

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – North West Hub

A contract between

The Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

And

Breheny

For

CLA Reconditioning & Revenue Detailed Design and Build
Programme 22-24
Package 3 Cumbria

Contract Forms

- Contract Data
- The *Contractor's* Offer and *Client's* Acceptance
- Price List
- Scope
- Site Information

Contract Data

The *Client's* Contract Data

	The <i>Client</i> is	
Name	Environment Agency	
Address for communications	"Please be aware, due to Covid-19 any communications via mail will not be received by the Client. Please liaise with the EA Client for the correct lines of communication for physical documentation, otherwise please use electronic communication where possible."	
Address for electronic communications		
The <i>works</i> are	Various assets across Cumbria area	
The <i>sites</i> are (NGR)	Various assets across Cumbria area	
The <i>starting date</i> is		
The <i>completion date</i> is		
The <i>delay damages</i> are		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		%

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) **does** apply

The *Adjudicator* is: TBC

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 *Adjudicator*. The application to the Institution includes a copy of this definition of the *Adjudicator*. The referring Party pays the administrative charge made by the Institution. The person appointed is also *Adjudicator* for later disputes.

Contract Data

The *Client's* Contract Data

The interest rate on late payment is [REDACTED] % per complete week of delay.

Insert a rate only if a rate less than 0.5% per week of delay has been agreed.

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 [REDACTED]

The *Client* provides this insurance None

Insurance Table

Event	Cover	Cover provided until
Loss of or damage to the <i>works</i>	[REDACTED]	The <i>Client's</i> certificate of Completion has been issued
Loss of or damage to Equipment, Plant and Materials	[REDACTED]	The defects Certificate has been issued
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>works</i> , 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 [REDACTED] 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 [REDACTED] 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	
Only enter details here if additional conditions are required.	
Z1.0	Sub-contracting
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.
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 • 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
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	Delete the text of Clause 92.3 and replace with: 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.
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.
Z7.2	The <i>Contractor</i> is instructed to manage and mitigate the impact of Covid 19 and work in accordance with Public Health England guidance, as may vary from time to time, from 1st April to 30th June 2021. From July 2021 the COVID related risks will be quantified in the Prices and no further Compensation Event is envisaged as being required for this matter.
Z7.3	For the purpose of Clause 60.1.9 "the site" is defined as the individual location listed in "the sites" in the Client's Contract Data.
Z12.1	For contracts containing packages of projects the <i>Client's</i> Contract Data, Scope and Site Information particular to an individual project is contained within its Site Specific Pack.

Contract Data

The Contractor's Contract Data

		The Contractor is
Name	Breheny Civil Engineering Ltd	
Address for communications		
Address for electronic communications		
The fee percentage is		%
The people rates are	As defined in the FCRM pricing Workbook	
category of person	unit	Rate
The published list of Equipment is		Pricing Workbook
The percentage for adjustment for Equipment is		0

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	£ as per agreed Framework Rates and set out in the Price Work Book
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	Enter the total of the Prices from the Price List.
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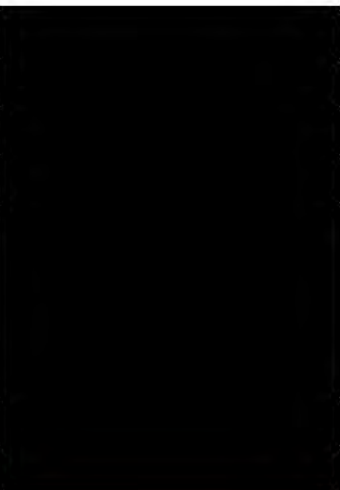
Signed on behalf of the *Contractor*

Name	
Position	
Signature	

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

Signed on behalf of the *Client*

Name	
Position	
Signature	

Date	
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Price List

Dimensions can be found in 'Description of works' section and Project Briefs are provided in Appendix A.

The method and rules used to compile the Price List are
Civil Engineering Standard Method of Measurement 4 th edition (CESMM4) as per the Framework Price Workbook.

Scope

This Scope is augmented by the following Appendix:

Appendix A- Site Information

The Indicative List of Sites is as per the 'Package Ranking Proforma'

1. Description of the works

Give a detailed description of what the *Contractor* is required to do and of any work the *Contractor* is to design.

The Environment Agency (EA) Project and Contract Management (P&CM) team for the North West Hub are seeking to appoint *Contractors* through the Lot 1 FCRM Operations Framework to deliver 30 asset recovery/recondition projects. The projects are all located in the Cumbria and Lancashire (CLA) and Greater Manchester (GMMC) Area of the North West and have been split into three packages of work, each package having in the region of 8 sites.

