

# 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**

**2022 – 2023 Kent, South London and East Sussex Culvert  
Inspection 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	Horizon House, Deanery Road, Bristol. BS1 5AH	
Address for electronic communications	<a href="https://defra.bravosolution.co.uk">https://defra.bravosolution.co.uk</a>	
The <i>works</i> are	To survey 26 culverts within the Kent South London and East Sussex area and report upon condition using the Manual of Sewer Condition Classification reporting protocol.	
The <i>site</i> is	Various locations in the Kent, South London and East Sussex area	
The <i>starting date</i> is	25 November 2022	
The <i>completion date</i> is	31 <sup>st</sup> March 2023	
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 *Adjudicator*. The referring Party pays the administrative charge made by the Institution. The person appointed is also *Adjudicator* for later disputes.

# Contract Data

## The *Client's* Contract Data

The interest rate on late payment is		% 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 £...0..... 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	
<b>Only enter details here if additional conditions are required.</b>	
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> </ul>

	• 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.						
Z12.0	Packaging						
Z12.1	For contracts containing packages of projects the <i>Client's</i> Contract Data, Scope and Site Information particular to an individual project is contained within its Site Specific Pack						
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 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  a) <b>The Latest Index (L)</b> is the latest index as issued by the <i>Client</i> . The L, which is at the discretion of the <i>Client</i> , is based upon the issued consumer price index ((CPI) based upon the 12-month rate) before the date of assessment of an amount due.  b) <b>The Price Volatility Provision (PVP)</b> at each date of assessment of an amount due is the total of the Material Factor as defined below multiplied by L for the index linked to it.  c) <b>Material Factor (MF)</b> 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 <i>Client</i> shall pay the PVP. PVP is calculated as:  Assessment x MF x L = PVP  If an index is changed after it has been used in calculating a PVP, the calculation is not changed and remains based upon the rate issued by the <i>Client</i> . The PVP calculated at the last assessment before 30 June 2023 is used for calculating the price increase after that date.						
Z30.3	Price Increase  Each time the amount due is assessed, an amount for price increase is added to the total of the Prices which is the change in the Price for Work Done to Date for the materials component only (and the corresponding proportion) since the last assessment of the amount due multiplied PVP for the date of the current assessment.						
Z30.4	Compensation Events  The <i>Contractor</i> shall submit a compensation event for the PVP on a monthly basis (where applicable) capturing Defined Cost only for the PWDD increase in month. Forecasted costs should only be considered for the June 2023 period compensation event. <table><tr><td>Assessment Date</td><td>Defined Cost?</td><td>Forecasted Cost?</td></tr><tr><td>31<sup>st</sup> Jul 21</td><td>In period costs only</td><td>No</td></tr></table>	Assessment Date	Defined Cost?	Forecasted Cost?	31 <sup>st</sup> Jul 21	In period costs only	No
Assessment Date	Defined Cost?	Forecasted Cost?					
31 <sup>st</sup> Jul 21	In period costs only	No					

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

The Defined Cost for compensation events is assessed using

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

# Contract Data

## The Contractor's Contract Data

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

# 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	£247,794.00
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	<b>Enter the total of the Prices from the Price List.</b>
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Signed on behalf of the *Contractor*

Name	
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Position	
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Signature	
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Date	30 <sup>th</sup> November 2022
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The *Client* accepts the *Contractor's* Offer to Provide the Works

Signed on behalf of the *Client*

Name	
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Position	
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Signature	
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Date	30/11/22
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# 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.

Please see spreadsheet 'KSLES CCTV surveys 2022-2023 Pricing Template'

Item Number	Description	Unit	Quantity	Rate	Price
The total of the Prices				£247,794.00	

The method and rules used to compile the Price List are

KSLES CCTV surveys 2022-2023 Pricing Template

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

Lot 1A Appendix A1a: Specification Supplementary clauses for culvert works.

677\_15 SHEW code of practice.

Sample CCTV Inspection Report.

# Scope

The Scope should be a complete and precise statement of the *Client's* requirements. If it is incomplete or imprecise there is a risk that the *Contractor* will interpret it differently from the *Client's* intention.

## 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* shall survey the culverts contained within the KSLES CCTV surveys 2022-2023 Pricing Template and PCI \_ENV PLAN Site Specific 2022\_2023. The reports must follow the Manual of Sewer Condition Classification reporting protocol. Each report to contain an Executive Summary for the *Clients* convenience. The *Client* has included a sample report for reference within the tender pack.

The *Contractor* shall attend pre-start meetings with the Client at each site, such visits will be programmed to take place simultaneously after contract award but before works commence.

The *Contractor* shall provide such traffic management, temporary works and over pumping as is required to facilitate a full inspection of each culvert, including or required assents.

The *Contractor* shall clean and dewater each culvert as required to facilitate a full inspection of each culvert.

The *Contractor* shall classify and dispose of waste materials in line with the WM3 Waste Classification technical guidance.

The *Contractor* shall develop a Waste Management Plan for the Clients approval before works commence.

The *Contractor* shall assume the role as Designer and Principal Contractor under the CDM Regulations 2015.

As Designer the *Contractor* shall produce a Buildability Statement, Designers Risk Analysis and RAG List to inform the risk management process.

As Designer the *Contractor* shall produce temporary works designs as required to facilitate the inspections.

