

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: VolkerStevin Infrastructure Limited
Company Number: 07877543

Geographical Area:
Contract Name: Appleby FRMS ECC
Project Number: ENV0000498C

Contract Type: Engineering Construction Contract
Option: Option C

Contract Number:

Stage: Construction

Revision	Status		Originator		Reviewer		Date

ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework
CONTRACT DATA

Project Name Appleby FRMS ECC

Project Number ENV0000498C

19

This contract is made on 19 March 2024 between the Client and the Contractor

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated xx day of Month Year and Framework Agreement Extension dated and signed 1st April 2023 between the Client and the Contractor in relation to the Collaborative Delivery Framework. The entire agreement and the following Schedules are incorporated into this Contract by reference
- Schedules 1 to 23 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference
Appleby FRMS ECC Scope v3.1

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 the secondary Options of the NEC4 Engineering and Construction Contract June 2017.

Main Option	Option C	Option for resolving and avoiding disputes	W2
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Secondary Options

- X2: Changes in the law
- X7: Delay damages
- X9: Transfer of rights
- X10: Information modelling
- X11: Termination by the Client
- X15: Contractor's design
- 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 works are

Construction of a new pumping station and overflow culvert within Appleby town centre

The Client is Environment Agency

Address for communications

Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The Project Manager is

Address for communications

Environment Agency

	Horizon House Deanery Road Bristol BS1 5AH	
Address for electronic communications		
The <i>Supervisor</i> is		
Address for communications	AECOM Ground Floor Exchange Station Tithebarn Street Liverpool L2 2QP	
Address for electronic communications		
The Scope is in 'Appleby FRMS ECC Scope v3.1 CLEAN'		
The Site Information is in ENV0000498C-JAC-ZZ-300-HS-Z-0001_OC Pre Construction Information v2		
The <i>boundaries of the site</i> are ENV0000498C-JAC-ZZ-300-DR-Z-0101-S3-P02 Existing Site Layout		
The <i>language of the contract</i> is English		
The <i>law of the contract</i> is <i>the law of England and Wales, subject to the jurisdiction of the courts of England and Wales</i>		
The period for reply is	2 weeks	
The following matters will be included in the Early Warning Register		
Early warning meetings are to be held at intervals no longer than		2 weeks
2 The Contractor's main responsibilities		
The <i>key dates</i> and <i>conditions</i> to be met are <i>condition</i> to be met		<i>key date</i>
'none set'		'none set'
'none set'		'none set'
'none set'		'none set'
The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the <i>works</i> at intervals no longer than		4 weeks
3 Time		
The <i>starting date</i> is		18 March 2024
The <i>access dates</i> are part of the Site		date
Access to the area used for the site compound		29 April 2024
Access to the remaining working areas		17 June 2024
The <i>Contractor</i> submits revised programmes at intervals no longer than		4 weeks
The <i>Completion Date</i> for the whole of the <i>works</i> is		01 April 2026
The <i>Client</i> is not willing to take over the <i>works</i> before the Completion Date		

The period after the Contract Date within which the Contractor is to submit a first programme for acceptance is 4 weeks

4 Quality management

The period after the Contract Date within which the Contractor is to submit a quality plan is 4 weeks

The period between Completion of the whole of the works and the defects date is 52 weeks

The defect correction period is 2 weeks except that

- The defect correction period for Health and safety issues is 24 Hours
- The defect correction period for reduction in standard of protection is 24 Hours

5 Payment

The currency of the contract is the £ sterling

The assessment interval is Monthly

The Client set total of the Prices is

The interest rate is Base rate of the per annum (not less than 2) above the Bank of England

The Contractor's share percentages and the share ranges are

	share range	Contractor's share percentage
less than		
from	to	as set out in Schedule 17
greater than		as set out in Schedule 17

6 Compensation events

The place where weather is to be recorded is Great Dunn Fell No 2

The weather measurements to be recorder for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at hours GMT

and these measurements:

1. Not used
- 2.
- 3.
- 4.
- 5.

The weather measurements are supplied by The Met Office

The weather data are the records of past weather measurement for each calendar month which were recorded at and which are available from

Assumed values for the ten year weather return weather data for each weather measurement for each calendar month are

