



Framework: Client Support Framework
Supplier: Capita Binnie
Company Number: [REDACTED]
Geographical Area: National
Project Name: Colwick (Holme Sluices) Fish Pass Environmental Clerk of Works
Project Number: ENV0000907C
Contract Type: Professional Service Contract
Option: Option E
Contract Number: project_33827

Revision	Status	Originator	Reviewer	Date

PROFESSIONAL SERVICE CONTRACT - Under the Client Support Framework CONTRACT DATA

Project Name Colwick (Holme Sluices) Fish Pass Environmental Clerk of Works

Project Number ENV0000907C

This contract is made on 10 February 2022
between the *Client* and the *Consultant*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 02nd day of July 2019 between the *Client* and the *Consultant* in relation to the Client Support Framework. The entire Agreement and the following schedules are incorporated into this contract by reference
- Schedules 1 through to 14 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference

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 secondary Options of the NEC4 Professional Service Contract June 2017.

Main Option	Option E	Option for resolving and avoiding disputes	W2
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Secondary Options

X2: Changes in the law

X9: Transfer of rights

X10: Information modelling

X11: Termination by the *Client*

X18: Limitation of liability

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 *service* is Provision of an Environmental Clerk of Works to support the Colwick (Holme Sluices) Fish Pass project.

The *Client* is Environment Agency

Address for communications

Address for electronic communications

The *Service Manager* is

Address for communications

Address for electronic communications

The Scope is in
Holme_Sluices_ Fish_Pass_ECoW_ Scope v2 dated 27 October 2021

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 *period for retention* is 6 years following Completion or earlier termination

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 *Consultant's* main responsibilities

The *key dates* and *conditions* to be met are
condition to be met *key date*
 'none set' 'none set'
 'none set' 'none set'
 'none set' 'none set'

The *Consultant* prepares forecasts of the total Defined Cost plus Fee and *expenses* at intervals no longer than 4 weeks

3 Time

The *starting date* is 04 October 2021

The *Client* provides access to the following persons, places and things
 access *access date*
 Access to the whole of the site 04 October 2021

The *Consultant* submits revised programmes at intervals no longer than 4 weeks

The *completion date* for the whole of the *service* is 14 September 2023

The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is 4 weeks

4 Quality management

The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is 4 weeks

The period between Completion of the whole of the *service* and the *defects date* is 26 weeks

5 Payment

The *currency of the contract* is the £ sterling

The *assessment interval* is Monthly

The *expenses* stated by the *Client* are as stated in Schedule 6.

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

The locations for which the *Consultant* provides a charge for the cost of support people and office overhead are All UK Offices

The *exchange rates* are those published in on

6 Compensation events

These are additional compensation events

1. 'not used'
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 and the periods for which the *Consultant* maintains insurance are

EVENT	MINIMUM AMOUNT OF	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE <i>SERVICE</i> OR TERMINATION
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The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the service	£5 million in respect of each claim, without limit to the number of claims	12 years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the Service	Which ever is the greater of £5m or the amount required by law in respect of each claim, without limit to the number of claims	12 months
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	Which ever is the greater of £5m or the amount required by law in respect of each claim, without limit to the number of claims	For the period required by law
The <i>Consultant's</i> total liability to the <i>Client</i> for all matters arising under or in connection with the contract, other than the excluded matters is limited to		£5 million

Resolving and avoiding disputes

The <i>tribunal</i> is		litigation in the courts
The <i>Adjudicator</i> is		'to be confirmed'
Address for communications		'to be confirmed'
Address for electronic communications		'to be confirmed'
The <i>Adjudicator nominating body</i> is		The Institution of Civil Engineers

Z Clauses

Z1 Disputes

Delete existing clause W2.1

Z2 Prevention

The text of clause 18 Prevention is deleted.

Delete the text of clause 60.1(12) and replace with:

The *service* is affected by any of the following events

- War, civil war, rebellion, revolution, insurrection, military or usurped power;
- Strikes, riots and civil commotion not confined to the employees of the *Consultant* and sub consultants,
- 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 aerial device or thing dropped from them.

Z3 Disallowed Costs

In second bullet of 11.2 (18) add:

(including compensation events with the Subcontractor, i.e. payment for work that should not have been undertaken).

Add the following additional bullets after 'and the cost of ' :

- Mistakes or delays caused by the *Consultant's* failure to follow standards in Scopes/quality plans.
- Reorganisation of the *Consultant's* project team.
- Additional costs or delays incurred due to *Consultant's* failure to comply with published and known guidance or document formats.
- Exceeding the Scope without prior instruction that leads to abortive cost
- Re-working of documents due to inadequate QA prior to submission, i.e. grammatical, factual arithmetical or design errors.
- Production or preparation of self-promotional material.
- Excessive charges for project management time on a commission for secondments or full time appointments (greater than 5% of commission value)
- Any hours exceeding 8 per day unless with prior written agreement of the *Service Manager*
- Any hours for travel beyond the location of the nearest consultant office to the project unless previously agreed with the *Service Manager*
- Attendance of additional individuals to meetings/ workshops etc who have not been previously invited by the *Service Manager*
- Costs associated with the attendance at additional meetings after programmed Completion, if delay is due to *Consultant* performance.
- Costs associated with rectifications that are due to *Consultant* error or omission.
- Costs associated with the identification of opportunities to improve our processes and procedures for project delivery through the *Consultant's* involvement
- Was incurred due to a breach of safety requirements, or due 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 resulting of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit

When appointing *Consultants* on a secondment basis only:

Add clause 19

19.1 The *Client* will from starting date to Completion Date indemnify the *Consultant* against any and all liabilities, proceedings, costs, losses, claims and demands whatsoever arising directly or indirectly out of the activities of the *Consultant* in providing the services save where such claims, in the reasonable opinion of the *Client*, arise from or are contributed to by:

19.1.1 Misrepresentation or negligence by or on behalf of the *Consultant* ;

or

19.1.2 The *Consultant* has acted contrary to the *Service Manager's* reasonable instructions or wholly outside the scope of the *Consultant's* duties as defined by the *Service Manager* .

