

This document is executed as a deed and is delivered and takes effect at
the date written at the beginning of it

25/02/2022



Environment
Agency

| | |
|---------------------------|--|
| Framework: | Collaborative Delivery Framework |
| Supplier: | BAM Nuttall Ltd |
| Company Number: | 00305189 |
| Geographical Area: | East |
| Project Name: | HNL MEICA Appraisal Package Stanstead Radial Gate |
| Project Number: | |
| Contract Type: | Engineering Construction Contract |
| Option: | Option C |
| Contract Number: | 35238 |
| Stage: | Construction |

| Revision | Status | Originator | Reviewer | Date |
|----------|--------|------------|----------|------|
|----------|--------|------------|----------|------|

ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework
CONTRACT DATA

Project Name HNL MERCA Appraisal Package Stanstead Radial Gate

Project Number

This contract is made on 25 February 2022 between the Client and the Contractor

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 10th day of April 2019 between the Client and the Contractor in relation to the Collaborative Delivery Framework. The entire agreement and the following Schedules are incorporated into this Contract by reference
- Schedules 1 to 21 in (or view of the Framework) schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference
Stanstead Scope - Construction works V4 - 11Feb22 - Dated 11 Feb 22

Part One - Data provided by the Client
Statements given in all Contracts

1 General

The conditions of contract are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and the secondary Options of the NEC4 Engineering and Construction Contract June 2017.

Main Option Option C Option for resolving and avoiding disputes W2

Secondary Options

- X2: Changes in the law
- X5: Sectional Completion
- X7: Delay damages
- X9: Transfer of rights
- X10: Information modelling
- X11: Termination by the Client
- X15: Contractor's design
- X18: Limitation of liability
- X20: Key Performance Indicators
- Y(UK)1: Project Bank Account
- Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996
- Y(UK)3: The Contracts (Rights of Third Parties) Act 1999
- Z: Additional conditions of contract

The works are

Fabrication and testing of the Gates and other MBE elements

The Client is Luis Rico

Address for communications



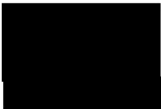
Address for electronic communications



The Project Manager is

Paul Toward

Address for communications



Address for electronic communications

The Supervisor is

Greg Bowles

Address for communications



Address for electronic communications



The Scope is in

Stanstead Scope - Construction works V4 - 11Feb22 - Dated 11 February 22

The Site Information is in

Stanstead Hardhead PCI_P03 dated 29 January 22

The boundaries of the site are

Stanstead Hardhead PCI_P03 dated 29 February 22

The language of the contract is English

The law of the contract is

the law of England and Wales, subject to the jurisdiction of the courts of England and Wales

The period for reply is

7 weeks

The following matters will be included in the Early Warning Register

| | | |
|--|---------------------------------|--|
| Early warning meetings are to be held at intervals no longer than | | 2 weeks |
| 2 The Contractor's main responsibilities | | |
| The key dates and conditions to be met are: 'none set' 'none set' 'none set' | | key date 'none set' 'none set' 'none set' |
| The Contractor prepares forecasts of the total Defined Cost for the whole of the works at intervals no longer than | | 4 weeks |
| 3 Time | | |
| The starting date is | | 25 February 2022 |
| The access dates are part of the Site Access Programme | | date 25 February 2022 |
| The Contractor submits revised programmes at intervals no longer than | | 4 weeks |
| The Completion Date for the whole of the works is | | 30 September 2022 |
| The Client is not wishing to take over the works before the Completion Date | | |
| The period after the Contract Date within which the Contractor is to submit a first programme for acceptance is | | 4 weeks |
| 4 Quality management | | |
| The period after the Contract Date within which the Contractor is to submit a quality plan is | | 4 weeks |
| The period between Completion of the whole of the works and the defects date is | | 52 weeks |
| The defect correction period is: - The defect correction period for - The defect correction period for | | 2 weeks except that if if |
| 5 Payment | | |
| The currency of the contract is the £ sterling | | |
| The assessment interval is | | Monthly |
| The Client set total of the Prices is | | |
| The interest rate is base rate of the | | 2.00% per annum (not less than 2) above the Bank of England |
| The Contractor's share percentages and the share ranges are: | | |
| less than from greater than | share range 00 % to 120 % | Contractor's share percentage 0 % as set out in Schedule 17 as set out in Schedule 17 |
| 6 Compensation events | | |
| The place where weather is to be recorded is | | High Beach (Location: 51.663, 0.043, Altitude: 110m above mean sea level, Station type: Automatic) |
| The weather measurements to be recorded for each calendar month are: - the cumulative rainfall (mm) - the number of days with rainfall more than 5mm - the number of days with minimum air temperature less than 0 degrees Celsius - the number of days with snow lying at | | 09:00 hours GMT |
| and these measurements: | | |
| 1. 2. 3. 4. 5. | | |
| The weather measurements are supplied by | | Met Office |
| The weather data are the records of past weather measurement for each calendar month which were recorded at | | High Beach (Location: 51.663, 0.043, Altitude: 110m above mean sea level, Station type: Automatic) |
| and which are available from | | |
| Assumed values for the ten year weather return weather data for each weather measurement for each calendar month are: | | |
| Jan Feb Mar Apr May | Jul Aug Sep Oct Nov | |

