



NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – South East Hub

A contract between

The Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

And

Breheny Civil Engineering Ltd

For

2021/22 Medway and North Kent Reservoir Maintenance
Programme

Contract Forms

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

Contract Data

The *Client's* Contract Data

	The <i>Client</i> is	
Name	Environment Agency	
Address for communications	Environment Agency, Medway House, Powder Mill Lane, Leigh, Kent TN11 9AS	
Address for electronic communications		
The <i>works</i> are	<p>A variety of remedial works identified at Hall Place and Leigh Barrier flood storage areas. These works require:</p> <ul style="list-style-type: none"> - addressing structural damage and repainting, - replacing mechanical elements due to rust and damage, - removing one trash screen. <p>This work is likely to include dewatering activities, desilting and FRAP applications.</p>	
The <i>site</i> is	<p>Hall Place FSA</p> <p>Various locations across Hall Place Flood Storage Area, which forms part of a flood alleviation scheme, situated approximately 1km North East of Bexley. The flood storage area attenuates flows from the river Cray.</p> <p>Site locations can be found in Section C of all the scoping and access documents listed in the Site Information.</p> <p>Leigh Barrier FSA</p> <p>Various locations across Leigh Barrier Flood Storage Area, which forms part of the River Medway Flood Relief Scheme, situated about 2km west of Tonbridge in Kent and 9km downstream of the confluence of the Medway and Eden Rivers.</p> <p>Site locations can be found in Section C of all the scoping and access documents listed in the Site Information.</p>	
The <i>starting date</i> is	6 December 2021.	
The <i>completion date</i> is	30 June 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	52	weeks after Completion
The <i>defects correction period</i> is	4	weeks
The <i>assessment day</i> is	the last working day	of each month
The <i>retention</i> is	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.
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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
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The <i>Client</i> provides this insurance	None
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Insurance 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 <i>works</i> , Plant and Materials and Equipment) and for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Works	Minimum £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 <i>works</i>	Minimum £1,000,000 in respect of every claim without limit to the number of claims	12 years following Completion of the whole of the <i>works</i> or earlier termination

The <i>Adjudicator nominating body</i> is	The Institution of Civil Engineers
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The <i>tribunal</i> is	litigation in the courts
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The <i>conditions of contract</i> are the NEC4 Engineering and Construction Short Contract June 2017 and the following additional conditions	
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	<p>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.</p> <p>The <i>Contractor</i> does not proceed with the relevant work until the <i>Client</i> has accepted this design.</p>
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	<p>Delete the text of Clause 60.1(11) and replace by:</p> <p>The works are affected by any one of the following events</p> <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.
Z30.0	Material Price Volatility The Client recognises the ongoing pricing uncertainty in relation to materials for the period from 1 July 2021 to 30 June 2022 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%.

Contract Data

The *Contractor's* Contract Data

	The <i>Contractor</i> is	
Name	Breheny Civil Engineering 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		As per FCRM Framework Rates
The <i>percentage for adjustment for Equipment</i> 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 26/11/2021

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

Signed on behalf of the *Client*

Name

Position

Signature

Date 03/12/2021

Price List

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.

Item Number	Description	Unit	Quantity	Rate	Price
Hall Place FSA					
1	Design, including temporary works and area extent of the works.	Sum	1		
2	On-site mobilisation, including provision of compound and welfare facilities.	Sum	1		
3	Dewater the penstock headwall area and undertake a photographic pre-condition survey report of the headwall structure damage.	Sum	1		
4	Dewater the siphon and the siphon's stilling basin and undertake a photographic pre-condition survey report of the siphon's concrete walls damage, and any other structural damage identified.	Sum	1		
5	Replacement of identified rusted nuts and bolts used to fix the siphon's trash screen and rusted guard rail elements within the concrete embedded zone.	Sum	1		
6	Demobilisation	Sum	1		
7	Update Hall Place's H&S file.	Sum	1		
8	Additional items required to deliver the Scope (<i>Contractor</i> to specify) <ul style="list-style-type: none"> Painting of Penstock 	Sum	1		
9	On-site mobilisation, including provision of compound and welfare facilities.	Sum	1		
10	Trash screen removal beneath the bridge on Powdermill Stream.	Sum	1		
11	Demobilisation	Sum	1		
12	Update Leigh Barrier's H&S file.	Sum	1		
13	Additional items required to deliver the Scope (<i>Contractor</i> to specify) <ul style="list-style-type: none"> Vegetation Clearance 	Sum	1		
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.

