

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – Central Hub

A contract between

The Environment Agency



And

Breheny Civil Engineering Ltd

For

EAN Recovery Works 21/22 River Nar Embankment Repairs

Contract Forms

- **Contract Data**
- **The *Contractor's* Offer and *Client's* Acceptance**
- **Price List**
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- **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]	
The <i>works</i> are	Design and undertake repairs which will include a widening of the crest and re-profiling the channel face for approximately 150 metres of a fluvial embankment	
The <i>site</i> is	River Nar section of interest approximately NGR: TF6217217738 to TF6204317581. Access track entrance approximately NGR: TF6159117539	
The <i>starting date</i> is	12 th July 2021	
The <i>completion date</i> is	Project completion 31 st March 2022.	
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 *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
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	
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 <i>works</i> , Plant and Materials and Equipment) and for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Works	Minimum £5,000,000 in respect of every claim without limit to the number of claims	
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	
Failure of the <i>Contractor</i> to use the skill and care normally used by professionals providing works similar to the works	Minimum £1,000,000 in respect of every claim without limit to the number of claims	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</i> 's acceptance of a tender and the <i>Client</i> 's 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</i> 's 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</i> 's 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 <i>Contractor</i> is	
Name	Breheny Civil Engineering Ltd	
Address for communications	[REDACTED]	
Address for electronic communications	[REDACTED]	
The <i>fee</i> percentage is	As submitted in the Lot 1 Price Workbook	%
The <i>people rates</i> are	As submitted in the Lot 1 Price Workbook	
category of person	unit	rate
The <i>published list of Equipment</i> is		As submitted in the Lot 1 Price Workbook
The <i>percentage for adjustment for Equipment</i> is		

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

[REDACTED]

Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

[REDACTED]

Position

[REDACTED]

Signature

[REDACTED]

Date

24 June 2021

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

Signed on behalf of the *Client*

Name

[REDACTED]

Position

[REDACTED]

Signature

[REDACTED]

Date

7 July 2021

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.

River Nar Embankment Repairs

Item Number	Description	Unit	Quantity	Rate	Price
	General Items				
01	Provision of all Insurances as required by the contract	sum	1		
02	Establish and develop all necessary health and safety documentation and method statements	Sum	1		
03	Mobilise labour, plant and equipment to site, establish a secure compound, office, messing, storage and welfare facilities	sum	1		
04	Erect suitable signage and public interface control measures.	sum	1		
05	Locate, mark and take any necessary control measures for working near services	sum	1		
	Site Specific Items				
06	Undertake full grass cut of embankment prior to works – approximately 150 metres.	sum	1		
07	Prior to undertaking works carry out a topographic survey of the embankment approximately 150 metres.	sum	1		
08	Design should be undertaken to widen the crest to at least 3 metres and re-profile the channel face of the embankment, where required	sum	1		
09	Obtain flood risk activity permit, footpath closure/diversion and any other assents required for the work	sum	1		
10	Undertake construction in line with the approved design	sum	1		
11	Undertake post-construction topographic survey of the embankment.	sum	1		
12	Seed the embankment using a clover based grass seed mix to ensure grass coverage is returned to a good condition Contractor to provide grass seed. The establishment of the grass coverage of the embankment will be subject to a check 6 months after completion	sum	1		

	to ensure that, by then, it has achieved a suitable level of coverage.				
13	Make an allowance to repair access track such as levelling of rutting and reinstate ramp to White House Farm access bridge using onsite material	sum	1		
14	Provide to the satisfaction of the <i>Employer</i> a Health & Safety File for the completed works.	sum	1		
The total of the Prices					

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

As per description of works and constraints below.

Note target completion date of: **31st March 2022.**

1. Description of the works

River Nar Embankment Repairs

The section of River Nar which requires remedial works is located at the downstream section at Saddlebow, King's Lynn. Access to the embankment is via a gated farm track off of Saddlebow Road, Saddlebow, King's Lynn PE34 3AG.

Grid references:

1. River Nar section of interest approximately NGR: TF6217217738 to TF6204317581.
2. Access track entrance approximately NGR: TF6159117539.

