

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – Central Hub

A contract between

The Environment Agency
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

And

Breheny Civil Engineering Ltd

For

Regular maintenance of the Hydrometric Assets in the Anglian Region

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	[REDACTED]	
Address for electronic communications	[REDACTED] [REDACTED] [REDACTED]	
The <i>works</i> are	<ol style="list-style-type: none"> 1. Monthly maintenance of hydrometric flow gauging stations from March to October 2. Bi-monthly maintenance of hydrometric level gauging stations from March to October in the Great Ouse Catchment. Twice yearly maintenance of hydrometric level gauging stations between April to October in the Essex, Norfolk and Suffolk counties. 3. Winter well flushing and Gauging Strip Clearance in the Essex, Norfolk and Suffolk counties only 4. To carry out any minor repair works to the sites and notify if any other larger site defects are found 5. Maintenance of fish and eel passes at the hydrometric structures 	
The <i>site</i> is	<p>and</p> <ul style="list-style-type: none"> • 83 sites across the Great Ouse catchment • 71 sites across Norfolk, Suffolk & Essex Counties as detailed in work units 1-4 within Routine Maintenance Schedule • 13 Level only sites across Norfolk, Suffolk & Essex 2 x p.a. as detailed within the document "NES River Level Maintenance Sites" • 59 Well Flushings across Norfolk, Suffolk & Essex as detailed within work unit 4 in the Routine Maintenance Schedule • 4 Eel pass cleaning as detailed within "NES River Level Maintenance Sites" 	
The <i>starting date</i> is	1 st April 2022	
The <i>completion date</i> is	31 st 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) 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	2	% per complete week of delay.
Insert a rate only if a rate less than 0.5% per week of delay has been agreed.		
For any one event, the liability of the <i>Contractor</i> to the <i>Client</i> for loss of or damage to the <i>Client's</i> property is limited to	£100k	
The <i>Client</i> provides this insurance	None	
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 Nil in respect of every claim without limit to the number of claims	12 years following Completion of the whole of the works or earlier termination
The <i>Adjudicator nominating body</i> is		The Institution of Civil Engineers	
The <i>tribunal</i> is		litigation in the courts	
The <i>conditions of contract</i> are the NEC4 Engineering and Construction Short Contract June 2017 and the following additional conditions			
Only enter details here if additional conditions are required.			
Z1.0	Sub-contracting		
Z1.1	The <i>Contractor</i> submits the name of each proposed subcontractor to the <i>Client</i> for acceptance. A reason for not accepting the subcontractor is that their appointment will not allow the <i>Contractor</i> to Provide the Works. The <i>Contractor</i> does not appoint a proposed subcontractor until the <i>Client</i> has accepted them.		
Z1.2	Payment to subcontractors and suppliers will be no more than 30 days from receipt of invoice.		
Z2.0	Environment Agency as a regulatory authority		
Z2.1	The Environment Agency's position as a regulatory authority and as <i>Client</i> under the contract is separate and distinct. Actions taken in one capacity are deemed not to be taken in the other.		
Z2.2	Where statutory consents must be obtained from the Environment Agency in its capacity as a regulatory authority, the <i>Contractor</i> is responsible for obtaining these and paying fees. The <i>Client's</i> acceptance of a tender and the <i>Client's</i> instruction or variation of the works does not constitute statutory approval or consent.		
Z2.3	An action by the Environment Agency as regulatory authority is not in its capacity as <i>Client</i> and is not a compensation event.		
Z3.0	Confidentiality & Publicity		
Z3.1	The <i>Contractor</i> may publicise the works only with the <i>Client's</i> written agreement		
Z4.0	Correctness of Site Information		
Z4.1	Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the <i>Client</i> but is not warranted correct. The <i>Contractor</i> checks the correctness of any such Site Information they rely on for the purpose of Providing the Works.		
Z5.0	The Contracts (Rights of Third Parties) Act 1999		
Z5.1	For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this contract confers or purports to confer on a third party any benefit or any right to enforce a term of this contract.		
Z6.0	Design		
Z6.1	Where design is undertaken, it is the obligation of the <i>Contractor</i> to ensure the use of skill and care normally used by professionals providing similar design services.		
Z6.2	The <i>Contractor</i> designs the parts of the works which the Scope states they are to design.		
Z6.3	The <i>Contractor</i> submits the particulars of their design as the Scope requires to the <i>Client</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that it does not comply with either the Scope or the applicable law. The <i>Contractor</i> does not proceed with the relevant work until the <i>Client</i> has accepted this design		
Z6.4	The <i>Contractor</i> may submit their design for acceptance in parts if the design of each part can be assessed fully.		
Z7.0	Change to Compensation Events		
Z7.1	Delete the text of Clause 60.1(11) and replace by: The <i>works</i> are affected by any one of the following events <ul style="list-style-type: none">• War, civil war, rebellion revolution, insurrection, military or usurped power• Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-contractors• Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel• Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device• Natural disaster• Fire and explosion		

