



**NEC4 ECC
Option A**

Contract document:


**Widening of the Northern Footpath at Fleet Pond
Reconstruction & Surfacing works Fleet Pond Drive
Reconstruction & Surfacing works Fleet Pond Car Park**

Contract for:

Hart District Council

Documents Included:

- Contract Data Part One
- Contract Data Part Two (to be completed by *Contractor*)
- Activity Schedule (to be compiled by *Contractor*)
- Scope

	Contract Documents NEC4 ECC	Contract Data Part One
---	--	---

Data provided by the *Employer*

1. General
<ul style="list-style-type: none"> • The <i>conditions of contract</i> 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 Engineering and Construction Contract June 2017, • Main Option: A • Option for resolving and avoiding disputes: W2 Secondary Options: X2, X4 X5, X7, X9, X11, X15, X16, X18, X21, Y(UK)2, and Z1, Z2, Z3, Z4, Z7, Z 9, Z10, Z11, Z12, Z13, Z14 • The <i>works</i> are: To increase accessibility to Fleet Pond from the new Hartland Village development through widening the northern footpath of Fleet Pond • The <i>Client</i> is: Name: Hart District Council Address for Communications: Civic Offices, Harlington Way, Fleet, GU51 4AE

- The *Project Manager* is:
Name: Steve Mountain
Address for communications: **Civil Engineering and Landscape Team, Havant Borough Council, Public Service Plaza, Civic Centre Road, Havant, PO9 2AX.**
Address for electronic communications: Steve.mountain@havant.gov.uk
 - The *Supervisor* is:
Name: Owen Davies
Address for communications: **Civil Engineering and Landscape Team, Havant Borough Council, Public Service Plaza, Civic Centre Road, Havant, PO9 2AX.**

Address for electronic communications: owen.davies@havant.gov.uk
-
- The Scope is in: **the document titled 'Fleet Pond Scope' dated September 2021 and shown on the Contract Drawings listed in WI 2100 of that document.**
 - The Site Information is in: **the documents and files listed in the content sheet titled 'Fleet Pond Site Information - Content Sheet' dated September 2021.**
 - The *boundaries of the site* are: defined on **Drawing Numbers, 2019_41 0100_001 Location**
 - The *language of this contract* is: **English**
 - The *law of this contract* is the law of: **England & Wales, subject to the jurisdiction of the Courts of England & Wales.**

- The *period for reply* is: two weeks except that
 - The *period for reply* for the *Contractor* to submit a revised programme for acceptance after the *Project Manager* has given an instruction is one week.
- The following matters will be included in the Early Warning Register (these are not additional *Client* liabilities, and do not change the risk allocation):

1	<i>Disruption to users of Fleet Pond during the works</i>	<i>The Site is a popular destination for users of Fleet Pond including local residents, Fleet and its environs. The works have potential to disrupt the users causing an adverse reaction.</i>
2	Emergency rendezvous point	Boathouse corner is a designated emergency rendezvous point access and systems of working will need to be employed during construction works of the Northern footpath
3	Existing services	Buried services that have not been identified during the design stage could be discovered. Contractors must satisfy themselves as to the location of services prior to the <i>works</i> .
4	Environmental Designations:	Fleet Pond and the Car park are within the boundaries of a SSSI. Fleet Pond is also designated as Main River and is a designated reservoir under the Reservoirs Act. There are areas of environmental sensitivity. The <i>works</i> have the potential to damage these designated sites.
5	Protected Species	As identified in the CEMP, the habitat within the site is suitable for: <ul style="list-style-type: none"> - Commuting and foraging bats; - Badger setts; - Reptiles, including Sand Lizard and Smooth Snake. These species are protected by law. If found, works must halt and a suitably qualified ecologist must be contacted for advice on proceeding works.
5	Fleet Pond Society	Charitable interest group that undertake ad hoc work within Fleet Pond environment under agreement with Hart District Council

Early Warning meetings are to be held at intervals no longer than: four weeks.

2. The Contractor's main responsibilities

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

Condition to be met		Key date
(1)	Site mobilisation	8 th November 2021
(2)	Completion of footway surface	7 th March 2022
(3)	Completion of Car Park and Access Road	1 st June 2022
(4)	Site demobilisation	17 th June 2022

- The *Contractor* prepares forecasts of the Defined Cost for the *works* at intervals no longer than four weeks.

3. Time

- The *starting date* is **8th of November 2021**
- The *access dates* are

	part of the Site	date
1	Northern Footpath	8 th November 2021
3	Access Road and Car Park	once footpath is complete and commissioned.

