkway and install new GMS hand railing.	Sum			
19	Site Demobilisation	Sum			
20	Reinstatement (including any necessary reseeded) of work and access areas.	Sum			
21	Contribution to the Health and Safety File	Sum			

22	Provision of As-Built Drawings	Sum			
23	Waste Disposal	Sum			
24	Supply, maintain and remove syphon pipework with a flow meter to carry a minimum 50 l/s	Sum			
Optional	Provision of trackway, including topsoil strip and subsequent topsoil re-use (For clarity this item is e/o to item 8 if a permanent stone track is installed) Please note this item will be excluded from the total of the Prices, and may be instructed at the <i>Client's</i> discretion.	Sum			

The method and rules used to compile the Price List are

Civil Engineering Standard Method of Measurement 4th edition (CESMM4) as per the Framework Price Workbook.

Scope

1. Description of the works

The *Contractor* shall undertake the following for the work:

Phase 1 – to be completed by 31/03/2021

- Receive and review of 'For construction' issue designs to assist the *Client* in ensuring that the designs provide sufficient detail to allow for the robust planning of the construction stage (including production of the Construction Phase Plan) and to minimise *Contractor's* Technical Questions during the construction stage.
- Visit Osney Depot (Botley Road Oxford) to check pre-fabricated fish and eel pass components and inform EA project manager if any additional materials are required.
- Production of a Flood Risk Assessment (FRA) and submission of a Flood Risk Activity Permit (FRAP) for the planned works. The FRA must be sufficient to demonstrate that the proposed works will not result in an increase in flood risk to people and property.
- Production of an Environmental Action Plan (EAP), which demonstrates how the *Contractor* will manage the works to avoid any negative impacts on the environment or ecology. The EAP must be submitted to the *Client* for review at least two weeks before construction work starts.
- Liaison with landowners to agree access and the location of any compound or welfare facility
- Production of a Designer's Risk Assessment for contractor led design elements (temporary works and walkway) and a Construction Phase Plan, that must be submitted to the *Client* for review at least one week before construction work starts.
 - The Designer's Risk Assessment must include consideration for how the work can be done safely as well as any ongoing risks for members of the public because of the planned works.
 - The *works* will require the *Contractor* to work in and near water. The *Contractor* must include details of their approach to this within their Construction Phase Plan
- Design of any temporary works needed. Dam sections must adhere to all current temporary works regulations. Work cannot commence on site before the *Client* approves the design.
- Design of the walkway replacement. Work on the walkway cannot commence on site before the *Client* accepts the design.

Phase 2 – the *Contractor* shall not commence without being instructed to do so by the *Client*. The works for Phase 2 shall be as per Price List items 7a – 24.

- If materials need to be purchased in advance for phase 2 work, the *Contractor* shall raise early warning and seek advice from the *Client*.
- Collect pre-fabricated fish and eel pass from Osney Depot (Botley Road Oxford)
- Vegetation and tree clearance required to established site access.
- Provision of welfare facilities and a compound area/site office.
- Management of the people plant interface including provision for footpath closures/diversions or traffic management as necessary.
- Supply and installation of all temporary works required including temporary works to manage flows.
- Installation of piling at the upstream and downstream face of the weir, as shown on the Drawings. All piles to be driving using vibration piling.
- Break out of existing concrete weir to formation level, construction of concrete channels and wing walls to support Larinier pass and eel pass. Concrete shall be ready-mixed concrete batched off the site shall comply with BS EN 206: Part 1 complemented by BS 8500: Parts 1 and 2.
- Construct rip-rap erosion protection as shown on the Drawings
- River bank reinstatement as shown on the Drawings.
- Install new walkway as designed by the *Contractor* and installation of new GMS hand railing as per the design provided. The design and positioning of the walkway will be agreed with the *Client* to ensure it is compatible with the stoplog placement and eel pass maintenance.
- Demobilise and reinstate the entire work area, including the site compound and all access routes used by the *Contractor* or any sub-contractors. *Contractor* will need to ensure that contingency planning is in place to remove any temporary works, plant, compound, welfare facilities etc in the event of a flood.
- Production of Health & Safety files and as built drawings.
- Management and disposal of waste in accordance with the *Client's* SHEW Code of Practice.
- *Contractor* shall facilitate Fisheries inspection if required.

Following statement is relevant for both Phase1 and Phase 2 work

The *Contractor* will need to ensure that contingency planning is in place to remove any temporary works, plant, compound, welfare facilities etc in the event of a flood.

The *Contractor* shall also:

- Fulfil the duties of both Principal Contractor and Designer in terms of the CDM 2015 regulations. Duties will include, but are not limited to, producing the buildability statement, Designer's Risk Assessment, temporary works schedule, completing the RAG list and liaising with the *Client* and Principal Designer.
- Liaise with the *Client* and the Principal Designer on matters relating to the delivery of the project, compliance with the CDM regulations, flood risk management, regulatory compliance, ecological stewardship and the programme.

Trackway work:

Please note that the following trackway work is subject to *Client's* discretion, subsequent to the *starting date*, depending on project need. The *Contractor* shall not undertake any activity associated with this without prior instruction from the *Client*.

- Provision of a terram and type 1 trackway, extending from SP4393511782 to the site at SP4393511079 the trackway shall be 4m wide, and 250mm deep constructed using terram and type 1.
- Strip of 250mm topsoil to avoid raising the land in the floodplain
- The *Contractor* shall assume this topsoil can be reused on site within 2km of the trackway by spreading on arable land outside of the floodplain if you are able to operate under SR2010 No 5 (<https://www.gov.uk/government/publications/sr2010-no5-mobile-plant-for-reclamation-restoration-or-improvement-of-land>). If the *Contractor* is unable to operate under a permit then they shall immediately notify the *Client*, and provide a quotation for the topsoil to reused or disposed of off-site.
- Provision of Waste Disposal Certificate if the topsoil cannot be re-used at site

2. Drawings

Eynsham Mill Fish Pass

Drawing Description	Revision	Title
P5208 101 R01	R01	Eynsham Mill Weir and Fish Pass Plan
P5208 102 R01	R01	Cross sections AA & BB
P5208 103 R01	R01	Cross sections CC and details 1 & 2
P5082-210309	1	Eynsham Hydraulic Calculations

3. Specifications

Title	Date or Revision	Tick if publicly available
Environment Agency Blockage Management Guide (Gov.uk)	12/2019	Yes
Latest Ciria Guidance: Culvert, screen and outfall manual - New CIRIA guidance	12/2019	Yes
Minimum Technical Requirements	As per the SE FCRM Operations Framework	

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

The *Contractor* must carry out the work taking in to consideration the information provided in the Pre-Construction Information and Designers Risk Assessment.)

The *Contractor* shall not commence any work on the *site* until the *Client*, or their representative, has accepted the method statements and risk assessments and *Contractor* led design related to this contract

The *Contractor* is to prepare, for the *Client's* acceptance, the Designers Risk Assessment, Construction Phase Plan (CPP) and the Environmental Action Plan (EAP) prior to starting the *works*

This contract will involve working within land in private ownership. No works must commence until agreement has been secured with relevant landowners.

Working times

The *Contractor* will be permitted to work between 9am 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
Site Information only	

Site Information

This contract will involve working within land in private ownership.

Further site information is included within the PCI. Of particular note the works at both sites are located within the floodplain.

This contract will is likely to require the *Contractor* to work in and near water.

Proposed sub-contractors

	Name and address of proposed sub-contractor	Nature and extent of work
1.	Form of Contract:	
2.	Form of Contract:	
3.	Form of Contract:	