	• Impact by aircraft or other device or thing dropped from them
Z8.0	Framework Agreement
Z8.1	The <i>Contractor</i> shall ensure at all times during this contract it complies with all the obligations and conditions of the Framework Agreement made with the <i>Client</i> .
Z9.0	Termination
Z9.1	Delete the text of Clause 92.3 and replace with: If the <i>Contractor</i> terminates for Reason 1 or 6, the amount due on termination also includes 5% of any excess of a forecast of the amount due at Completion had there been no termination over the amount due on termination assessed as for normal payments
Z10.0	Data Protection
Z10.1	The requirements of the Data Protection Schedule shall be incorporated into this contract
Z11.0	Liabilities and Insurance
Z11.1	Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.

Contract Data

The Contractor's Contract Data

The Contractor is		
Name	Breheny Civil Engineering Ltd	
Address for communications		
Address for electronic communications		
The fee percentage is	12	%
The people rates are	As agreed within the FCRM framework agreement	
category of person	unit	rate
The published list of Equipment is	As agreed within the FCRM framework agreement	
The percentage for adjustment for Equipment is	As agreed within the FCRM 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 £384,614.55

Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

Position

Signature

Date

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

Signed on behalf of the *Client*

Name

Position

Signature

Date

Price List

Entries in the first four columns in this Price List are made either by the *Client* or the tenderer.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price Column only: the Unit, Quantity and rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

General Hydrometric Maintenance

Item Number	Description	Unit	Quantity	Rate	Price
1	Great Ouse - Hydrometric maintenance at 45 flow recording stations (individual tasks indicated in the 'Bedford Patch', 'Ely Patch' and 'Kings Lynn Patch' Programmes of work). Monthly visits, April-Oct 2022 & Mar 2023	8	45	£301.28	£108,460.09
2	Great Ouse - Hydrometric maintenance at 38 level recording stations (individual tasks indicated in the 'Bedford Patch', 'Ely Patch' and 'Kings Lynn Patch' Programmes of work). Bi-monthly visits, May-Oct 2022 & Mar 2023	4	38	£302.14	£45,925.29
3	Norfolk, Suffolk & Essex Hydrometric maintenance at 71 flow recording stations as detailed in "Appendix A – Routine Maintenance Activity Schedule V6" Monthly visits, April-Oct 2022	7	71	£290.64	£144,446.61
4	Norfolk, Suffolk & Essex - Hydrometric maintenance at level recording sites (flood) NES River Level Maintenance Sites	1	13	£767.69	£9,979.96
5	Norfolk, Suffolk & Essex – Well Flushings as detailed in "Appendix A – Routine Maintenance Activity Schedule V6"	1	59	£354.78	£20,932.11
6	Norfolk, Suffolk & Essex – Eel pass clearance as detailed in "Appendix A – Routine Maintenance Activity Schedule V6"	1	4	£503.69	£2,014.75
7	In channel weed clearance to 12 no. sites as per "Appendix A – Routine	3	12	£1,468.22	£52,855.74