Asset inspections carried out after the winter 2020-2021 flood event have identified multiple cracks and minor slips along the channel face. At approximately TF6203717589 the channel face has suffered a 10 metre slip. Further downstream of this at TF6207717721, the embankment narrows on the bend where cracking and minor slippage has occurred.

The works are to be delivered within the financial year of 2021 and 2022 as part of the EAN Recovery Programme.

The *Contractor* is required to design and undertake repairs which will include a widening of the crest and re-profiling the channel face for approximately 150 metres of a fluvial embankment.

Works will require:

1. Site visit to assess works to be undertaken and assess access requirements;

- 2 Cut grass to observe profile of embankment;
3. Undertake topography survey along length of embankment approximately 150 metres prior to works and supply to the *Employer*;
4. Contractor to assess suitability of a foot path diversion during the works or whether footpath closure is required Contractor to liaise with statutory authority- Norfolk County Council and obtain a diversion or closure as necessary.
- 5 Undertake design work to re-profile and widen the embankment where required;
6. Submit design for acceptance to the *Client*;
- 7 Obtain Flood Risk Activity Permit and Footpath Closure / diversion
8. Undertake embankment repairs during suitable environmental window which includes;
 - a Re profiling of the channel face of the embankment;
 - b. Widen embankment crest to at least 3 metres;
 - c Level crest to ensure that a suitable gradient is achieved for plant access to both upstream and downstream access bridges;
- 9 Undertake topography survey along length of embankment of the same length after works completed;
- 10 Once works completed undertake repairs to access track to level access where damage has occurred;
- 11 Produce H&S file to accompany the project after completion

Design: The works shall widen the embankment at the downstream end on the bend and shall be designed in such a way as to ensure its durability for future maintenance activities, mainly grass cutting machinery. This could be achieved by removing a suitable amount of material from the higher areas where the embankment undulates to creating suitable foundation. If this is the *Contractor's* favoured option over importing material the *Client* will provide a finish crest level and gradient which is deemed appropriate for the defence

The upstream and downstream access ramps to the bridges shall be regraded to a sufficient gradient to ensure suitability of plant access for future maintenance

The steepness of the upstream section of embankment is believed to be the main contributing factor to the cracking and slippage along the channel face Due to the width of the embankment where the slippage has occurred it is considered that re-profiling of the channel face would be the prefer option to reduce the frequency of further slippages in the future

2. Drawings

List the drawings that apply to the contract.

N/A

3. Specifications

List the specifications which apply to the contract.

Title	Date or Revision	Tick if publicly available
Principal Bridge Inspection Report White House Farm Access Bridge (KP039)	November 2018 P01	

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 the project

Acceptance will be by way of a written communication from the <i>Client</i> 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 <i>Contractor</i> is to identify and arrange suitable welfare compound area
The <i>Client</i> has the contractual right to access the working area as shown on the drawings. The <i>Contractor</i> 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 <i>Contractor</i> should assume the worst conditions when preparing their quotation.
Compensation will be agreed and paid by the <i>Client</i> (via its appointed land agents) to affected landowners based on the <i>Contractor's</i> programme, proposed access routes and method statements. Compensation claims incurred due to the <i>Contractor's</i> failure to comply with its programme, access routes and/or method statements will be passed on to the <i>Contractor</i> .
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 delay the work giving timescales for the resumption on site.
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.
We require 24 hour / 7 days per week emergency contacts from the <i>Contractor</i> including the provision of out of hours response if required due to theft, fire, flood and vandalism. It is expected that any emergency procedures are carried out by a competent employee of the Principal Contractor.
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 (if applicable). 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. Please be aware the Permitting process can take 8 weeks from receipt of payment, need for permits to be discussed with EA Project Manager prior to applying for permits.
Known constraints to the project have been outlined for the <i>Contractor</i> below:
<p><u>Access Restrictions</u></p> <p>There is good access to the site via a gated farm track from Saddlebow Road to the right bank of the River Nar. At the end of the access track there is a concrete farm bridge (40 tonne weight limit) crossing the Nar to a non residential farm/storage area.</p> <p>The crest of the embankment narrows from 4.5 metres downstream towards the disused rail bridge to less than 3 metres. The narrow crest on the bend has cracked and may be unstable for wide, heavy machinery to pass safely downstream.</p> <p>Since Christmas 2020 the <i>Client</i> has advised its grass cutting contractor not to cut this section of embankment due to the potential safety issue with bank stability on the bend.</p> <p>No mud or debris to be deposited on any tarmac areas outside the site area, any such material to be removed immediately by the <i>Contractor</i>.</p> <p>The <i>Contractor</i> shall ensure that any service diversions and protection measures required during the works have been arranged and agreed with the relevant Statutory Authority.</p>

