

# 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

ENVPark Farm Culvert

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	Scott's Float Depot, Military Road, Playden, Rye, East Sussex TN31 7PH	
Address for electronic communications		
The <i>works</i> are	Repair the defective section of culvert conveying the Pent D Stream under Park Farm Industrial Estate between inspection chambers 9-11.	
The <i>site</i> is	Park Farm Industrial Estate, Park Farm Road, Folkestone, Kent CT19 5EY TR2222737448 to TR2228037337	
The <i>starting date</i> is	6 January 2021	
The <i>completion date</i> is	31 March 2021	
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) <b>does</b> 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		% 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 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

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 <i>works</i> are affected by any one of the following events</p> <ul style="list-style-type: none"> <li>• War, civil war, rebellion revolution, insurrection, military or usurped power</li> <li>• Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-contractors</li> <li>• Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel</li> <li>• Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device</li> <li>• Natural disaster</li> <li>• Fire and explosion</li> <li>• Impact by aircraft or other device or thing dropped from them</li> </ul>

Z7.2	Additional Compensation Event COVID-19 Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, until 31 <sup>st</sup> March 2021.
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.

# Contract Data

## The Contractor's Contract Data

	The Contractor is	
Name	Breheny Civil Engineering Ltd	
Address for communications	Unit B, Endeavour Park, London Road, Addington Kent ME19 5SH	
Address for electronic communications		
The fee percentage is		%
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



Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

Position

Signature

Date 04.01.2021

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

Signed on behalf of the *Client*

Name

Position

Signature

Date 4 January 2021

# Price List

Items 1.1-1.5 and 1.8-1.11: 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 Price Column is updated only: the Unit, Quantity and rate columns being left blank.

Items 1.6 and 1.7: 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 rate is to be multiplied by the expected quantity to produce the Price. The rate will be used in the event of subsequent changes to the quantity.

Item Number	Description	Unit	Quantity	Rate	Price (£)
<b>1. Pent D culvert at Park Farm Ind. Est.</b>					
1.1	Applying for the Flood Risk Activity Permit for the Park Farm Industrial Estate project.	Sum			
1.2	Taking sample of silts from Park Farm Industrial Estate culvert for analysis. Subsequent report to be used in developing the waste plan.	Sum			
1.3	Mobilisation, including welfare provision and site security at Park Farm Industrial Estate.	Sum			
1.4	Reveal and reinstate the inspection chamber within Booker Ltd. car park/yard.	Sum			
1.5	Repair the culvert at Park Farm Industrial Estate between inspection chambers 9 -11 to remediate the damage recorded within the CCTV survey reports.	Sum			
1.6	Removal for off-site disposal of any silts or debris within the section of culvert to be repaired at Park Farm Industrial Estate, where the <i>Contractor</i> deems such removal necessary in delivering the project.	Tonne	10		
1.7	Remove waste from the culvert in addition to above, with the Client's approval.	Tonne	1		
1.8	Providing the <i>Client</i> with a CCTV survey report of the repaired sections at Park Farm Industrial Estate.	Sum			
1.9	Demobilisation at Park Farm Industrial Estate.	Sum			
1.10	Pre-start and post-delivery photographic survey of the aboveground areas relating the Park Farm Industrial Estate site.	Sum			
1.11	<i>Contractor to specify</i>	Sum			
<b>The total of the Prices</b>					

The method and rules used to compile the Price List are

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

677\_15 SHEW Code of Practice



# Scope

## 1. Description of the works

### Pent D Stream culvert at Park Farm Industrial Estate in Folkestone

The outcome of the works is to repair the culvert to remediate the damage recorded within the CCTV survey reports between inspection chambers 9 – 11 (some 130m overall). The repair must extend the serviceable life of the damaged section of culvert to the year 2040. The repair must accommodate all connections to the section of culvert. In delivering the works, the *Contractor* shall:

1. Undertake an inspection of the culvert to inform the design.
2. Design suitable repairs. All designs must be submitted to the *Client* for approval before procuring materials or applying for the FRAP.
3. Take a sample of deposits within the culvert for analysis and reporting. Results to inform the waste plan.
4. Apply for the Flood Risk Activity Permit (FRAP), including payment of required fees to the Environment Agency. Application to include temporary works as well as the repair. No other permits are required.
5. Produce a pre-start photographic condition survey of the aboveground elements of the site, to be shared with the *Client* before works commence.
6. Undertake site mobilisation, including welfare provision and site security.
7. Excavate the inspection chamber within Booker Ltd. car park/yard (this chamber has been tarmacked over). Works to include the making good the car park surface to accord with the current finished surface and a highways grade inspection chamber lid.
8. Undertake such preparatory works, such as jetting/cleaning the culvert and debris removal, as the design of the repair requires.
9. Dispose of waste in accordance with the Waste Plan.
10. Repair the culvert to remediate the damage recorded within the CCTV survey reports between inspection chambers 9 - 11. The repair must extend the serviceable life of the damaged section of culvert to the year 2040. The repair must accommodate all connections to the section of culvert subject to the repair.
11. Register for Flood Alerts and respond to such alerts by ensuring that the full capacity of the culvert is not compromised (by over-pumping if necessary).
12. Undertake demobilisation, including making good any damage caused by the contractor in delivering the works to the property of the landowners.
13. Produce a post-delivery photographic condition survey of the above-ground elements of the site, to be shared with the *Client*.
14. Produce an H&S file under the guidance of the Principal Designer.

