

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – South East Hub

A contract between

**Natural England
5th Floor,
Northgate House,
Valpy Street,
Reading, RG1 1AF**

And

**Breheny Civil Engineering Ltd
Flordon Road
Creeting St Mary
Ipswich
Suffolk
IP6 8NH**

For

**Design and Construction of Replacement Boardwalk at
Thursley National Nature Reserve**

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	Natural England	
Address for communications	5th Floor, Northgate House, Valpy Street, Reading, RG1 1AF	
Address for electronic communications	<div></div>	
The <i>works</i> are	Design and Construction of an access route comprising boardwalk and raised path.	
The <i>site</i> is	Thursley National Nature, Thursley, Surrey	
The <i>starting date</i> is	11 October 2021	
The <i>completion date</i> is	31 March 2022	
The <i>delay damages</i> are	nil	Per day
The <i>period</i> for reply is	2	weeks
The <i>defects date</i> is	104	weeks after Completion
The <i>defects correction period</i> is	4	weeks
The <i>assessment day</i> is	the last working day	of each month
The <i>retention</i> is	nil	%
The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does apply		
The <i>Adjudicator</i> is :		
In the event that a first dispute is referred to adjudication, the referring Party at the same time applies to the Institution of Civil Engineers to appoint an <i>Adjudicator</i> . The application to the Institution includes a copy of this definition of the <i>Adjudicator</i> . The referring Party pays the administrative charge made by the Institution. The person appointed is also <i>Adjudicator</i> for later disputes.		

Contract Data

The *Client's* Contract Data

The interest rate on late payment is	0.5	% per complete week of delay.																
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 <i>Contractor</i> to the <i>Client</i> for loss of or damage to the <i>Client's</i> property is limited to	£100,000																	
The <i>Client</i> provides this insurance	None																	
Insurance Table <table border="1"> <thead> <tr> <th>Event</th> <th>Cover</th> <th>Cover provided until</th> </tr> </thead> <tbody> <tr> <td>Loss of or damage to the <i>works</i></td> <td>The replacement cost</td> <td>The <i>Client's</i> certificate of Completion has been issued</td> </tr> <tr> <td>Loss of or damage to Equipment, Plant and Materials</td> <td>The replacement cost</td> <td rowspan="3">The defects Certificate has been issued</td> </tr> <tr> <td>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</td> <td>Minimum £5,000,000 in respect of every claim without limit to the number of claims</td> </tr> <tr> <td>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</td> <td>The amount required by the applicable law</td> </tr> <tr> <td>Failure of the <i>Contractor</i> to use the skill and care normally used by professionals providing works similar to the works</td> <td>Minimum £1,000,000 in respect of every claim without limit to the number of claims</td> <td>6 years following Completion of the whole of the works or earlier termination</td> </tr> </tbody> </table>			Event	Cover	Cover provided until	Loss of or damage to the <i>works</i>	The replacement cost	The <i>Client's</i> certificate of Completion has been issued	Loss of or damage to Equipment, Plant and Materials	The replacement cost	The defects Certificate has been issued	The <i>Contractor's</i> liability for loss of or damage to property (except the works, Plant and Materials and Equipment) and for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Works	Minimum £5,000,000 in respect of every claim without limit to the number of claims	Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	Failure of the <i>Contractor</i> to use the skill and care normally used by professionals providing works similar to the works	Minimum £1,000,000 in respect of every claim without limit to the number of claims	6 years following Completion of the whole of the works or earlier termination
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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 <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
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	Additional Compensation Event COVID-19 Managing and mitigating the impact of Covid 19 and work in accordance with Public Health England guidance, as may vary from time to time, from 1st July to 31st August 2021.

Contract Data

The Contractor's Contract Data

	The Contractor is	
Name	Breheny Civil Engineering	
Address for communications	Unit 5, The Courtyard, Ryarsh, West Malling, ME19 5AA	
Address for electronic communications	<div></div>	
The fee percentage is	<div></div>	%
The people rates are		
category of person	unit	rate
The published list of Equipment is		As per FCRM Framework Rates
The percentage for adjustment for Equipment is		As per FCRM Framework Rates

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

£

Signed on behalf of the *Contractor*

Name

Position

Signature

Date 13/10/2021

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

Signed on behalf of the *Client*

Name

Position

Signature

Date

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	Design full detail of boardwalk and raised path	sum	1		
2	Site mobilisation, including provision of compound	sum	1		
3	Construction of boardwalk and raised path	sum	1		
4	Materials	sum	1		
5	Reinstatement of work and access areas.	sum	1		
6	Waste Disposal	sum	1		
7	Site demobilisation	sum	1		
8	Contribution to the Health and Safety File	sum	1		
9	Provision of As-Built Drawings	sum	1		

Please note section E-F is excluded from tender.

