



Environment  
Agency

[illegible]



## ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework CONTRACT DATA

**Project Name** Farlington Marshes Project Appraisal (SOC - OBC): Early Supplier Engagement

**Project Number** ENV0002137C

This contract is made on 24 December 2020  
between the *Client* and the *Contractor*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 01st 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 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference  
Farlington Marshes CDF ECC ESE Scope V8.1

### 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

X7: Delay damages

X9: Transfer of rights

X10: Information modelling

X11: Termination by the *Client*

X18 Limitation of Liability

X20: Key Performance Indicators

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

Early Supplier Engagement and potential ground Investigation to support the production of an Outline Business Case (OBC) that achieves Environment Agency LPRG approval.

The *Client* is

Environment Agency

Address for communications

Horizon House, Deanery Road  
Bristol  
BS1 5AH

Address for electronic communications

The *Project Manager* is

Address for communications

Environment Agency

Address for electronic communications

The *Supervisor* is

Address for communications

Address for electronic communications

The *Scope* is in  
Farlington Marshes CDF ECC ESE Scope V8.1

The Site Information is in  
TBC as part of PMI for any works

The boundaries of the site are  
TBC as part of PMI for any works

The partner contract is

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 2 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  
condition to be met  
'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

04 January 2021

The access dates are  
part of the Site

Asite

FastDraft

Farlington Marshes site

date  
04 January 2021  
04 January 2021  
04 January 2021

The Contractor submits revised programmes at intervals no longer  
than

4 weeks

The Completion Date for the whole of the works is

31 October 2021

The Client is not willing 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  
A safety issue for the public is 24 Hours  
except that  
is

## 5 Payment

The currency of the contract is the £ sterling

The assessment interval is Monthly

The Client set total of the Prices is £45,813.14

The interest rate is 2.00% per annum (not less than 2) above the  
Base rate of the Bank of England

The Contractor's share percentages and the share ranges are

less than share range 80 % Contractor's share percentage 0 %

from 80 % to 120 % as set out in Schedule 17  
greater than 120 % as set out in Schedule 17

## 6 Compensation events

The place where weather is to be recorded is Hayling Island: 50.785, -0.985

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. N/A
2. N/A
3. N/A
4. N/A
5. N/A

The *weather measurements* are supplied by The Met Office  
The *weather data* are the records of past weather measurement for each calendar month  
which were recorded at Hayling Island: 50.785, -0.985  
and which are available from The Met Office

Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are

Jan	Jul
Feb	Aug
Mar	Sep
Apr	Oct
May	Nov
Jun	Dec

These are additional compensation events

- Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, between 1st November 2020 and 31st March 2021.
1. November 2020 and 31st March 2021.
  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

## Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Senior Representatives* of the Client are

Address for communications

Environment Agency

Address for electronic communications

Name

Address for communications

Defra Group Commercial c/o Environment Agency

Address for electronic communications

The *Adjudicator* is

'to be confirmed'

Address for communications

'to be confirmed'

Address for electronic communications

To be confirmed

The Adjudicator nominating body is

The Institution of Civil Engineers

**Z Clauses****Z1 Correctness of Site Information and other documents**

Z1.1 Site Information about the ground, subsoli, 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.

**Z3 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 which 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 Aggregated Contractor's share**

Delete existing clauses 54 and 93.4 and replace with:

54.7 The *Project Manager* assesses the *Contractor's* share of the difference between the Aggregated Total of the Prices and the Aggregated Price for Work Done to Date. The difference is divided into increments falling within each of the share ranges. The limits of a share range are the Aggregated Price for Work Done to Date divided by the Aggregated Total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each share range and the corresponding *Contractor's* share percentage.

54.8 If the Aggregated Price for Work Done to Date is less than the Aggregated Total of the Prices, the *Contractor* is paid its share of the saving. If the Aggregated Price for Work Done to Date is greater than the Aggregated Total of the Prices, the *Contractor* pays its share of the excess.

54.9 If, prior to the Completion Date, the Aggregated Price for Work Done to Date exceeds 110% of the Aggregated Total of the Prices, the amount in excess of 110% of the Aggregated Total of the Prices is retained from the *Contractor*.

54.10 The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the works using forecasts of the final Aggregated Price for Work Done to Date and the final Aggregated Total of Prices. This share is included in the amount due following Completion of the whole of the works.