- The *Contractor* submits revised programmes at intervals no longer than 4 weeks.
- The *completion date* for the whole of the works is 29th June 2022

The *Client* is willing to take over the *works* before the Completion Date.

The *Contractor* is to identify a first programme for acceptance in part two of the Contract Data.

4. Quality Management
<p>The period after the Contract Date within which the <i>Contractor</i> is to submit a quality policy statement and quality plan is 21 days</p> <ul style="list-style-type: none"> The period between Completion of the whole of the <i>works</i> and the <i>defects date</i> is 52 weeks. <ul style="list-style-type: none"> The <i>defect correction period</i> is four weeks
5. Payment
<ul style="list-style-type: none"> The <i>currency of this contract</i> is the pound sterling (£). The <i>assessment interval</i> is 4 weeks. The <i>interest rate</i> is 2% per annum above the base rate of the National Westminster Bank. <p>X16: Retention</p> <ul style="list-style-type: none"> The <i>retention free amount</i> is £0 The <i>retention percentage</i> is 5%. The <i>Contractor</i> may not give the <i>Client</i> a retention bond <p>Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996</p> <ul style="list-style-type: none"> The period for payment is 28 days after the date on which the payment becomes due.

6. Compensation events

- The place where weather is to be recorded is: **South Farnborough, Hampshire.**
- 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 1000 hours GMT,and these measurements:

None.
- The *weather measurements* are supplied by **The Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB.**
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at **South Farnborough, Hampshire** and which are available from **the Met Office.**

These are additional compensation events: None

8. Liabilities and Insurances

- There are **no additional *Client's* liabilities**
- **Public and Products Liability:** 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 **£10,000,000.00 (ten million pounds)**. The minimum limit of indemnity of insurance covering liability from goods sold, installed or supplied by the *Contractor* in relation to all claims in the aggregate during any one period of insurance in respect of Products Liability is **£10,000,000.00 (ten million pounds)**.

Employers Liability: The minimum limit of cover for insurance in respect of 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 **£10,000,000.00 (ten million pounds)**.

Resolving and avoiding disputes

- The *tribunal* is **arbitration**
- The *arbitration procedure* is **the Institution of Civil Engineers' Arbitration Procedure (2006) or any amendment or modification in force when the Arbitrator is appointed**
- The place where the arbitration is to be held is **London**
- The person or organisation who will chose an arbitrator
 - if the Parties cannot agree a choice or
 - if the *arbitration procedure* does not state who selects an arbitrator is **the Institution of Civil Engineers**

The *Senior Representatives* of the *Client* are

Name: Philip Sheppard

Address for Communications: Hart District Council : Civic Offices : Harlington Way : Fleet : GU51 4AE

Address for electronic communications Philip.sheppard@hart.gov.uk

The *Senior Representatives* of the *Client* are

Name: Steven Lyons

Address for Communications: Hart District Council : Civic Offices : Harlington Way : Fleet : GU51 4AE

Address for electronic communications: steven.lyons@hart.gov.uk

The *Adjudicator* is

Name: **to be appointed by the Adjudicator nominating body which is the Institution of Civil Engineers**

Address: **One Great George Street, Westminster, London, SW1P 3AA**

X5: Sectional Completion

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

<i>section</i>	<i>description</i>	<i>completion date</i>
1	Footpath Construction works	7 th March 2022

X7: Delay Damage

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

<i>Section</i>	<i>Description</i>	<i>Amount per Day</i>
1	Footpath works	£1100
2	The delay damages for the remainder of the works are:	£1100

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 the skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim: is **limited to the lesser of (1) sum equivalent to ten (10) times the fees payable for the design work under this contract or (2) £10,000,000.00 (ten million pounds).**

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 skill and care is **12 years**

X18: Limitation of Liability

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to **£10,000,000.00 (ten million pounds).**

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to **£5,000,000.00 (five million pounds)**

The *Contractor's* liability for Defects due to his design in which are not listed on the Defects Certificate are limited to **£1,000,000.00 (one million pounds)**

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with this contract, other than excluded matters is limited to **£25,000,000.00 (twenty five million pounds)**

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

Option Z: Additional conditions of contract

The **additional conditions of contract** are: Z1, Z2, Z3, Z4, Z7, Z9, Z10, Z11, Z12, Z13 and Z14.

Z1 Identified and defined terms

Z1.1 Delete the definition of "A Corrupt Act" in clause 11.2(5) and the replace with the following:

"A Corrupt Act is

- corruptly offering, giving or agreeing to give to any person an inducement or reward in respect of this or any other *Council* contract (even if the *Contractor* does not know this has been done);
- showing or forbearing to show favour or disfavour to any person in relation to this contract or any other contract with the *Client*;
- committing any offence:
 - (a) under the Bribery Act 2010;
 - (b) under sub-section (2) of Section 117 of the Local Government Act 1972;
 - (c) under legislation or common law concerning fraudulent acts; or
 - (d) defrauding, attempting to defraud or conspiring to defraud the *Client*; or
- any activity, practice or conduct which would constitute one of the offences listed in this definition of a Corrupt Act, if such activity, practice or conduct had been carried out in the UK."