The *Contractor* shall liaise with Principal Designer.

The *Contractor*, as Principal Contractor shall provide a CPP to both the *Client* and Principal Designer at least 30 days before site works commence.

The *Contractor* shall supervise their appointed sub-contractors on site at all times. The Supervisor shall be a Confined Space Management trained individual.

The *Contractor* shall pass their contractors RAMS onto both the *Client* and the Principal Designer for review, 10 working days before proposed commencement on site.

The *Contractor* shall audit their sub-contractor's RAMS to ensure that all site hazards within the PCI have been addressed. This includes managing hazards included within the Environment Plan section of the PCI. RAMS must be site specific.

The *Contractor* must provide details of the fish friendly pumps used to the *Client* at least 10 days before works commence. Details shall include manufacturer and model number.

The *Contractor* shall take samples of silt within culverts, where such silt would hamper the inspection. The samples shall be analysed, and a report produced to inform the Waste Plan.

The *Contractor* shall deem the category of Confined Space Entry using The Classification & Management of Confined Space Entries.

The *Contractor* shall provide the *Client* with an accurate plan of the culvert, using tracing technologies as required.

The *Contractor* shall provide the *Client* with level data for each culvert inlet and outlet inverts. Such data shall be accurate to +/- 50mm.

The *Contractor* shall provide the final reports within 6 weeks of the inspection, in an electronic format and a hardcopy including CD.

The *Contractor* shall advise the *Client* where Notice of Intended Entry are required at least 30 days before works commence.

The *Contractor* shall provide the Client with both pre-start and post works condition surveys.

The *Contractor* shall obtain Flood Risk Activity Permits as required. Costs associated with such applications will be managed under a Compensation Event (CE).

Where silt removal is required to facilitate the inspection, the *Contractor* shall price for 1 tonne. Should the quantity of silt exceed 1 tonne it will be priced according to the rate contained within the Price List.

The *Contractor* shall programme inspections of culverts under tidal influence with due consideration to astronomical tide times.

The *Contractor* shall appoint a qualified ecologist to carry out ecology surveys as required. Costs associated with such applications will be managed under a Compensation Event (CE).

If a given inspection is abandoned or deferred due to reasons beyond the *Contractor's* control, the *Client* will consider appropriate compensation in accordance with the *Contractor's* Schedule of Rates.

## 2. Drawings

**List the drawings that apply to the contract.**

Drawing Number	Revision	Title
Folkestone and Hythe Flood Alleviation Scheme as built drawings (39-page document)	As Constructed Drawings Sept 1998 – May 1999	Folkestone and Hythe Flood Alleviation Scheme As Constructed Drawings Sept 1998 – May 1999

### 3. Specifications

List the specifications which apply to the contract.

Title	Date or Revision	Tick if publicly available
Environment Agency Blockage Management Guide (Gov.uk)	12/2019	Yes
Manual of Sewer Condition Classification	5 <sup>th</sup> Edition	Yes
Lot 1A Appendix A1a: Specification Supplementary clauses for culvert works	18/04/2019	No
SHEW CoP	June 2022	No
CCTV Inspection Report - Example of acceptable reporting format: Site - Morehall Rec. Ground and Cherry Garden Ave. Folkestone	Dec 2014 and March 2015	No
Civil Engineering Specification for the Water Industry, 7th Edition	March 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* 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 *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*.

All confined space entries must be assessed by the *Contractor*. The *Contractor* must undertake all confined entry in compliance with appropriate Confined Space safe system of work for the National Category of Confined Space (NC1 to NC4). The *Contractor* will be operating under their own confined space permits for all man-entry work.

Flows through culverts are subject to change depending on prevailing rainfall.

When inspecting culverts subject to tidal influence works should be planned for delivery during the low tide cycle.

In some instances, where de-watering is required, a Flood Risk Activity Permit maybe required.

Some culverts are best inspected in the wintertime when levels on Romney Marsh are lower under our winter levels management regime.

Culverts may contain fish and eels. Eels are protected under law.

#### 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

**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 *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 and 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 – the contract must be finalised before 31 March 2023 and all reports provided to the *Client*.
- (f) The programme must reflect the need to deliver works in the wintertime as stipulated within the PCI.


The programme shall be reviewed and updated where necessary by the *Client* and *Contractor* at 4 weekly intervals.

## 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
The <i>Client</i> will serve Notice of Intended Entry upon landowners as required	7 days before works commence.
The <i>Client</i> will provide active monitoring.	At pre-start visit and onwards.
The <i>Client</i> will obtain all necessary assents from Natural England.	7 days before works commence.
The <i>Client</i> will maintain vegetation at the culvert inlet and outlet to facilitate the works as identified within the PCI.	

## Site Information

 Link expires after 30 days  
See above link for following documents:

- As Built Drawings
- CCTV Inspection Report -Example of acceptable reporting format
- OIs and Guidance Documents
- PCI
- Previous CCTV Surveys
- SHEW CoP and Lot 1A Appendix A1a
- Site Location Plans

Pre-Contract Information (PCI) including the Environment Plan – Word and Excel components.

Site Location/Hazard Plans

Previous Culvert Condition Reports as per the PCI.

FRAP Guidance; 'Applying for a Bespoke Flood Risk Activity Permit from the Environment Agency'

## Proposed sub-contractors

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