Minimum Technical Requirements as per the SE FCRM Operations Framework.

677_15 SHEW code of practice.

Prices to include but not limited to all project management costs, the production of any other pre-condition survey reports not included on the scope environmental permits and welfare provisions as required.

Scope

1. Description of the works

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

The *Contractor* is to undertake a variety of works at Hall Place FSA and Leigh Barrier FSA. These works consist of:

Hall Place FSA

*** Penstock Headwall Outfall Repairs:** There is an amount of structural damage identified in the penstock outlet headwall, that discharges into the River Cray. The *Contractor* is to dewater the headwall area and undertake a photographic pre-condition survey report for the whole extent of the headwall structure including the apron between the wingwalls, to identify any structural damage such as: cracks, damaged concrete, and any other structural damage. The report must show the following minimum requirements:

- clear identification of any structural damage and its location,
- photographic evidence of the damage,
- nature of the damage (cracks, concrete spalling, etc.),
- length and depth of the damage.

The report is to be issued to the *Client* as well as the cost and the proposed methodology that will be used for repairing the damage prior to demobilising. A notification of a compensation event to carry out the repairs will be subject to instruction from the *Client*.

The *Contractor* may leave their temporary works in place for a maximum period of 2 weeks. The *Contractor* may extend this period, only after seeking and obtaining written agreement from the *Client* during this 2 week period

The *Contractor* is required to submit as part of their risk assessment and method statement (RAMS) a contingency plan to remove the temporary works in the event that the reservoir begins to impound as a consequence of heavy rainfalls, and the penstock is required to be operated to release the impounded water.

The *Contractor's* proposed methodology will include the materials and specifications used to carry out the repairs. The repairs must comply with CS 462 Repair and management of deteriorated concrete highway structures.

The penstock also requires cleaning and repainting. The specification for painting activities is as per CESWI7 - 2.6. The specification for cleaning prior to painting is required to comply with the requirements of the painting system used.

*** Syphon structure repairs:** There is an amount of structural damage identified in the syphon structure located upstream of the impounding area in the river Cray. The *Contractor* is to dewater the syphon and the syphon's stilling basin and undertake a photographic pre-condition survey report of the damage identified in the in the syphon's concrete walls, and any other structural damage within these areas. The report must show the following minimum requirements:

- clear identification of any structural damage and its location,
- photographic evidence of the damage,
- nature of the damage (cracks, concrete spalling, etc.),
- length and depth of the damage.

The report is to be issued to the *Client* as well as the cost and the methodology that will be used for repairing the damage prior to demobilising. A notification of a compensation event to carry out the repairs will be subject to instruction from the *Client*.

The *Contractor* may leave their temporary works in place for a maximum period of 2 weeks, only after seeking and obtaining written agreement from the *Client* during this 2 week period

The *Contractor's* proposed methodology will need to include the materials and specifications used to carry out the repairs. The repairs must comply with CS 462 Repair and management of deteriorated concrete highway structures.

The *Contractor* shall also as a minimum, replace with equal or better:

- all rusted nuts and bolts used to fix the siphon's trash screen.
- all rusted guard rail elements within the concrete embedded zone.

The *Contractor* is required to submit as part of their risk assessment and method statement (RAMS) a contingency plan to remove the temporary works in the event that the syphon starts operating as a consequence of the river raising in height due to heavy rainfalls.

*** Produce an H&S file** for the works carried out at Hall Place FSA under the guidance of the Principal Designer.

The works at Hall Place must be completed by 31 March 2022.

Leigh Barrier FSA

*** Powdermill Bridge Trash Screen Replacement:** The existing trash screen beneath the bridge on Powdermill Stream is damaged. The *Contractor* is to remove the existing trash.

A hydraulic analysis is assumed to not be required. At this location, overtopping flows are routed into the impounding area of the flood storage reservoir, where there are no properties at risk.

