

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – North Hub

A contract between	Environment Agency Horizon House Deanery Road Bristol BS1 5AH
---------------------------	--

And	A E Yates Ltd.
------------	---------------------------------------

For	Shaw Wood Road
------------	-----------------------

	Contract Forms <ul style="list-style-type: none">- Contract Data- The <i>Contractor's</i> Offer and <i>Client's</i> Acceptance- Price List- Scope- Site Information
--	---

Bravo Reference	Project_35955
------------------------	----------------------

Contract Data

The *Client's* Contract Data

	The <i>Client</i> is	
Name	Environment Agency	
Address for communications	[REDACTED]	
Address for electronic communications	[REDACTED]	
The <i>works</i> are	A Design and Build Contract for a flood defence wall on the River Calder.	
The <i>site</i> is	Located at approximate SD95945 24733. At Shaw Wood Road, Todmorden	
The <i>starting date</i> is	16 th January 2023	
The <i>completion date</i> is	22 nd May 2023	
The <i>delay damages</i> are	[REDACTED]	Per day
The <i>period</i> for reply is	[REDACTED]	weeks
The <i>defects date</i> is	[REDACTED]	weeks after Completion
The <i>defects correction period</i> is	[REDACTED]	weeks
The <i>assessment day</i> is	the last working day	of each month
The <i>retention</i> is	[REDACTED]	%
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 *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

[REDACTED]

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 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	[REDACTED]	
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	[REDACTED]	
Failure of the <i>Contractor</i> to use the skill and care normally used by professionals providing works similar to the works	[REDACTED]	6 years following Completion of the whole of the works or earlier termination

The *Adjudicator* nominating body is The Institution of Civil Engineers

The *tribunal* 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 works 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	Amend the text of Clause 60.1 with the addition of 60.1.13 "The <i>Contractor</i> is prevented from carrying out all work on the <i>site</i> as a consequence of flooding [and the flooding was not caused by the <i>Contractor</i>] for periods of time, each at least one full working day,

	which are in total more than one seventh of the total number of days between the <i>starting date</i> and the Completion Date. In assessing this event, only the working days which exceed this limit and on which work is prevented by no other cause are taken into account”															
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.															
Z30.0	Material Price Volatility The <i>Client</i> recognises the ongoing pricing uncertainty in relation to materials for the period from 1 July 2021 to 30 June 2023 the <i>Client</i> will mitigate this additional cost through this clause. Payment is made per assessment based upon a general average material proportion within assessments, calculated at 40%.															
Z30.1	Defined terms a) The Latest Index (L) is the latest index as issued by the <i>Client</i> . The L, which is at the discretion of the <i>Client</i> , is based upon the issued consumer price index ((CPI) based upon the 12-month rate) before the date of assessment of an amount due. b) The Price Volatility Provision (PVP) at each date of assessment of an amount due is the total of the Material Factor as defined below multiplied by L for the index linked to it. c) Material Factor (MF) 40% is used, based on a general average material proportion across our programme. The volatility provision is only associated with material element. No volatility provision is applicable to any other component of costs.															
Z30.2	Price Volatility Provision Through a Compensation Event the Client shall pay the PVP. PVP is calculated as: Assessment x MF x L = PVP If an index is changed after it has been used in calculating a PVP, the calculation is not changed and remains based upon the rate issued by the <i>Client</i> . The PVP calculated at the last assessment before 30 June 2023 is used for calculating the price increase after that date.															
Z30.3	Price Increase Each time the amount due is assessed, an amount for price increase is added to the total of the Prices which is the change in the Price for Work Done to Date for the materials component only (and the corresponding proportion) since the last assessment of the amount due multiplied PVP for the date of the current assessment.															
Z30.4	Compensation Events The <i>Contractor</i> shall submit a compensation event for the PVP on a monthly basis (where applicable) capturing Defined Cost only for the PWDD increase in month. Forecasted costs should only be considered for the June 2023 period compensation event. <table><tr><td>Assessment Date</td><td>Defined Cost?</td><td>Forecasted Cost?</td></tr><tr><td>31st Jul 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Aug 21</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Sept 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Oct 21</td><td>In period costs only</td><td>No</td></tr></table>	Assessment Date	Defined Cost?	Forecasted Cost?	31 st Jul 21	In period costs only	No	31 st Aug 21	In period costs only	No	30 th Sept 21	In period costs only	No	31 st Oct 21	In period costs only	No
Assessment Date	Defined Cost?	Forecasted Cost?														
31 st Jul 21	In period costs only	No														
31 st Aug 21	In period costs only	No														
30 th Sept 21	In period costs only	No														
31 st Oct 21	In period costs only	No														