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*

Natural England is the government's advisor on the natural environment. We provide practical advice, grounded in science, on how best to safeguard England's natural wealth for the benefit of everyone. Our remit is to ensure sustainable stewardship of the land and sea so that people and nature can thrive. It is our responsibility to see that England's rich natural environment can adapt and survive intact for future generations to enjoy.

Brief Background

A significant amount of the boardwalk at Thursley Common was destroyed in 2020. With 90% having been either completely lost to the fire or charred so badly that it was deemed unsafe. Removal of the damaged remains took place toward the end of 2020. A new design is required that will not only be ecologically friendly and in keeping with the natural landscape beauty but will incorporate design characteristics that will consider a level of fire resilience.

Thursley National Nature Reserve is a SSSI which indicates the extreme sensitivity of the site. As such, any works on site require several permissions to be accepted before any work can be undertaken. These permissions include Planning Consent, Common Consents, and SSSI and Habitats Regulation Assessment. Natural England are currently in the process of obtaining all the required documentation in order for work to be

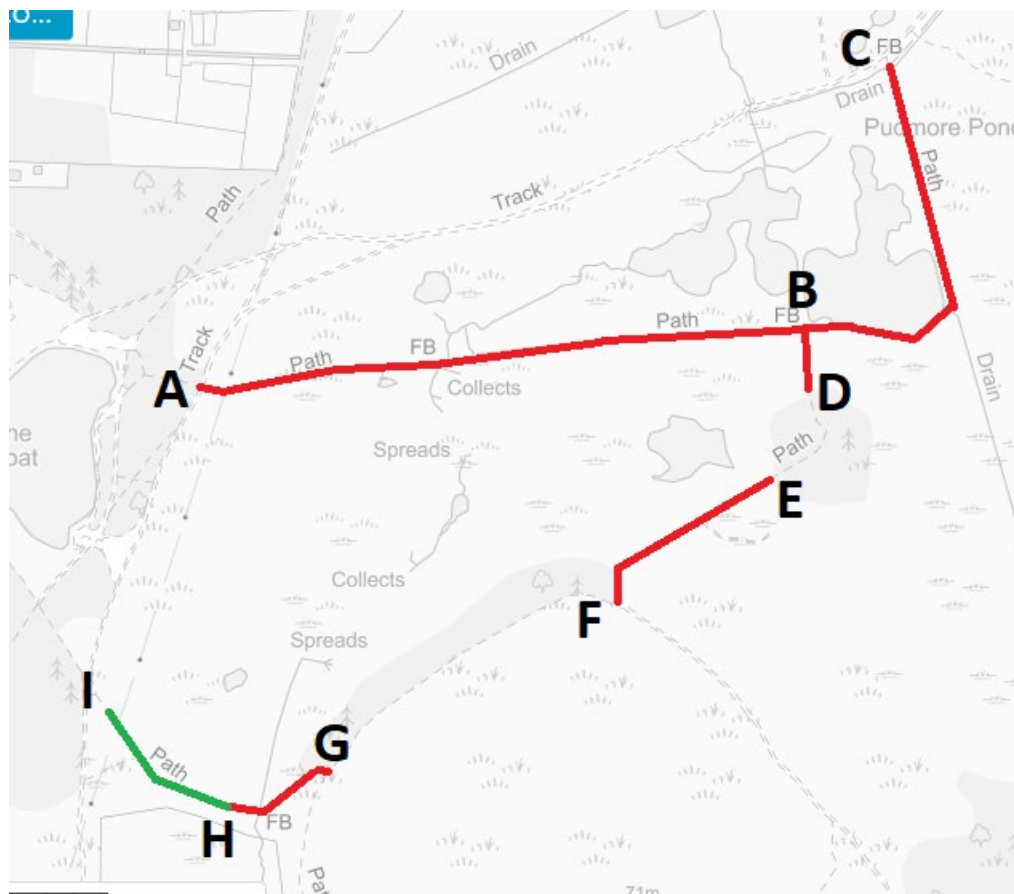
carried out as soon as possible, but no work will be allowed until all necessary documentation has been obtained.

Map

The *Contractor* shall design and then build a structure to allow access along the sections shown in red.

Please note that section E to F is now excluded from the scope.

*Note that although the lines on the map are shown as straight lines, however, it is required that the structure will have some shape and sinuosity (where conditions allow) for aesthetic objectives (see Site information for examples). Green on the map indicates where the *Contractor* shall design and build a raised path. This will also follow the current footpath in shape.