Jan	Not used	Jul
Feb		Aug
Mar		Sep
Apr		Oct
May		Nov
Jun		Dec

These are additional compensation events

1. Carbon Methodology - Adherence to and compliance with the Carbon Methodology V3.1

2. Discovery of the following items during the works [unless the item is identified by the Site Information]:
 - Archaeology
 - UXOs
 - Heritage
 - Uncharted Service
 - Contamination/asbestos
3. Additional constraints over and above the requirements of the contract that are imposed on the Contractor by local businesses or residents will be a client risk
4. The Working Areas are flooded as a result of either the below occurring [providing that the flood has not been caused by the Contractor]:
 - Doomgate culvert overtopping within the Working Area
 - River Eden exceeding the height of the river bank within the Working Area
 - The Contractors in-river temporary works adjacent to the River Eden outfall are flooded, subject to the temporary works design being accepted by the Supervisor.
5. Water from de-watering activities contains contaminants requiring treatment or disposal [and the contamination was not caused by the Contractor]

8 Liabilities and insurance

These are additional *Client's* liabilities

- 1 'not used'
- 2 'not used'
- 3 'not used'

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

[REDACTED]

The minimum amount of cover for insurance against 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

not less than the amount required by law

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

Not used

Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Senior Representatives* of the *Client* are

[REDACTED]

Address for communications

Environment Agency

Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

[REDACTED]

Name

[REDACTED]

Address for communications

Environment Agency

Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

[REDACTED]

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 Correctness of Site Information and other documents

Z1.1 Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the *Client*, but is not warranted correct. Clause 60.3 does not apply to such Site Information and the *Contractor* is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the *works*.
Z1.2 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 they rely on for the purpose of pricing for, or providing the *works*.

Z 2B: Water levels: Contractor's risk

Clause 60.1 (12) second bullet point is amended to: "are not weather conditions or floods and"

Z3 Prevention: No change to prices

Delete first sentence of clause 62.2 and replace with:

"Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. Quotations for the compensation event described in 60.1(19) comprise any delay to the Completion Date and Key Dates assessed by the *Contractor*.
Delete 'The' At start of clause 63.1 and replace with:

"For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the..."

Z 4 The Schedule of Cost Components

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

Z 6 Payment for Work

Delete existing clause 11.2 (31) and replace with:

"11.2 (31) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee. In all instances and circumstances the Price for Work Done to Date shall not exceed the forecast for the same as provided under clause 20.4."

Z7 Contractor's share

After c154.2 and before c154.3, insert the following additional clause:

54.2A If, prior to Completion of the whole of the works, the Price for Work Done to Date exceeds 111% of the total of the Prices, the amount in excess of 111% of the total of the Prices is retained from the Contractor.

Z10 Payments to subcontractors, sub consultants and

Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works unless another alternative and appropriate form is proposed and agreed in accordance with clause 26.3. Payment to subcontractors will be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these timescales then the Client reserves the right to delay payments to the Contractor in respect of subcontracted work, services or goods.

Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the *Contractor's* opportunities to work on framework contracts.

Z11Y(UK) 3 The Contracts (Rights of Third Parties) Act

Z11.1 The *Contractor* warrants all design complies with the contract whether undertaken by the *Contractor* or by sub-contractors.

Z11.2 All contracts for design employed by the *Contractor* must include:

- Y(UK)3 The Contracts Rights of Third Parties) Act 1999
- A requirement for the *Contractor's* sub-contractor to hold Professional indemnity insurance to the same level as the cover specified for the *Contractor* in this Call-off contract
- A clause to give the *Client* (the Environment Agency) the right to enforce the provisions of the Contracts (Right of Third Parties) Act 1999,
- A clause to ensure that neither the *Contractor* nor their sub-contractor can alter the provisions of their sub-contract without the consent of the *Client*
- A clause to ensure that the *Client's* rights against the sub-contractor under this agreement shall be subject to the same conditions, limitations and exclusions as apply to the *Contractor's* rights against the design consultant under this agreement
- A clause to state that except as provided in clause Z11.1, the agreement does not create any right enforceable by any person who is not a party to it (Other Party) under the Contracts (Rights of Third Parties) Act 1999, but the clause does not affect any right or remedy of any other party which exists or is available apart from that Act.

Z16 Disallowed Costs

Add the following bullets to clause 11.2 (26) Disallowed costs

- was incurred due to a breach of safety requirements, or due to 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.