30 th Nov 21	In period costs only	No
31 st Dec 21	In period costs only	No
31 st Jan 22	In period costs only	No
28 th Feb 22	In period costs only	No
31 st Mar 22	In period costs only	No
30 th Apr 22	In period costs only	No
31 st May 22	In period costs only	No
30 th Jun 22	In period costs only	No
31 st Jul 22	In period costs only	No
31 st Aug 22	In period costs only	No
30 th Sept 22	In period costs only	No
31 st Oct 22	In period costs only	No
30 th Nov 22	In period costs only	No
31 st Dec 22	In period costs only	No
31 st Jan 23	In period costs only	No
28 th Feb 23	In period costs only	No
31 st Mar 23	In period costs only	No
30 th Apr 23	In period costs only	No
31 st May 23	In period costs only	No
30 th Jun 23	In period costs only	Forecasted costs for remainder of contract

The Defined Cost for compensation events is assessed using

- the Defined Cost at *base date* levels for amounts calculated from rates stated in the Contract Data for People and Equipment and
- the Defined Cost current at the date the compensation event was notified, adjusted to the *base date* by 1+PVP for the last assessment of the amount due before that date, for other amounts.

Contract Data

The *Contractor's* Contract Data

		The <i>Contractor</i> is
Name		A E Yates Ltd
Address for communications		
Address for electronic communications		
The <i>fee</i> percentage is		%
The <i>people rates</i> are		
category of person	Unit	rate
The <i>published list of Equipment</i> is		
The <i>percentage for adjustment for Equipment</i> is		

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	16 th January 2023
------	-------------------------------

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

Signed on behalf of the *Client*

Name

Position

Signature

Date	20 January 2023
------	-----------------

Price List

Entries in the first four columns in this Price List are made either by the *Client* or the tenderer.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price Column only: the Unit, Quantity and rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

Item Number	Description	Unit	Quantity	Rate	Price
1	Review of Outline design				
2	Completion of Detailed design				
3	Attending regular weekly progress meetings				
4	Production of Risk Assessments/ CPP				
5	Site visits and investigations				
6	Material and plant				
7	Labour				
8	Health and Safety File				
9	Sub-Contractor				
The total of the Prices					