Z2 Subcontracting

Z2.1 Delete the second sentence of clause 26.2 and replace with the following:

"A reason for not accepting the Subcontractor is that

- the appointment will not allow the *Contractor* to Provide the Works or,
- they are not the Subcontractor identified in the *Contractor's* tender to undertake the work to be subcontracted and the *Project Manager* has not been provided with sufficient information to satisfy them that the replacement Subcontractor will provide at least the same quality of work and value for money."

Z2.2 Delete the words "except any pricing information" from clause 26.3.

Z2.3 Add the following bullet points at the end of clause 26.3:

- "the *Project Manager* deems that their use will not provide value for money to the *Client*;
- they do not clearly define the mechanisms for calculation of the amount due for work undertaken and/or the management and costing of change;
- they are not compatible with the *conditions of contract* and the *additional conditions of contract* (including clause 26.5 below); or

Z2.4 Insert a new clause at 26.5

"The *Contractor*, in relation to any subcontracting of any portion of the *works*:

- procures that the relevant sub-contract places on the Subcontractor all such obligations contained in this contract as necessary to give full effect to the terms of this contract (including the provisions of Option X11 to enable termination for any reason, if the *Client* so wishes); and
- procures that all relevant sub-contracts are executed and delivered as a deed, when reasonably required by the *Client*; and
- provides to the *Project Manager* a certified copy of any sub-contract (but excluding any particulars of the cost of such sub-contract works unless other provisions of this contract require the *Contractor* to provide them to the *Client*) within 14 days of it being fully executed."

Z3	Assignment
Z3.1	<p>Delete clause 28.1 and replace with the following:</p> <p>"The <i>Client</i> can assign the benefit of all or any of the benefit of the <i>Contractor's</i> obligations under this contract and/or the benefit arising under or out of this contract, or any part, share or interest herein, at any time without the consent of the <i>Contractor</i> to any local authority or public body or organisation performing all or part of the duties currently undertaken by the <i>Client</i>. Any assignment to any other person shall be with the consent of the <i>Contractor</i>, not to be unreasonably withheld or delayed."</p>
Z3.2	<p>Insert a new clause 28.2:</p> <p>"The <i>Contractor</i> can only assign the benefit of all or any of the <i>Client's</i> obligations under this contract and/or the benefit arising under or out of this contract with the prior written consent of the <i>Client</i>."</p>
Z4	<u>Payment</u>
Z4.1	<p>Insert a new clause 50.10:</p> <p>"If the <i>Contractor</i> has failed to procure and / or submit any required bonds, guarantees, and any other documents (except <i>Subcontractor undertaking to the Client or Subcontractor undertaking to Others</i>, and the certified copies of the relevant sub-contract), to the <i>Project Manager</i> as required by the terms of this contract (including the Scope) and by law, one quarter of the Price for Work Done to Date is retained in assessments of the amount due to the <i>Contractor</i> until such time as the <i>Contractor</i> has supplied them notwithstanding the amount of the <i>works</i> carried out by the <i>Contractor</i>."</p>
Z4.2	<p>Insert a new clause 50.11:</p> <p>"If the <i>Contractor</i> has not procured and submitted to the <i>Project Manager</i> for acceptance any relevant <i>Subcontractor undertaking to the Client or Subcontractor undertaking to Others</i> (and the certified copies of the relevant sub-contract), as required by this contract, one quarter of the Price for Work Done to Date is retained in assessments of the amount due to the <i>Contractor</i> for services or work of Subcontractors for whom the <i>Contractor</i> is obliged to procure any relevant <i>Subcontractor undertaking to the Client or Subcontractor undertaking to Others</i> and certified copies of sub-contract and has not done so."</p>

Z7 Client's liabilities

Z7.1 Remove the last bullet of Clause 80.1 and replace with:

"Additional *Client's* liabilities, if any, stated in the Contract Data Part 1.'

Z9 Health and Safety Plans

Z9.1 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 he relies on for the purpose of pricing for, or providing the works.

Z10 Freedom of Information Act

Z10.1 The *Contractor* acknowledges that the *Client* is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and co-operate with the *Client* to enable the *Client* to comply with these information disclosure requirements. Any costs incurred by the *Contractor* in complying with any request will be treated as a Compensation Event.