| | |
|-----|-----|
| Jul | Dec |
|-----|-----|

These are additional compensation events

1

The Contractor is required (whether as a result of a Project Manager's instruction or otherwise) to:
i) stop the works, or any part of the works;
ii) alter or adopt a new method of working other than:
a, that set out in the accepted method statement; and/ or
b, due to Scope restraints; and/or
c) carry out additional works.

2

'not used'

3

'not used'

4

'not used'

5

'not used'

8 Liabilities and insurance

These are additional Client's liabilities

1

'not used'

2

'not used'

3

'not used'

the minimum amount of cover for insurance against loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) arising from or in connection with the Contractor Providing the Works for any one event is

£15,000,000

The minimum amount of cover for insurance against death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with the contract for any one event is

not less than the amount required by law

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

N/A

Additional liabilities

Claims and proceedings from any of the owners of the adjacent buildings and compensation and costs payable to the same which arise from the Contractor carrying out the works, including undertaking the dewatering of the channel, PROVIDED the Contractor has done so in accordance with the Scope and the accepted method statement. For the avoidance of doubt

i) Negligence or accidental damage caused by the Contractor is not included in this additional Client liability; and
ii) Any direct consequential losses which the Contractor incurs as a result of any direct claims and/or direct proceedings from, or has paid or will pay to, the owners of the Adjacent Buildings, as a consequence of a Client's liability, shall be treated as a cost payable under clause 82.2 by the Client

Resolving and avoiding disputes

The Tribunal is litigation in the courts

The Senior Representatives of the Client are

Address for communications

Address for electronic communications

Name

Address for communications

Address for electronic communications

The Adjudicator is

Address for communications

Address for electronic communications

The Adjudicator nominating body is

Dhan Francis

Environment Agency
Heron House
Osmeary Road
Bristol
BS1 5AH

br an francis@environment-agency.gov.uk

To be confirmed

To be confirmed

To be confirmed

The Institution of Civil Engineers

Z Clause

Z1 Correctness of Site Information and other documents
Z1.1 Site information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the Client, but is not warranted correct. Clause 60.3 does not apply to such Site information and the Contractor is responsible for checking the correctness of any such Site information they rely on for the purpose of pricing for or providing the works.
Z1.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the Client but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the Contractor is responsible for checking the correctness of any such information they rely on for the purpose of pricing for, or providing the works.

Z 2H: Water levels: Contractor's risk
Clause 60.1 (12) second bullet point is amended to: "are not weather conditions or floods and"

Z 3 Prevention: No change to prices
Delete first sentence of clause 62.2 and replace with:
"Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the Contractor. Quotations for the compensation event described in 60.1(19) comprise any delay to the Completion Date and Key Dates assessed by the Contractor.
Delete 'the' At start of clause 63.1 and replace with:
"For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the ..."