*** Produce an H&S file** for the works carried out at Hall Place FSA under the guidance of the Principal Designer.

General: Hall Place FSA and Leigh Barrier FSA

The *Contractor* is responsible for completing sections 3 to 11 of the Pre-Construction Information in accordance with LIT 12934 - Area operations risk management standard and submitting to the *Client* for acceptance prior to starting the works.

The *Contractor* is responsible for applying for and abiding by environmental permits as required. For pricing purposes, Flood Risk Activity Permit (FRAP) is assumed to be necessary for this contract. It is the *Contractor's* responsibility to apply for all FRAPs or register for FRAP exemptions. The *Contractor* should allow at least 4 weeks for obtaining the FRAP, whilst noting that the statutory response period is 8 weeks.

The *Contractor* will abide by CDM principles and liaise with the 'CDM Client' or the *Clients'* 'CDM Principal Designer' as applicable. For this project, the *Contractor* will act as 'CDM Contractor or CDM Principal Contractor', as applicable and 'CDM Designer' (where appropriate).

The *Contractor* is to complete CPP and RAMS documents for all sites. These documents must be site specific. A Construction Phase Plan (CPP) and Risk Assessment and Method Statements (RAMS) are to be sent to the *Client* at least 14 calendar days before the start of work on site.

The *Contractor* is to send the *Client* weekly updates of work completed and an updated programme monthly.

All works and clearance work are to be completed by 31st March 2022.

The *Contractor* is to abide by the following documents: Civil Engineering Standard Method of Measurement 4th edition (CESMM4) as per the Framework Price Workbook and 677_15 SHEW code of practice.

2. Drawings

List the drawings that apply to the contract.

Drawing Number	Revision	Title

3. Specifications

List the specifications which apply to the contract.

Title	Date or Revision	Tick if publicly available
CS 462 Repair and management of deteriorated concrete highway structures	Mar 2020	Yes
Minimum Technical Requirements & CDF MTRs – Change Log	May 2021	No
Good Practice in Flood Storage Reservoir Design	January 2021	No
Civil Engineering Specification for the Water Industry, 7th Edition	March 2011	Yes
SHEW CoP	May 2018	No
CESWI7	Mar 2011	Yes

4. Constraints on how the Contractor Provides the Works

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Client*.

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* in accordance with the Environment Plan within the Pre-Contract Information.

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

The *Client* will be present on the first day on site to issue a 'Permission to Work' to the *Contractor*. The *Contractor* must not start on site without this document.

The *Contractor* must not undertake any confined space entries unless agreed with the *Client*.

For NC1 and NC2 confined space entries the *Contractor* must contact the *Client* to assess the risk for the culvert of being subject to sudden changes in water levels.

For NC3 and NC4 confined space entries the *Contractor* must submit site-specific method statements and risk assessments to the *Client* for acceptance. The *Contractor* shall not commence any work on the site until the *Client*, or their representative, has accepted the site-specific method statements and risk assessments and the specific EA permit to work has been issued by the *Client*.

The works, including temporary works, may require a Flood Risk Activity Permit (FRAP). The statutory period for reply is 8 weeks. The <i>Contractor</i> is responsible for obtaining the FRAP and allowing sufficient time with their Programme to do so.
For de-watering and over pumping activities all pumps must be have an inlet mesh compliant with The Eels (England and Wales) Regulations 2009, and fish and mussel rescue plans must be included in the site-specific method statements and risk assessments.
Where the <i>Contractor</i> is to undertake desilting activities, silt sampling and waste disposal will be required. Prior to undertaking silt sampling, the <i>Contractor</i> may assume the silt is inert. If the silt testing provides a result that is not inert then prior written agreement from the <i>Client</i> is required before the silt can be removed. Additional disposal costs for contaminated silt will be dealt with by compensation events.
The <i>Contractor</i> must submit site-specific method statements and risk assessments to the <i>Client</i> for acceptance. The <i>Contractor</i> shall not commence any work on the site until the <i>Client</i> , or their representative, has accepted the site-specific method statements and risk assessments and the specific EA permit to work has been issued by the <i>Client</i> .
If a compound or storage are located on natural ground nearby, the <i>Contractor</i> must submit their location to the <i>Client</i> for acceptance prior to starting the works.
For any digging in Ant hills/long grass the <i>Contractor</i> is require doing so using a gradual phase approach. Any reptiles found will require to Stop Works and notify the <i>Client</i> for further assessment.
Working times
The <i>Contractor</i> will be permitted to work between 7.30am and 5.00pm on weekdays (Monday to Friday)

5. Requirements for the programme

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

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

The *works* at Hall Place must be completed by 31 March 2022.