Public Right of Way

There is a public footpath along the eastern bank of the River Nar. This footpath is regularly used by walkers along the watercourse. Given the space constraint of the narrow crest downstream the *Contractor* will need to consider whether a suitable diversion can be put in place or full closure will be required ahead of time to give sufficient notice. The *Contractor* is required to erect suitable signage control measures whilst works are being undertaken or submit a footpath closure to the Local Authority if a diversion is not achievable.

Environmental Constraints

The works are located along the River Nar where the channel has SSSI designation. The *Client* has a 10 year assent to undertake minor bank repairs along the River Nar and consultation with Natural England will be undertaken by the *Client*.

Water Voles are potentially present along the watercourse. The *Client* has engaged with M&H Ecology to undertake a survey along the length of embankment in early June 2021. Therefore Water Vole displacement may be required prior to the works being undertaken. If Water Voles are present this will constrain the works onsite to the displacement windows (September or February – April).

Covid-19

The *Contractor* should have a detailed Safe System of Working during the Covid-19 pandemic and allow extra time in their work programme during the pre construction and construction phase to accommodate safe working practices. Any safe system of working plan should adhere to the government's guidance in place during the project's timeframe.

Permits

Works will require the *Contractor* to obtain a Flood Risk Activity Permit from the Environment Agency.

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 their programme with the *Contractor's* Offer for acceptance. The *Contractor* shows on each programme submitted 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) Period required for undertaking design
- (c) Construction start date
- (d) Each of the activities listed within the Price List
- (e) 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.
- (f) Completion date

The *Contractor* shall be required to submit on a weekly basis (or as otherwise agreed at the pre commencement meeting) daily site records.

The programme shall be updated and submitted to the *Client* on a monthly basis to support each payment application to confirm work complete to that assessment date. Any EWN or CE that impacts on the completion date shall be supported by an updated programme.

6. Services and other things provided by the *Client*

Item	Date by which it will be provided
Utilities information (<i>Contractor</i> shall verify, CAT Scan, mark and manage risk as appropriate)	Pre-commencement

7. Site Information

Site Information is information which describes the site and its surroundings and is in the documents called Pre-Construction Information (PCI).

River Nar Embankment Repairs

Closest Address: Saddlebow Road, Saddlebow, King's Lynn

Nearest Postcode: PE34 3AG

NGR: TF6217217738 to TF6204317581

The embanked section of River Nar where the works will focus on is located between a concrete single span bridge used for farm access and a disused rail bridge at the downstream end. The embankment is approximately 4.5 metres wide at the upstream concrete bridge (White House Farm) though becomes undulating and narrower towards the downstream disused rail bridge. The bank is particularly narrow on the bend adjacent to the grain silos. There is no access from the downstream end of the embankment.

Access to the site is via a locked gated farm track from the Saddlebow Road, King's Lynn. The access track is approximately 400 metres long to the embankment. The *Client* has an agreement with the land owner to use the access track to the River Nar for routine maintenance such as grass cutting. The *Client* will liaise with the landowner prior to the work being undertaken.

There is a public footpath along the eastern bank of the river.

The flow and river levels in the channel are susceptible to change depending on weather conditions at time of works. Any restrictions to flow within the channel during the works should be readily removable to respond to changing weather conditions on request from the *Client*.

Please reference to site information EA/NAR/2021.1 for further information.

Utilities: Service searches have been undertaken in May 2021 for the access track and working area along the River Nar embankment.

In the service searches it has been identified that there are BT Openreach overhead cables crossing the entrance of the access track parallel to Saddlebow Road. Underground virgin media services also cross the entrance to the access track. There is an Anglian Water Services foul sewer running parallel to the northern side of the access track. Further information has been provided in the utilities map and service searches.

Proposed sub-contractors

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