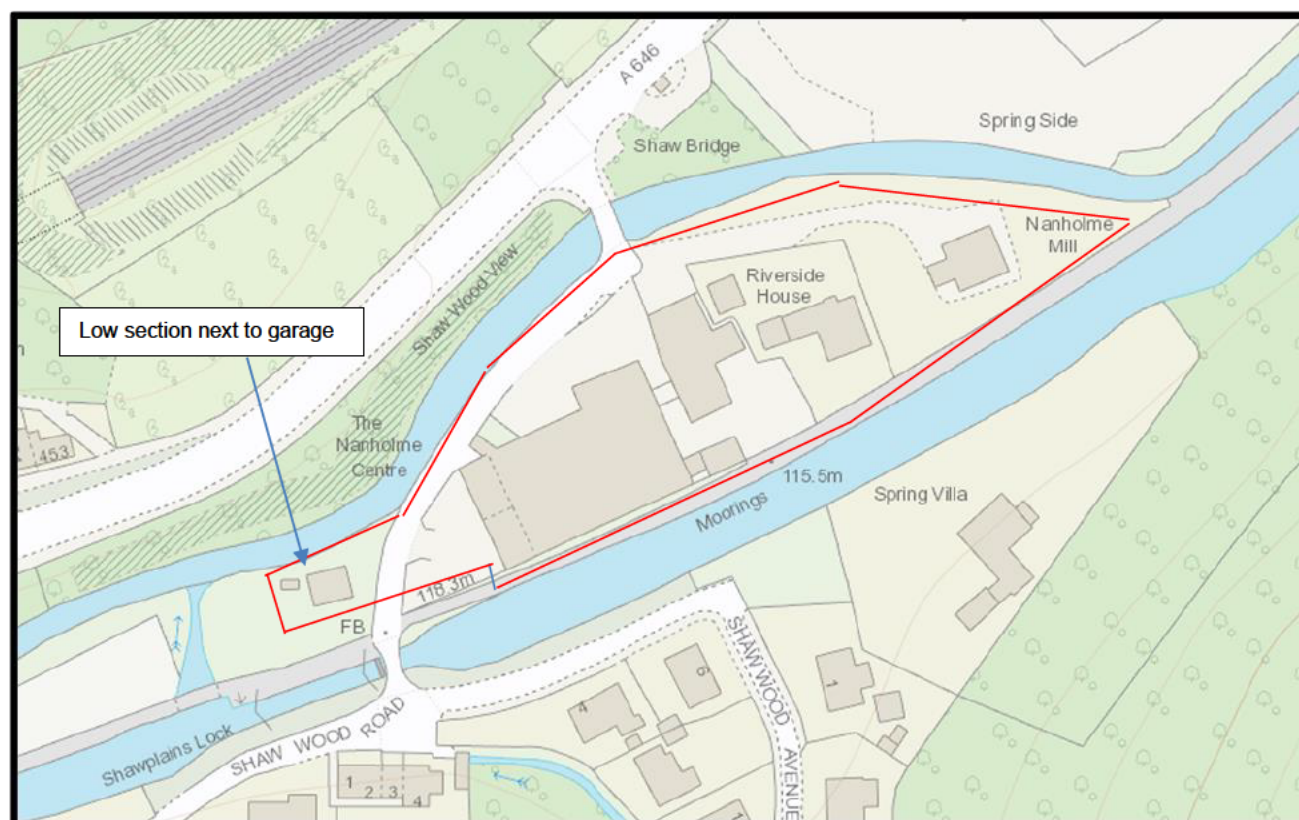
The method and rules used to compile the Price List are

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

Scope

1. Description of the *works*

The Shaw Wood Road scheme is located on the right bank of the River Calder downstream of Todmorden and is adjacent to the main A646 transport route through the Calder Valley. This area, and upstream locations, are characterised by steep narrow valleys which create flashy behaviour in the River Calder and its tributaries. Shaw Wood Road has a history of reported flooding, with the most severe events occurring in February 2020 and prior to that on Boxing Day 2015. On both occasions 14 properties were either flooded or surrounded by flood water and are therefore still at risk at present and are shown in the diagram below within the red line.



Flooding occurs due to a low section, with no flood defence assets, on the right bank on the River Calder shown in the diagram above. Adjacent to this is privately owned land and the only building on the site is a large garage/shed. When the River Calder rises flood waters overtop the bank spill on to Shaw Wood Road putting residential and commercial properties at risk.

The existing Highway wall downstream of the garage and before the bridge that separates the River Calder and Shaw Wood Rd is in good condition and is not known to significantly overtop during flood events. However, there are a number of drainage pipes in the base of the wall that drain the road back into the river. Some of these holes / pipes do not have functional flap valves, or similar, and flood waters have passed through, flooding the road, in high flow events. The wall is shown in the picture below with the garage to the left of the low section.



A provisional design has been developed by the *Client* which can be found in the PCI Appendices. This includes details to construct a new flood wall to close off the low section to the River Calder and calculations for a structural assessment of the existing highway wall. The *Contractor* shall hold design liability and therefore confirms the design through submitting it to the *Client* for acceptance. Value engineering and buildability is encouraged where possible, therefore design changes can be proposed by the *Contractor* if necessary.