Much of the route goes over permanent ware or waterlogged ground (acidic 'peat bog' type habitat) of very high ecological sensitivity. The wide variety of users shall also be taken into account.

The *Contractor* shall undertake the following:

- No work shall commence until all necessary permissions have been obtained by the *Client*.
- Liaison with *Client* Reserve Managers to agree access and the location of any compound or welfare facility.
- Provision of welfare facilities and a compound area/site office.
- The exact location of the Works Compound shall be agreed in advance with the *Client* to ensure that access for emergency vehicles is not impeded.
- Management of the people plant interface including provision for permissive path, diversions or traffic management as necessary.
- The site is a Common and is open to visitors (including walkers, horse riders, cyclists, dog walkers). The *Contractor* shall take their health and safety into account when designing and constructing the works. The works must be carried out safely and with minimal disruption to the public's enjoyment of the site.
- The *Contractor* is responsible for all signage to inform the public of safety and access around areas they will be working.
- Cutting of vegetation is permitted but shall be kept to minimum. *Contractor* shall avoid cutting the trees on site unless necessary. Cutting of trees must be agreed by NE.
- Design of boardwalk, the design shall be ecologically friendly and in keeping with the natural landscape beauty but incorporate design characteristics that will consider a level of fire resilience.

- All structures shall have a 20 year design life, and shall allow for ease of maintenance. The design shall recognise the risks of wildfire, combined with raised water levels on the structure.
- Installation of new boardwalk as designed by the *Contractor*. Work on the boardwalk shall not commence on site before the *Client* accepts the design.
- Design and construction of raised path between section H to I. The path shall be raised around to not become flooded at any point and marry with the new boardwalk at point H, height between 300mm to 600mm.
- The *Contractor* is responsible for clean and wash all plant, equipment, footwear and clothes thoroughly, and take measurements to minimise the contamination and risk of accidental introduction of non-native species.
- Demobilise and reinstate the entire work area, including the site compound and all access routes used by the *Contractor* or any *Sub-Contractors*.
- Production of Health & Safety files and as built drawings.

Critical dimensions

- Width of boardwalk - 1.6 metres (minimum width for inclusive accessibility)
- Approximately every 50m there shall be a "passing place" where conditions allow. Dimensions for these areas will be minimum 6m long x 3m wide approx. and in keeping with the aesthetic of the main structure (*see site information for examples)
- Design/ construction of the passing place can be altered with a flexibility of 10-15m, to avoid cutting of tress, or where condition is not allow.
- Contractor must consult with NE where passing places are likely to encroach on sensitive habitat.
- Any alteration must be liaised and accepted by NE.
- Ramps with no more than 8% gradient will link the boardwalk to existing paths at points A, C, D, G, H
- The boardwalk shall be constructed close to ground where conditions allow, but at a height that prevents it from submerging in rising water levels (*see site information for reference pictures on ground variation). It must not reach more than 600 mm above ground at any stage of construction. Any area of concern discovered by the *Contractor* during the build must be raised to the *Client*.
- The edge of the boardwalk shall incorporate a "lip/edging" to prevent wheelchairs / buggies falling.
- Section H-I: a raised path shall be more appropriate than a boardwalk. The planned raised path route follows an existing path that currently becomes water-logged. This is due to it entering a bog mire where the water level is high and reaches the surface in some areas. The path shall be raised so as to not become flooded and will marry with the new boardwalk at point H. The height of the path shall be between 300mm to 600mm.
- Section H-I: Stone and subsoil used by the *Contractor* shall have an acidic to neutral quality to mitigate harm to local habitat. Fittleworth, or equivalent, is a suitable example.

Other factors

Boardwalk shape and "flow" of the new design must incorporate aspects the same, or similar to, that of the old design as seen in images found in the site information.

The *Contractor* shall comply with the Safety, Health, Environment and Wellbeing (SHEW) Code of Practice (CoP), Timber must be specified, sourced and purchased from legal and sustainable sources, with an audit trail from forest to end use in accordance with the Environment Agency's timber purchasing requirements.

Damage to this internationally important heath and mire must be avoided at any stage of the Contract. This includes potential damage by physical or chemical damage. Method statements must ensure there is no risk of chemical pollution to the wetland habitat.

Liaison with *Client*

The *Contractor* shall liaise with the *Client's* Reserve Manager, James Giles / Tom Hawkins, every other day throughout the project and to formally review progress every 10 working days.

The *Contractor* shall liaise with *Client's* Principal Designer prior to works starting, through until all works have been completed and signed off by the *Client*.