54.11 The *Project Manager* makes a final assessment of the *Contractor's* share, using the final Aggregated Price for Work Done to Date and the final Aggregated Total of the Prices. This share is included in the final amount due.

93.4 If there is a termination, the *Project Manager* assesses the *Contractor's* share after certifying termination. The assessment uses as the Aggregated Price for Work Done to Date the sum of

- the total of
    - o the Defined Cost which the *Contractor* has paid and
    - o which it is committed to pay for work done before termination and
  - the total of
    - o the Defined Cost which the *Contractor* has paid and
    - o which it is committed to pay
- In the partner contract before the date the termination certificate is issued under this contract.
- The assessment uses as the Aggregated Total of the Prices the sum of
- the total of
    - the lump sum price for each activity which has been completed and
    - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed and
  - the total of
    - the lump sum price for each activity which has been completed and
    - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed
- In the partner contract before the date the termination certificate is issued under this contract.

Add:

11.2(37) The Aggregated Total of the Prices is sum of

- the total of the Prices and
- the total of the Prices in the partner contract

11.2(38) The Aggregated Price for Work Done to Date is the sum of

- the Price for Work Done to Date and/
- the Price for Service Provided to Date in the partner contract.

**Z10 Payments to subcontractors, sub consultants and suppliers**

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 1999**

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 Z11

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

Z11.1 The *Client* ("the third party") may in its own right enforce the provisions of this clause, subject to and in accordance with the provisions of the Contracts (Right of Third Parties) Act 1999 and the following provisions:

- Z11.1.1 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
  - Z11.1.2 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.
- Z11.2 Except as provided in clause Z1.1, 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 other 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.

**Z18 Payment of pain/gainshare and programme incentivisation**

Delete existing clause 54.3 and replace with:

54.3 The *Project Manager* makes regular assessments of the *Contractor's* share until the Completion Date using forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due in the following assessment. The *Project Manager* shall be entitled to take the *Contractor's* share percentage into account when assessing amounts in clause 50 and clause 51 due for payment at each assessment date thereafter. The *Project Manager* shall not assess any amount greater than the amount due when the forecast reaches the top *share range* in the Contract Data Part 1 (120% of the total of the Prices).

Delete existing clause 54.4 and replace with:

54.4 If clause 54.3 does not occur during the *works*, the *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the *works* using forecasts of the final Price for Work Done to Date and the final total of Prices. This share is included in the amount due following Completion of the whole of the *work*.

Insert the following new clause 54.5:

54.5 If clause 54.3 does not occur during the *works*, the *Project Manager* makes a final assessment of the *Contractor's* share, using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.

Insert the following new clause 54.6:

Programme Payments will be made under the Framework in accordance with Schedule 17

## **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.





**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 X7: Delay damages****X7 only**

Delay damages for Completion of the whole of the *works* are [REDACTED] per day

**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

£5,000,000.00

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

6 year(s)

**OPTION X18: Limitation of liability**

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

£1,000,000.00

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

£5,000,000.00

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

N/A

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

£5,000,000.00

The *end of liability date* is 6 Years after the Completion of the whole of the *works*

**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(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



## 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 VolkerStevin Ltd

Address for communications



Address for electronic communications



The fee percentage is

Option C



The working areas are

the site, VolkerStevin offices and personnel home offices (as

The key persons are

Name (1)	[Redacted]
Job	Framework Manager
Responsibilities	See CV
Qualifications	See CV
Experience	See CV

The key persons are

Name (2)	[Redacted]
Job	Project Manager
Responsibilities	See CV
Qualifications	See CV
Experience	See CV

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

n/a

### 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

Name (1) [REDACTED]  
Address for communications  
VolkerStevin  
[REDACTED]

Address for electronic communications  
[REDACTED]

Name (2) [REDACTED]  
Address for communications  
VolkerStevin  
[REDACTED]

Address for electronic communications  
[REDACTED]

### X10: Information Modelling

The *information execution plan* identified in the  
Contract Data is  
n/a

# Contract Execution

**Client execution**

Signed under hand by \_\_\_\_\_ for and on behalf of the Environment Agency

\_\_\_\_\_

Signature

\_\_\_\_\_

Role

**Contractor execution**

**Consultant execution**

Signed under hand by \_\_\_\_\_ for and on behalf of VolkerStevin Ltd

\_\_\_\_\_

Signature

\_\_\_\_\_

Role