	Maintenance Activity Schedule V6” utilising weed boats due to deep water				
The total of the Prices				£384,614.55	

The method and rules used to compile the Price List are

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

Scope

Carry out general maintenance of the hydrometric sites within the Great Ouse catchment and Norfolk, Suffolk & Essex Flow gauging stations as detailed in the works information

1. Description of the *works*

Great Ouse Catchment:

1. Monthly maintenance of hydrometric flow gauging stations between March and October (inclusive); sites and description of maintenance needed at each site indicated in the 3 tick-sheet documents 'Bedford Patch', 'Ely Patch' and 'Kings Lynn patch'.
2. Bi-monthly maintenance of hydrometric level measuring stations between March and October, details again included within the 3 tick-sheet documents above.
3. A description of all works required, the reasons for carrying out the work, and the parameters to work within, are indicated in the document 'Indicative SLA for 2022'.
4. Yearly meetings to discuss changes/improvements that can or are being made to the general maintenance

Essex Norfolk and Suffolk:

5. Routine Monthly Maintenance at H&T Norfolk, Suffolk & Essex Flow gauging stations as detailed in "Appendix a Routine Maintenance Activity Schedule document"
6. Twice yearly maintenance of hydrometric level measuring stations between April and October as detailed in "NES River Level Maintenance Sites"
7. Well flushings at H&T Norfolk, Suffolk & Essex sites as detailed in "Appendix A - Routine Maintenance Activity Schedule document"
8. Eel pass maintenance as detailed in "Appendix A - Routine Maintenance Activity Schedule document"
9. Quarterly contract meetings to discuss health & safety, changes/improvements and ways of working

2. Drawings

List the drawings that apply to the contract.

: Site sheet, plan view of works requested, annotated pictures

Description	Revision	Title
Maintenance tick-sheet		Bedford patch
Maintenance tick-sheet		Ely Patch
Maintenance tick-sheet		Kings Lynn patch
Overview of duties		Great Ouse - Indicative SLA for 2022
Site sheets		
Detailed Activity Schedule	V6	Appendix A – Routine Maintenance Activity Schedule
Detailed structure maintenance by structure type	1	Appendix C – Routine Maintenance by type
Grass cutting plans	1	Appendix D – Grass Cutting Plans
NSE Hydrometric Network By River	1	Graphical list of sites by river
Site sheets	1	Detailed site sheets showing location, post codes, NGR's
Emergency site sheets	1	Emergency contact details, local hospitals by location
Detailed requirement of in channel maintenance		Appendix B – Channel Maintenance, within the “ NSE H&T Maintenance SLA 2022-23 document (page 24)

3. Specifications

List the specifications which apply to the contract.

Title	Date or Revision	Tick if publicly available
Minimum Technical Requirements	Version 11 May 2021	
MEICA Standard Specifications OI369_13	Version 2	

4. Constraints on how the Contractor Provides the Works

Constraints to all projects in package both scoped and un-scoped:

The *Contractor* shall not commence any work on the *site* until the *Client*, or their representative, has accepted the Construction Phase Plan, including method statements and risk assessments ahead of each project in this contract. Acceptance will be by way of a written communication from the *Client* confirming the *Contractor* may take possession of the site from the agreed starting date.

The *Contractor* must allow a minimum of 2 weeks to allow the Principal Designer to review construction phase plans.

The *Client* shall identify and notify relevant owners and occupiers in writing, at least 14 days in advance of the *Contractor's* intention to commence works. The *Contractor* will not be permitted to advance this programme for the site unless the notice period stated above has been provided with the agreement of the owners and occupiers.

In order to assess the extent of work, the *Contractor* shall visit each site when pricing the work. The *Contractor* shall inform the *Client* of the time and date of each site visit before going to site.