2. Drawings

List the drawings that apply to the contract.

Drawing Number	Revision	Title
N/A		

3. Specifications

List the specifications which apply to the contract.

Title	Date or Revision	Tick if publicly available
Disability Discrimination Act as updated by the Equality Act	2010	✓
BS 5709 – Gaps, gates & Stiles	2018	✓
Conservation of Habitats and Species Regulations 2017	2017	✓
Minimum Technical Requirements	As per the SE FCRM Operations Framework	
Natural England Sustainable Timber Procurement Policy	2009	✓
Natural England Sustainable Procurement Policy	2007	✓
Environment Agency's SHEW Code of Practice	As per the SE FCRM Operations Framework	

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

Access and vehicles

Vehicle use shall be kept to a minimum and restricted to that which is essential to implement the *works* (see site information for map).

Vehicles will not be permitted to go off of the agreed route of the existing access track, all deviation to be agreed in advance with the *Client*.

All vehicular access within the working area shall be via the agreed route of the previous path/boardwalk to avoid direct damage to sensitive habitat.

Works Compound

A temporary compound may be set up near the Truxford entrance, with additional satellite sites nearer points A, C, F, G and I. The exact locations of satellite compounds shall be determined by the *Client* and agreed with the *Client* staff after consultation.

There shall be no storage or dumping of material on site.

Any debris/pollutant shall be safeguarded by the *Contractor* and removed from site.

Prohibition of fires

A strict prohibition on lighting fires or smoking is a condition of the Contract. The construction of the boardwalk and raised paths do not require the use of flammable materials or heat sources.

No waste be disposed of by burning on site.

Prevention of contamination to surface and/or groundwater

The *Contractor* is responsible for adhering to strict controls to prevent risk from accidental fuel/oil spillage. The *Contractor* shall have suitable spill kits available on site in case of accidental spillage.

The *Contractor* is responsible for adhering to best practice to reduce risk of accidental introduction of invasive or weedy species through biosecurity controls including cleaning mud from vehicle tyres and tools before entering the site. No soil or recycled building material which might contain roots or seeds will be brought onto site to use as infill.

If any materials are cut or drilled on site, the waste material must be collected and removed from site without delay, so as not to have particles contaminating the sensitive wetland features or creating a fire risk. An exception to this may be agreed with the *Client* for small quantities of wood shavings.

The Moat Car Park is for visitor use only and shall not be used by the *Contractor*.

The works must be undertaken in accordance to "Conservation of Habitats and Species Regulations 2017"

Works may need to stop due to adverse weather.

Storage of materials and equipment is at the *Contractor's* risk.

Working times

The *Contractor* will be permitted to work between 7.30am and 6.00pm on weekdays (Monday to Friday)

5. Requirements for the programme

The *Contractor* submits their programme with the *Contractor's* Offer for acceptance. The *Contractor* shows on each programme which they submit for acceptance (in form of Gantt chart showing the critical path, proposed order and timing to undertake the works and proposed plant and labour resources) the following:

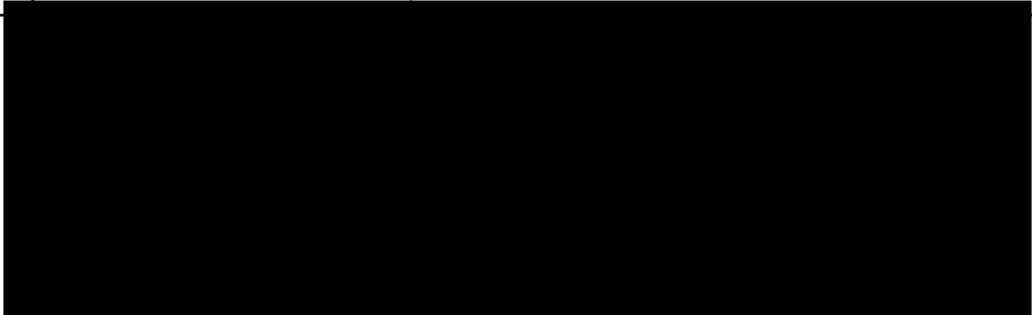
- (a) Period required for mobilisation/ planning & post contract award
- (b) starting date
- (c) Each of the activities listed within the Price List
- (d) Any key third party interfaces: lead in periods for materials and sub-contractors; time required to obtain consents/waste permits; stated constraints; *Contractor's* risks.
- (e) Completion date

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

Item	Date by which it will be provided
Emergency map	
Thursley Emergency Plan	

Site Information

Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
1.		
2.	Form of Contract:	
3.	Form of Contract:	
4.	Form of Contract:	