Z19 Linked contracts

Delays and additional cost on this contract resulting from the *Contractor's* fault or error on a previous contract on this project or programme will be a Disallowable cost under this contract and not be a Compensation event under this contract.

Z21 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 *Project Manager's* certificate.

Delete existing clause 51.2:

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 *Project 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

Z22 Resolving Disputes

Delete W2.1

Z23 Risks and insurance

Replace clause 84.1 with the following
Insurance certificates are to be submitted to the Client on an annual basis.

Z30 Material Price Volatility

The *Client* recognises the ongoing pricing uncertainty in relation to materials for the period from 1 July 2021 to 30 June 2023 the *Client* 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

- The Latest Index (L) is the latest index as issued by the *Client*. The L, which is at the discretion of the *Client*, is based upon the issued consumer price index ((CPI) based upon the 12-month rate) before the date of assessment of an amount due.
- 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.
- 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:

$$\text{Assessment} \times \text{MF} \times \text{L} = \text{PVP}$$

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 *Client*. 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 *Contractor* 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.

Assessment Date	Defined Cost?	Forecasted Cost?
31 July 2021	In period costs only	No
31 August 2021	In period costs only	No
30 September 2021	In period costs only	No
31 October 2021	In period costs only	No
30 November 2021	In period costs only	No
31 December 2021	In period costs only	No
31 January 2022	In period costs only	No
28 February 2022	In period costs only	No
31 March 2022	In period costs only	No
30 April 2022	In period costs only	No
31 May 2022	In period costs only	No
30 June 2022	In period costs only	No
31 July 2022	In period costs only	No
31 August 2022	In period costs only	No
30 September 2022	In period costs only	No
31 October 2022	In period costs only	No
30 November 2022	In period costs only	No
31 December 2022	In period costs only	No
31 January 2023	In period costs only	No
28 February 2023	In period costs only	No
31 March 2023	In period costs only	No
30 April 2023	In period costs only	No
31 May 2023	In period costs only	No
30 June 2023	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.

Z31 ECC – Price Adjustment for Inflation

The *Client* recognises the ongoing pricing uncertainty with regards to inflation. The *Client* will mitigate this uncertainty through this clause.

Z31.1 Defined terms:

- The index is Office for National Statistics (ONS) CPI (UK, 2015=100).
- The Base Date Index (B) is the latest available index published by ONS prior to the Contract Date.
- The Latest Index (L) is the latest available index published by ONS before the date of assessment of an amount due.
- The Price Adjustment Factor (PAF) at each date of assessment of an amount due is $0.9((L-B)/B)$.

Z31.2 Application rules.

The provisions of this clause [Z31] shall apply provided that:

- The Price for Work Done to Date is less than or equal to the total of the Prices and
- Inflation remains positive i.e. L is greater than B.

Z31.3 Price Adjustment Factor.

If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the Completion Date for the whole of the *works* is used for calculating an amount for price adjustment after that date.

Z31.4 Price adjustment Options A and B.

NOT USED

Z31.5 Price adjustment Options C and D.

Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$.

Z31.6 Compensation events.

NOT USED

Z111 ECC – Fee adjustment for non compliance with Scope

Delete existing 11.2 (10) and replace with the following clause

The Fee is the amount calculated by applying the *fee percentage* to the Defined Cost excluding the cost of Sub-contractors that have not complied with procurement by best value processes as defined in the Scope. 80% of the *fee percentage* is applied to the amount of the Defined Cost for Sub-contractors that have not complied with procurement by best value processes as defined in the Scope.

Z120 ECC – Carbon reduction

Ref. (Clause No.)	Clause words
11.2 Definitions	Add as Clause 11.2(36) (36) The Performance Table states the targets the <i>Contractor</i> is to achieve in Providing the Works and sets out the adjustment to payment if a measured performance is higher, the same or lower than its target. The Performance Table is the <i>performance table</i> unless later changed in accordance with the contract.
15.1 Early Warnings	In Clause 15.1 add as a new bullet between the second and third bullet: "• result in a target in the Performance Table not being met,"
Performance Measurements	
57	Add as Clause 57:
57.1	'From the <i>starting date</i> until the Completion Date, the <i>Contractor</i> reports to the <i>Project Manager</i> its performance against the targets in the Performance Table. Reports are provided at the intervals stated in the Performance Table.
57.2	If the <i>Contractor's</i> performance against a target in the Performance Table is not achieving or is forecast not to achieve the performance target stated, it submits to the <i>Project Manager</i> for acceptance its proposals for improving performance. A reason for not accepting the proposals is that they will not provide the improvement in performance needed to achieve the target in the Performance Table.
57.3	At the dates stated in the Performance Table, • if the relevant performance does not meet the target stated in the Performance Table, the <i>Contractor</i> pays the amount stated in the Performance Table, • if the relevant performance exceeds or meets the target stated in the Performance Table, the <i>Contractor</i> is paid the amount stated in the Performance Table.
57.4	Information in the Performance Table is not Scope.
X18	X18.5 add as a new bullet after the fourth bullet: • low performance damages if the Performance Table applies