The works include the following;

- The *Contractor* shall use the *Client*'s design as a basis to produce the detailed design of the *works* in accordance with appropriate legislation and design standards.
- The *Contractor* carries out any further surveys that may be necessary to support the design proposals. This may include assessment of ground conditions and presence of services.
- The *Contractor* will submit the design for *Client* review and acceptance. This should include cross sections, general arrangement and site layouts as necessary. A design life of 50 years is required.
- The *Contractor* shall submit any required temporary works designs for *Client* review and acceptance. The *Contractor* recognises access limitations in constructing the *works* between the river and the garage and takes account of this in the constructability of the *works*.
- The *Contractor* shall undertake construction of the accepted design.
- All information required should be submitted to the *Client* via email, or other agreed transfer method. This includes design information, any on site testing results and as built information, product data sheets and anything further that is necessary.
- The *Contractor* shall be the Principal Contractor for the works and produce and implement the systems and procedures that are necessary to undertake the role, including compliance with the Environment Agency's safety, health, environment and wellbeing code of practice (SHEWCoP).
- The *Contractor* shall implement a quality assurance plan on site to ensure the *works* are constructed in accordance with the accepted design.
- The *Contractor* shall undertake a pre-start condition survey of the working area and existing buildings as necessary and ensures the working area is adequately reinstated and the end of the *works*.
- The *Contractor* shall obtain all necessary permits and authorisations required to undertake the *works*.
- The *Contractor* shall include all necessary security requirements needed to protect the *works*.
- The *Contractor* provides all necessary traffic management and allows sufficient time in their programme to obtain Local Authority Highways authorisations.
- The *Contractor* undertakes to keep the site and surrounding roads and areas affected by the *works* clean and tidy.
- All waste is to be removed from site by the *Contractor* and disposed of responsibly.
- The *Contractor* is required to submit method statements and risk assessments to the *Client* for acceptance.

- The *Contractor* is to liaise with the *Client* and representatives effectively throughout the *works* on site and in required meetings.
- It should be noted that removal of contaminated material from site is a *Client* held risk.

2. Drawings

Drawing Number	Revision	Title
None	N/A	N/A

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

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

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

The *Contractor* is to prepare, for the *Client's* acceptance, the Construction Phase Plan (CPP) and the Environmental Action Plan (EAP) prior to starting the *works*. These documents shall be reviewed by the Principal Designer prior to commencement of the *works*.

The *Contractor* is to have all required permits in place for the *works* prior to commencing the *works*.

Vehicular access to the garage shall be maintained at all times in order to allow the business to operate as normal during the *works*.

Working times: The *Contractor* acts reasonably to avoid disturbance to the general public or occupiers of adjacent premises. Working hours of 8am to 5pm are to be adopted. No work shall be carried out outside of those hours without permission from the *Client*.

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:

- The starting date and the Completion Date
- The order and timing of the operations which the *Contractor* plans to do in order to Provide the Works
- The order and timing of work of the *Client* and others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Scope

- (d) Provisions for float and procedures set out in this contract
- (e) The dates when, in order to Provide the Works in accordance with its programme, the *Contractor* will need acceptances, Plant and Materials and other things to be provided by the *Client* and information from others
- (f) 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.
- (g) Order and timing of tests, inspections and commissioning activities whether done by the *Contractor* or *Client* or others
- (h) Information to be provided, who it is to be provided by, and the date by which it is to be provided

The *Contractor* should submit an updated programme monthly for acceptance by the *Client*

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

Item	Date by which it will be provided
None	N/A

Site Information

Pre-Construction Information (PCI)

Appendix A – Red Line Boundary

Appendix B - JCC20-229 C-GA-01 Rev C Topographical survey information, proposed general arrangement, sections and details

Appendix C – JCC20-229-S-CAL-01 Shaw Wood Road Calculation Package

Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
1.	<div>██████████</div> <div>Form of Contract: ██████████</div> <div>██████████</div>	<div>██████████</div>
2.	<div>██████████</div> <div>Form of Contract: ██████████</div> <div>██████████</div>	<div>████████████████████</div>
3.	Form of Contract:	
4.	Form of Contract:	