The *Contractor* submits their first programme with the *Contractor's* Offer for acceptance before the *starting date*.

The *Contractor* shows on each programme submitted for acceptance (every four weeks)

- the *starting date* and Completion Date,
- planned Completion
- the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works, • the order and timing of the work of the *Client* and others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Scope,
- the dates when the *Contractor* plans to complete other work needed to allow the *Client* and others to do their work,
- provisions for float, time risk allowances, health and safety requirements and the procedures set out in the contract,
- the dates when, in order to Provide the Works in accordance with the programme, acceptances, Plant and Materials and other things to be provided by the *Client* and information from others,
- for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which will be used
- other information which the Scope requires the *Contractor* to show on a programme submitted for acceptance. A programme issued for acceptance is in the form stated in the Scope.

Within two weeks of the *Contractor* submitting a programme for acceptance, the *Client* notifies the *Contractor* of the acceptance of the programme or the reasons for not accepting it. A reason for not accepting a programme is that

- the *Contractor's* plans which it shows are not practicable,
- it does not show the information which the contract requires, it does not represent the *Contractor's* plans realistically or
- it does not comply with the Scope. If the *Client* does not notify acceptance or non-acceptance within the time allowed, the *Contractor* may notify the *Client* of that failure. If the failure continues for a further one week after the *Contractor's* notification, it is treated as acceptance by the *Client* of the programme.

The *Contractor* shows on each revised programme

- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- how the *Contractor* plans to deal with any delays and to correct notified Defects and
- any other changes which the *Contractor* proposes to make to the accepted programme

The *Contractor* submits a revised programme to the *Client* for acceptance

- within the *period for reply* after the *Client* has instructed the *Contractor* to,
- when the *Contractor* chooses to and, in any case,
- at no longer interval than the interval stated in the Contract Data from the *starting date* until Completion of the whole of the *works*

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

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

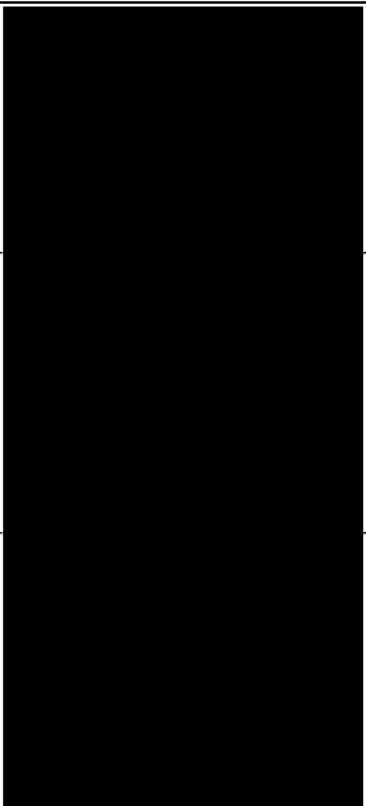
Item	Date by which it will be provided

Site Information

Pre-Construction Information. The Documentation included in the PCI v3.3 are as follows:

- Environment Plan (embedded in the PCI document v3.3).
- Scoping & Access Documents.
- Drawings
- Service Searches
- Standards and other general information
- Flood Risk Activity Permit (FRAP) requirements.
- Public Safety Risk Assessment included within the tender pack.
- Hall Place - Section 10 and Section 12 reports
- Leigh Barrier - Section 10 and Section 12 reports

Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
1.		Temporary Dams
2.		Trash Screen & Railings & Bolts
3.		Painting of the Penstock

4.		Concrete Surveys & Repairs
5.		Design Elements
6.		TOPO and GI Surveys
7.	Form of Contract:	