In delivering the works, the *Contractor* shall:

- Liaise with the *Client* and the Principal Designer on matters relating to the delivery of the project, compliance with the CDM regulations, flood risk management, regulatory compliance, ecological stewardship and the programme.
- Provide all pumping facilities as required to deliver the project. This will include over pumping to maintain conveyance through the site. Discharge through surface water connections must be maintained throughout.
- Register with the Environment Agency's flood warning systems for flood alerts and flood warnings, responding to such alerts by ensuring that conveyance is maintained.
- Fulfil the duties of both Principal Contractor and Designer in terms of the CDM 2015 regulations. Duties will include, but are not limited to, producing the buildability statement, designer's risk assessment, temporary works schedule, completing the RAG list, waste plan and liaising with the *Client* and Principal Designer.
- Make arrangements with the riparian owners/businesses within the site for the placement of compound(s) and the facility of deliveries to site.
- Manage the fall hazard of lifted inspection chamber covers, as it applies to the *Contractor's* operatives and the public.

## 2. Drawings

Drawing Number	Revision	Title

## 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
677_15 SHEW Code of Practice	May 2018	No

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

The *Client* considers the installation of plastic liners to be satisfactory method of repair, as reduced friction compensates for the modest reduction in diameter. However, the *Contractor* may suggest alternative methods of repair if they can evidence that culvert capacity will not be significantly reduced.

Should the *Contractor* deem culvert jetting/cleaning is required to facilitate the repairs, any waste material must be removed under a waste plan approved by the *Client*. The *Contractor* may assume that the deposits are non-hazardous when tendering. Should the Analysis report suggest otherwise, and disposal costs are greater than assumed at tender stage, the additional costs will be accepted by the *Client* as a CE.

The Park Farm Industrial Estate site is within the curtilage of active businesses, with public access

Works, including temporary works at both sites will require a Flood Risk Activity Permit.

The *Contractor* is to prepare, for the *Client's* acceptance, the Construction Phase Plan (CPP) and RAMS prior to starting the works at either site.

The *Contractor* must include the requirements of the Environment Plan (included within the PCI) within the CPP and RAMS for each site.

The *Client* has no flow data for the culvert.

Works must be delivered in line with the Government's Covid 19 restrictions and recommended procedures.

Should the *Contractor* need to enter a confined space, the confined space entry RAMS must be approved by an Environment Agency specialist before such works may proceed.

There are various surface water connections to the culverts. The designs will be shared with Southern Water for comment before works commence. The *Contractor* must manage flows from the connections at all stages of project delivery, and ensure that the final repair does not compromise the function of the connections.

The *Client* does not possess asbestos surveys of the culverts.

### Working times

Out-of-hours working may be required at Park Farm Industrial Estate

## 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:

- (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
The <i>Client</i> will negotiate access with the landowners and serve official Notices of Entry, including in relation to housing a welfare unit in [REDACTED]. However, the <i>Contractor</i> will negotiate directly with the businesses/landowners on site over the provision of areas for compound(s) and the facility of deliveries to site.	Before contract award.

# Site Information

Please refer to the Pre-contract Information (PCI).

Pent Stream Pre-Feasibility Study. Draft Report. Jacobs June 2009

Survey and Condition Assessment Report. Onsite 24/11/2015

Survey and Condition Assessment Report. Survey Design Services 23/10/2018

CCTV & BELOW GROUND TRACE OF PENT STREAM. Survey Design Services November 2018

Park Farm - Surface investigations for the Pent Stream. East Kent Engineering Partnership June 2018

Location of Culverted Stream Plan. CCC/EA/PS01. East Kent Engineering Partnership June 2018

## Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
1.	<div></div> <p>Form of Contract: NEC4 Short Subcontract</p>	CCTV, jetting and lining works
2.	<p>Form of Contract:</p>	
3.	<p>Form of Contract:</p>	
4.	<p>Form of Contract:</p>	