The *performance table* is [ECC-carbon-performance-table.xlsx](#)

the Performance Table for this contract type [form, Partner, Stage] as set out in the Carbon Methodology V3.1

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 X7: Delay damages

X7 only

Delay damages for Completion of the whole of the *works* are [REDACTED] per day

OPTION X10: Information modelling

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is 2 weeks

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professional providing information similar to the Project Information is, in respect of each claim [REDACTED]

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 the skill and care is

12 years

OPTION 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 skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim [REDACTED]

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 the skill and care is

12 years

OPTION X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to [REDACTED]

For any one event, the *Contractor's* liability to the *Client* for loss or damage to the *Client's* property is limited to [REDACTED]

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to [REDACTED]

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to [REDACTED]

The *end of liability date* is 12 years after the [REDACTED]
Completion of the whole of the *works*

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(UK2): The Housing Grants, Construction and Regeneration Act 1996

The period for payment is 14 days after the date on which payment becomes due

Y(UK3): The Contracts (Rights of Third Parties Act) 1999

term beneficiary

not used not used

Part Two - Data provided by the Contractor

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The Contractor is

Name

VolkerStevin Infrastructure Limited

Address for communications

Hertford Road
Hoddesdon
Hertfordshire
EN11 9BX

Address for electronic communications

[REDACTED]

The fee percentage is

Option C

[REDACTED]

The working areas are

The Site, Head Office and any other area required to deliver tl

The key persons are

Name (1)

[REDACTED]

Job

Contracts Manager

Responsibilities

Overseeing the management of the contract

Qualifications

BEng Civil Engineering

Experience

30 years experience

The key persons are

Name (2)

[REDACTED]

Job

Commercial Manager

Responsibilities

Overseeing the commercial management of the contract

Qualifications

BSc (Hons) Quantity Surveying

Experience

20 years experience

The key persons are

Name (3)

[REDACTED]

Job

Project Manager

Responsibilities

Responsible for all matters on site

Qualifications

[REDACTED]

Experience

40 years experience

The key persons are

Name (4)

[REDACTED]

Job

Quantity Surveyor

Responsibilities

Responsible for all commercial matters on site

Qualifications

BSc (Hons) Quantity Surveying

Experience

7 years experience

The following matters will be included in the Early Warning Register

Current pile design is not fit for purpose. Ie, designed for driv

2 The Contractor's main responsibilities

The Scope provided by the *Contractor* for its design is in

3 Time

The programme identified in the Contract Data is

5 Payment

The *activity schedule* is

Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1) [REDACTED]
Address for communications
VolkerStevin Ltd
Bluebell Way
Preston
Lancashire
PR2 5PE

Address for electronic communications

[REDACTED]

Name (2) [REDACTED]
Address for communications
VolkerStevin Ltd
Bluebell Way
Preston
Lancashire
PR2 5PE

Address for electronic communications

[REDACTED]

X10: Information Modelling

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

Contract Execution

Client execution

Signed as a Deed by [PRINT NAME]

[Redacted Signature]

In the presence of:

[Redacted Signature]

Signature

Date

[Redacted Name]

Name [Print]

for and on behalf of the Environment Agency

Senior Lawyer (Team Leader)

Role

Costs Manager

Role

Address

c / o Manley House, Kestrel Way

Exeter EX2 7LQ

Contractor execution

Signed as a Deed by [PRINT NAME]

[Redacted Signature]

Sig

[Redacted Signature]

Date

for and on behalf of

[Redacted Name]

Role

[Redacted Role]

In the presence of:

[Redacted Signature]

Signature

Date

Role

[Redacted Role]

Address

Bluebell Way

Preston

PR2 5PE

Name

[Redacted Name]