The *Client* has the contractual right to access the working area as shown on the drawings. The *Contractor* shall be required to determine the suitability of the access and agree any alternative routes with the landowner should the identified routes be unsuitable. Details of the routes must be included within the method statements. Access conditions may deteriorate following wet weather and the *Contractor* should assume the worst conditions when preparing his quotation.

Compensation will be agreed and paid by the *Client* (via its appointed land agents) to affected landowners based on the *Contractor's* programme, proposed access routes and method statements. Compensation claims incurred due to the *Contractor's* failure to comply with its programme, access routes and/or method statements will be passed on to the *Contractor*.

Where necessary the <i>Contractor</i> shall include for the removal and replacement of any gates, fences or hedges or any other measures necessary such as installing temporary tracks or crossings to facilitate access. The <i>Contractor</i> shall be responsible for reinstating access tracks/routes to the same conditions as encountered on arrival to the site.
The <i>Contractor</i> shall take all reasonable steps to avoid damage and disruption to the surrounding land, to the designated sites and associated access routes. Such land may be privately owned, commercially managed for industrial, agricultural use, or part of the local social amenities etc. Any problems with access should be reported directly to the <i>Client</i> .
A key, which must be returned on completion of the works, will be provided as necessary to allow access through Agency gates.
If access to a site has deteriorated (e.g. due to heavy rainfall) making it difficult or impossible for the <i>Contractor</i> to access, the <i>Contractor</i> shall immediately contact the <i>Client</i> . The <i>Contractor</i> shall inform the <i>Client</i> of their intention to continue work at this site or submit a request to the <i>Client</i> that they may either postpone work or be permitted to start work at another site. If the <i>Contractor</i> decides to continue at the original site, this will be at their own risk.
7 working days' notice of commencement of works shall be given to the client.
2 working days' notice must be given to the client in advance of completion of the works.
All accidents, near misses, dangerous occurrences and environmental incidents shall be notified to the <i>Client</i> , or their representative.
The <i>Contractor</i> shall be responsible for obtaining and/or registering for any necessary waste exemptions.
The <i>Contractor</i> shall be required to develop a Flood Action Plan (FAP) to the satisfaction of the <i>Client</i> and shall be submitted a minimum of 2 weeks prior to commencing works. The <i>Contractor</i> shall consider the need for temporary procedures that may, depending on weather and river flow conditions, require actions to be undertaken to short timeframes outside of normal working hours. The <i>Client</i> has provided <u>draft</u> flood action plans, where appropriate, based on assumed methods of work to give an indication of possible ways to manage any increased flood risk as a result of the works. The <i>Client</i> requires 24 hour / 7 days per week emergency contacts from the contractor including the provision of response as required according to the flood action plan. It is expected that any emergency procedures are carried out by a competent employee of the Principal <i>Contractor</i> .
The <i>Contractor</i> shall undertake an inspection and obtain pre and post work condition photos of any access routes that are expected to be used. This shall be made available to the EA's Project Manager upon request.
The <i>Contractor</i> shall be responsible for obtaining the necessary Environmental Permits for Flood Risk Activities. The <i>Contractor</i> shall ensure the permits are received a minimum of 2 weeks prior to commencement of works. The <i>Contractor</i> shall be responsible for all costs associated with permit applications. The <i>Client</i> has, where possible, started the application process which will need to be transferred to the <i>Contractor</i> and finalised. Please be aware the Permitting process can take 8 weeks from receipt of payment.
We expect all isolation, de-isolation and enabling operation of sluice gates and structures during the works to be carried out by the contractor with prior notification to the Project Manager

Working times

The *Contractor* will be permitted to work between 7.30am and 6.00pm on weekdays (Monday to Friday) Weekend and Bank Holiday working on site, and working outside of the hours stated above shall be with the written approval of the *Client*. With the exception of emergency response.

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*

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

7. Site Information

Site Information is information which describes the site and its surroundings and is in the document called Pre-Construction Information (PCI), the PCI will be provided after contract award.

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:	