There will be one combined ITT / Invitation to Tender for the three packages. Suppliers must rank each of the three packages in order of preference using the "Package Ranking Proforma". Depending on where the Suppliers are ranked in the tender evaluation will determine which package they are offered i.e. 1st ranked supplier will be offered 1st choice, 2nd ranked supplier will be offered choice of remaining three packages etc. Should less than four suppliers tender for the three packages then the 1st ranked supplier may be offered two or more packages etc.

Each of the 30 sites across all four packages and their associated descriptions are listed in the 'Package Ranking Proforma'. Please note that this list is indicative and subject to change before and during the contract period.

Each site will be added as Compensation Event

For all sites:

Site Visit / Investigation, Project Management and Design

- The *Contractor* will receive scoping documents, (outline design, general arrangement drawing and high-level specification) and Pre-Construction Information from the *Client*. Completion date must be no later than 31st March 2024.
- The *Contractor* is required to attend an on-site meeting with the EA representative to discuss the *works* and requirements of each site.
- The *Contractor* is required to attend weekly progress meetings with the *Client* or *Client* representative.
- The *Contractor* is required to produce an initial programme at the start of the Contract and on a monthly basis, before the monthly early warning meeting, for acceptance of the *Client*.
- The *Contractor* will prepare and submit any Permits and planning documentation that is required in relation to the *works*.
- The *Contractor* will provide a full set of construction drawings indicating the proposed *works*.
- The construction drawings must comply with all *Client* specifications as noted within the Scope.
- If compliance with the MTR is not practical given site constraints, the *Contractor* must consider alternative solutions and submit to the *Client* for acceptance.
- The *Contractor* will carry out the role of CDM 'Designer' and 'Principal Contractor' for the construction period.
- The *Contractor* is required to provide the relevant Health and Safety, Construction Phase Plan (CPP), Risk Assessment, Method Statements and CDM Documentation to the *Client*. The *Contractor* must ensure that the documents satisfy the PD-PCMT checklist requirements.

- The *Contractor* is required to revise, response, and resubmit *Clients* deliverables responses/comments when required.
- The *Contractor* is required to provide the Project Execution Plan (PEP) to the *Client* for approval.

Construction and Handover

- The *Contractor* is required to agree in writing with the *Client* or *Client* representative the start and completion dates of construction activities.
- The *Contractor* is to provide the construction works in accordance with the agreed PEP and detailed construction drawings.
- The *Contractor* is required to attend and contribute to any project progress meetings that take place, as arranged by the Parties stated within the Contract.
- The *Contractor* is required to provide all site set up and preliminary works in accordance with the SHEW Code of Practice.
- The *Contractor* is required to comply with the EA Minimum Technical Requirements.
- Where appropriate, the *Contractor* is required to provide any temporary works to facilitate safe access, dry working areas or any required and safe environment for conducting the works.
- If temporary works are utilised, the *Contractor* is required to ensure that the area and surrounding environment are returned to their original state upon completion.
- The *Contractor* is required to provide a Waste Management Plan for the acceptance of the *Client*
- The *Contractor* is required to remove all waste/soil from site straight away to an appropriate licensed waste handler, unless agreed with the *Client*.
- The *Contractor* is required to provide site photographs and records of the site before starting construction, during construction and post-construction.
- The *Contractor* is required to issue all as-built drawings and associated H&S file information to the *Client* at completion of each site.
- The *Contractor* is to provide the *Client* with an Operation and Maintenance manual for all works.
- Monitoring is required by the *Contractor* where works will be expected to cause significant noise and/or vibration disturbance.

2. Drawings

List the drawings that apply to the contract.

EA

Drawing Number	Revision	Title
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Project Briefs for each site in Appendix A		
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All sites

The *Client* will provide the *Contractor* with an outline scoping document for each site to include:

- Pre-Construction Information
- High-level specification
- Health and Safety File (if available)

3. Specifications

List the specifications which apply to the contract.