Z 4 The Schedule of Cost Components
The Schedule of Cost Components is as detailed in the Framework Schedule 9

Z 6 Payment for Work

Delete existing clause 11.2 (31) and replace with:

"11.2 (31) The Price for Work Done to Date is the total Defined Cost when the Project Manager forecasts will have been paid by the Contractor before the next assessment date plus the Fee, not exceeding the forecast provided under clause 20.4 and accepted by the Client."

Z7 Contractor's share

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

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

Z10 Payments to subcontractors, sub consultants and

Subcontractors

The Contractor will use the NEC4 contract on all subcontracts for works. Payment to subcontractors will be 28 days from the assessment date.

If the Contractor does not achieve payments within these time scales then the Client reserves the right to delay payments to the Contractor in respect of subcontracted work, services and supplies. Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the Contractor's opportunities to work on framework contracts

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

The design consultant employed by the Contractor is required to fulfil the obligations of the warrantor under the primary contract for design works that they complete. This includes:

Transfer of rights clause 211

Professional indemnity insurance cover to same cover as that specified for the Contractor

211.1 The Client (the third party) may in its own right enforce the provisions of the clause, subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 and the following provisions:

211.1.1 The parties may not rescind or vary any provision(s) of this agreement, including this clause, at any time without the consent of the third party; and

211.1.2 each third party's rights against party A under this agreement shall be subject to the same conditions, limitations and exclusions as apply to party B's rights against party A under this agreement.

211.2 Except as provided in clause 211.1.1, this agreement does not create any right enforceable by any person who is not a party to it (Other Party) under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a third party which exists or is available apart from that Act

Z16 Disallowed Costs

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

- was incurred due to a breach of safety requirements, or due to additional work to comply with safety requirements;
- was incurred as a result of the client issuing a Yellow or Red Card to prepare a Performance Improvement Plan
- was incurred as a result of rectifying a non compliance with the Framework Agreement and/or any call off contracts following an audit

Z19 Linked contracts

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

Z21 Requirement for Invoice

Add the following sentence to the end of clause 51.1:

The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the Project Manager's certificate.

Delete existing clause 51.2:

51.2 Each certified payment is made by the later of

• one week after the paying Party receives an invoice from the other Party and

• three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated

If a certified payment is late, or if a payment is late because the Project Manager has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made

Z22 Resolving Disputes

Delete W2.1

Z23 Risks and Insurance

Replace clause 84.1 with the following

Insurance certificates are to be submitted to the Client on an annual basis.

Z30 Material Price Volatility

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

Z30.1 Defined terms

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

b) The Price Volatility Provision (PVP) at each date of assessment of an amount due is the total of the Material Index as defined below multiplied by L for the index linked to it.

c) Material Factor (MF) 40% is used, based on a general average material proportion across our programme. The volatility provision is only associated with material element. No volatility provision is applicable to any other component of costs

Z30.2 Price Volatility Provision

Through a Compensation Event the Client shall pay the PVP. PVP is calculated as:

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

If an index is changed after it has been used in calculating a PVP, the calculation is not changed and remains based upon the rate issued by the Client. The PVP calculated at the last assessment before 30 June 2022 is used for calculating the price increase after that date

Z30.3 Price Increase

Each time the amount due is assessed, an amount for price increase is added to the total of the Prices which is the change in the Price for Work Done to Date for the materials component only (and the corresponding proportion) since the last assessment of the amount due multiplied PVP for the date of the current assessment.

Z30.4 Compensation Events

The Contractor shall submit a compensation event for the PVP on a monthly basis (where applicable) capturing Defined Cost only for the PWDD increase in month. Forecasted costs should only be considered for the June 2022 period (compensation event).