Z11 Discrimination

- Z11.1 The *Contractor* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010 (and legislation/code referred to therein) (the "Discrimination Acts").
- Z11.2 Where possible in providing the *works*, the *Contractor* co-operates with and assists the *Client* to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different "Protected Characteristics" (as defined in the Discrimination Acts including age, race, gender, religion, disability, sexual orientation, gender reassignment, pregnancy or maternity, or marriage and civil partnership) and other people.
- Z11.3 Where an employee or Subcontractor employed by the *Contractor* is required to carry out any activity at the *Client* premises, the *Contractor* must ensure that each such employee or Subcontractor complies with the *Client* 's employment policies and codes of practice relating to discrimination and equal opportunities.
- Z11.4 The *Contractor* notifies the *Project Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Contractor* under the Discrimination Acts in connection with this contract and provide any information requested by the investigating body, court or tribunal in the timescale allotted, attend (and permits a representative from the *Client* to attend) any associated meetings, promptly allow access to any relevant documents and information and co-operates fully and promptly with the investigatory body, court or tribunal.
- Z11.5 The *Contractor* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Contractor*.
- Z11.6 The *Contractor* should include in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

Z12	Data Protection
Z12.1	<p>In this Clause Z12, the following terms take the following meanings:</p> <p>Data Protection Legislation: (i) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable law about the processing of personal data and privacy;</p> <p>GDPR: General Data Protection Regulation (Regulation (EU) 2016/679);</p> <p>Personal Data: takes the meaning given in the GDPR;</p> <p>Processing: takes the meaning given in the GDPR.</p>
Z12.2	<p>The Parties acknowledge that it is not intended that any Personal Data shall be Processed under this Contract or in the provision of the <i>works</i>. Nonetheless, each Party shall, at its own expense, ensure that it complies with and ensure that it reasonably assists the other Party to comply with the Data Protection Legislation. The Parties also agree to take account of any guidance issued by the Information Commissioner's Office where relevant.</p>
Z12.3	<p>The Parties shall notify each other immediately if they consider that any of the Data Protection Legislation has been infringed in relation to this Contract.</p>
Z12.4	<p>Should it be required that Personal Data is Processed under this Contract or in the provision of the <i>works</i>, the parties shall enter into a separate Data Processing Agreement (in a form to be agreed), detailing the Parties' respective obligations in accordance with the Data Protection Legislation.</p>

Z13	Use of <i>Client's</i> material by the Contractor
Z13.1	Any material furnished by the <i>Client</i> to the <i>Contractor</i> in connection with this contract shall remain the property of the <i>Client</i> and such material together with any information derived there from shall be kept confidential and shall not without the consent in writing of the <i>Client</i> be published or disclosed to any third party or made use of by the <i>Contractor</i> except for the purpose of implementing this contract. All such material shall be returned to the <i>Client</i> on expiry or termination of this contract.
Z13.2	The <i>Contractor</i> shall not cause or permit anything that may change or endanger the intellectual property of the <i>Client</i> or the <i>Client's</i> title to any material furnished by the <i>Client</i> to the <i>Contractor</i> in connection with this contract.
Z13.3	The <i>Contractor</i> shall forthwith notify the <i>Client</i> if any claim or demand is made or action brought against the <i>Contractor</i> or when known it's Sub-contractor for infringement or alleged infringement of any intellectual property right in connection with the performance of this contract. The <i>Contractor</i> shall not and shall procure that its Subcontractor does not make any admission that may be prejudicial to the defence or settlement of any claim demand or action for infringement or alleged infringement of any intellectual property right by the <i>Contractor</i> or Subcontractor in connection with the performance of this contract.
Z13.4	In this clause Z13, the term "material" includes all drawings, plans, specifications, manuals, records, calculations and all other documents and all revisions and additions to the same and all intellectual property rights of whatever nature contained in them including (without limitation) copyright design rights image rights and database rights domain and website name rights and rights to merchandise (whether registerable or otherwise) and all applications for any of the same and other similar rights whatsoever and wheresoever in the world furnished by the <i>Client</i> to the <i>Contractor</i> in connection with this contract.
Z14	Ultimate Holding / Parent Company Guarantee (Optional, at the <i>Client's</i> sole discretion)
Z14.1	Delete clause X4.1 and replace with the following: "If the <i>Contractor</i> is a subsidiary of another company, the <i>Contractor</i> gives to the <i>Client</i> a guarantee of the <i>Contractor's</i> performance from the parent or ultimate holding company of the <i>Contractor</i> in the form to be agreed between the parties. If the guarantee was not given by the Contract Date, it is given to the <i>Client</i> within 4 weeks of the Contract Date."