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 (C786F)	12/2019	yes
EA SHEW Code of Practice	12/2019	yes
4. Constraints on how the <i>Contractor</i> Provides the Works		
State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the <i>Client</i>.		
The <i>Contractor</i> will adhere to any environmental constraints identified within the scoping document for each site e.g. (but not limited to) in-channel working seasonal restrictions, ecological constraints/survey requirements such as bird nesting and bat roosting, SSSI/SAC requirements.		
The <i>Contractor</i> is to prepare a full Construction Phase Plan (CPP) to be issued and signed by the <i>Client</i> prior to the commencement of any construction works. This should be presented to the <i>Client</i> no less than 14 days prior to when the <i>Contractor</i> intends to start work. This is to allow the <i>Client</i> to review the document, consult landowners on the proposed works methodology and obtain review and sign-off from the CDM Principal Designer.		
The <i>Contractor</i> is to provide a minimum of 10 working days notice prior to mobilising to site to allow sufficient time for the <i>Client</i> to serve Notice of Entry to landowners.		
The <i>Contractor</i> will not begin works on site until the <i>Client</i> has formally signed off the Construction Phase Plan and all Risk Assessments and Method Statements (RAMS).		
The <i>Contractor</i> will ensure through a detailed programme that all works are complete prior to the 31 st March 2024. The <i>Contractor</i> will make allowances for any delays and ensure suitable resource throughout the contract.		
The <i>Contractor</i> will consider Public and Operational Safety in all outline and detailed designs and must be a Considerate Contractor.		
Prior to commencement, the <i>Contractor</i> will consider and identify up-to-date service locations using drawings and review the SHEW Code of Practice in relation to services.		
The <i>Contractor</i> will remove waste from site straight away by a licensed waste handler.		
The <i>Contractor</i> will support the <i>Client</i> representative with the relevant information to update or create the Health and Safety file and Operation and Maintenance manual for each scheme.		
<i>Client</i> will have the right to cancel/postpone the construction phase, without significant financial penalties, if the timing of the construction work due to seasonal constraints and the weather conditions means that it is not safe/appropriate for the work to be carried out or if funding is stopped.		
The <i>Contractor</i> may publicise information about the works, so long as the <i>Client</i> has agreed in writing following review of the publication.		
All designs prepared by the <i>Contractor</i> must comply fully with any standard <i>Client</i> specification.		
The <i>Contractor</i> , whilst supplied with all known service information available to the <i>Client</i> , must demonstrate relevant due diligence when excavating/ breaking ground. The <i>Contractor</i> accepts liability for excavations / breaking out works, including the safe management of these works.		
The <i>Contractor</i> will identify any trees for felling, to accommodate the works, to the <i>Client</i> . The <i>Client</i> must agree to these trees being removed prior to any tree felling taking place.		
The <i>Contractor</i> will ensure the working area and access tracks are reinstated to the original condition in which it was, prior to the commencement of the works.		
The <i>Contractor</i> is to advise the <i>Client</i> of any land registry required for a site compound. The <i>Client</i> is responsible for the compensation or agreements relating to securing the compound area.		
The <i>Contractor</i> will ensure access along footpaths is maintained, or a suitable diversion planned and agreed with the relevant landowner/local council, throughout the duration of the works for public use.		

The <i>Contractor</i> and <i>Client</i> will abide by the SHEW Code of Practice at all stages of the project.
All designs should adequately consider public safety arrangements
The <i>Contractor</i> should make all provisions possible to eliminate, offset or reduce its carbon output and enhance the environment where possible (e.g. biodiversity and water quality).
H&S files (where available) will be provided to the <i>Contractor</i> by the <i>Client</i> before starting construction on site.
The <i>Contractor</i> will liaise with EA-Partnership Strategic Overview to obtain the required internal permits.

Working times

The *Contractor* will be permitted to work between 8am and 5pm on weekdays (Monday to Friday).

Additional hours outside of those listed above, including weekend hours, must be communicated to and signed off by the *Client*. The *Contractor* should allow at least 5 working dates notice to the *Client* if additional working hours are required.

5. Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

State what the use of the *works* is intended to be at their Completion as defined in clause 11.2(1).

The *Contractor* submits their programme with the *Contractor's* Offer for acceptance. The *Contractor* shows on each programme (for the three sample sites) which they submit for acceptance in Microsoft Project (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/Flood Risk Activity Permit; stated constraints; *Contractor's* risks.
- (e) Completion date

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

Describe what the *Client* will provide, such as services (including water and electricity) and "free issue" Plant and Materials and equipment.

Utility Services for all schemes (it is the Contractors responsibility to obtain an update)

Item	Date by which it will be provided
Notice of Entries	At least 10 days prior to <i>works</i> commencement.
Services and Land Registry details (to be updated by <i>Contractor</i>)	Along with this contract

Site Information

The *Client* will provide the *Contractor* with a scoping document for each site.

Service drawings for all sites (to be updated by *Contractor*)

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:	
4.	Form of Contract:	