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

Secondary Options**OPTION X2: Changes in the law**

The *law of the project* is the law of England and Wales, subject to the jurisdiction of the courts of England and Wales

OPTION X5: Sectional Completion

| The <i>completion date</i> for each <i>section</i> of the <i>works</i> is | | | <i>completion date</i> |
|---|------------------------------------|--|------------------------|
| <i>section</i> | <i>description</i> | | |
| 1 | Phase 1 - Fabrication of the Gates | | 31 May 2022 |
| 2 | Whole of the works (Storage) | | 30 September 2022 |

X7 plus X5

| Delay damages for each <i>section</i> of the <i>works</i> are | | | <i>amount per day</i> |
|---|------------------------------------|--|-----------------------|
| <i>section</i> | <i>description</i> | | |
| 1 | Phase 1 - Fabrication of the Gates | | |
| 2 | Whole of the works (Storage) | | |

OPTION X10: Information modelling

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

2 weeks

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

£5,000,000

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

12 years

OPTION X15: The Contractor's design

The *period for retention* following Completion of the whole of the *works* or earlier termination is

12 Years

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim

£5,000,000.00

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

12 Years

OPTION X18: Limitation of liability

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

£5,000,000

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

£5,000,000

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

£5,000,000

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

The *end of liability date is* 12 years after the *Completion of the whole of the works* £5,000,000.00

OPTION X20: Key Performance Indicators (not used with Option X12)

The *incentive schedule* for Key Performance Indicators is in Schedule 17.

A report of performance against each Key Performance Indicator is provided at intervals of 3 months.

Y(UK)1:Project Bank Account

The Contractor is to pay any bank charges made and to be paid any interest paid by the *project bank*

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

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

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

term *beneficiary*

term *beneficiary*

The provisions of
Y(UK)1

Part Two - Data provided by the Contractor

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

1 General

The Contractor is

Name

Address for communications

Address for electronic communications

The fee percentage is

The working areas are

The key persons are

Name (1)
Job
Responsibilities

Qualifications
Experience

The key persons are

Name (2)
Job
Responsibilities
Qualifications
Experience

The key persons are

Name (3)
Job
Responsibilities
Qualifications
Experience

The key persons are

Name (4)
Job
Responsibilities
Qualifications
Experience

The following matters will be included in the Early Warning Register

2 The Contractor's main responsibilities

The Scope provided by the Contractor for its design is in

3 Time

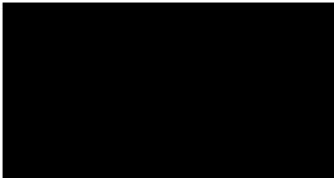
The programme identified in the Contract Data is

5 Payment

The activity schedule is

Resolving and avoiding disputes

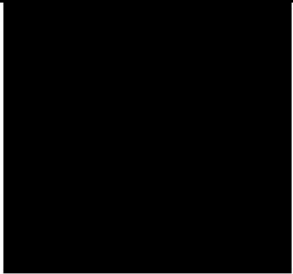
The Senior Representatives of the Contractor are



Address for electronic communications



Name (2)
Address for



Address for

X10: Information Modelling

The information execution plan identified in the Contract Data is

Y(UK)1: Project Bank Account

The project bank is

named suppliers are

Contract Execution

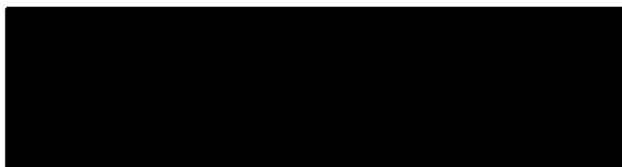
Client execution Andrew Pheasant (Senior Lawyer (Team Leader))

Signed as a Deed by [PRINT NAME] for and on behalf of the Environment Agency



Role Senior Lawyer (Team Leader)

In the presence of:

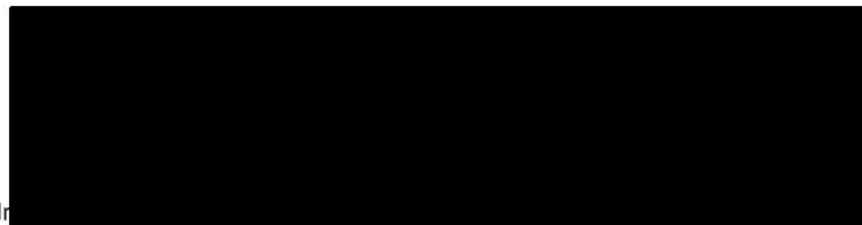


Role Costs Manager



Contractor execution

Signed as a Deed by [PRINT NAME] Ian Gerald Phillipot for and on behalf of BAM Nuttall Ltd



In