Z6 The Schedule of Cost Components

The Schedule of Cost Components are as detailed in the Framework Schedule 6.

Z7 Linked contracts

Issues requiring redesign or rework on this contract due to a fault or error of the *Consultant* under this contract or a previous contract will neither be an allowable cost under this contract or any subsequent contract, nor will it be a Compensation event under this contract or any subsequent contract under this project or programme.

Z8 Requirement for Invoice

Insert the following sentence at 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 *Service Manager's* certificate.

Delete existing clause 51.2 and insert the following:

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 *Service 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

Z9 Conflict of Interest

The *Consultant* immediately notifies the *Client* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* (including without limitation its reputation and standing) and/or the *Client* of which it is aware or which it anticipates may justify the *Client* taking action to protect its interests. Should the Parties be unable to remove the conflict of interest to the satisfaction of the *Client*, the *Client*, in its sole discretion, may terminate this Contract.

Z10 Change in Control

The *Consultant* shall notify the *Client* as soon as reasonably practicable, in writing, of any agreement, proposal or negotiations which will or may result in a *Consultant* Change in Control and shall give further notice to the *Client* when any Change in Control has occurred. The *Client* may terminate this contract with immediate effect by notice in writing and without compensation to the *Consultant* within six (6) months of being notified that a Change of Control has occurred, or, where no notification has been made, the date that the *Client* becomes aware of the Change of Control, but shall not be permitted to terminate where the *Client's* prior written acceptance was granted prior to the Change in Control. A Change of Control is defined as per the Deed of Agreement, Z14.4.

Z11 Rate Increase Provision

Contracts with a duration of less than two years, which are extended over this duration by the *Service Manager* due to *Client* Scope increases, may apply a rate review as follows. The *Consultant* will charge the *Client* the contract staff rates for a minimum of two full years, and at the next annual rate review where a new staff rate list is accepted (as stated in Schedule 6), the new staff rate will apply to the contract as per Schedule 6. No Compensation Event is permitted for this different contract staff rate.

Z12 Waiver

No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party by the Service Manager in writing in accordance with the Contract, and with express reference to Clause Z12. The failure of either party to insist upon strict performance of the Contract, or any failure or delay in exercising any right or remedy shall not constitute a waiver or diminution of the obligations established by the Contract.

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 X10: Information modelling

The period after the Contract Date within which the *Consultant* is to submit a first Information Execution Plan for acceptance is 2 weeks

OPTION X18: Limitation of liability

The *Consultant's* liability to the *Client* for indirect or consequential loss is limited to £1,000,000

The *Consultant's* liability to the *Client* for Defects that are not found until after the *defects date* is limited to £5,000,000

The *end of liability date* is 6 years after the Completion of the whole of the *service*

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 *Consultant*

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

1 General

The *Consultant* is

Name and company number



Address for communications

Capita

Binnie



Address for electronic communications

The *fee percentage* is

Option E



The *key persons* are

Name (1)



Job

Environmental Clerk of Works

Responsibilities

Undertake Environmental Clerk of Works duties including monitor site set-

Qualifications

BSc Environmental Science, CEnv, AECCW (Full Member), CIEEM (Full Merr

Experience

15 years' experience in ecology and nature conservation

The *key persons* are

Name (2)



Job

Project Manager

Responsibilities

Project Manager

Qualifications

BSc Civil Engineering

Experience

22 Years

The *key persons* are

Name (3)



Job

Project Director

Responsibilities

Project Director

Qualifications

BSc C.WEM FCIWEM

Experience

18 Years

The *key persons* are

Name (4)

Job

Responsibilities

Qualifications

Experience

The *key persons* are

Name (5)

Job

Responsibilities

Qualifications

Experience

The *key persons* are

Name (6)

Job

Responsibilities

Qualifications

Experience

The *key persons* are

Name (7)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

3 Time

The programme identified in the Contract Data is

4/10/21 - 19/7/23

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

X10: Information Modelling

The *information execution plan* identified in the Contract Data is

Contract Execution

Client execution

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

[Redacted signature area]

Consultant execution

Signed under hand by [Redacted signature] for and on behalf of

[Redacted signature area]

Environment Agency

NEC4 professional services contract (PSC)

Scope

Project / contract information

Project name	Colwick (Holme Sluices) Fish Pass
Project SOP reference	ENV0000907C
Contract reference	project_33827
Date	27 October 2021
Version number	2
Author	

Revision history

Revision date	Summary of changes	Version number
28/07/2021	First issue	1
27/10/2021	Amended for programme changes	2

This Scope should be read in conjunction with the version of the Minimum Technical Requirements current at the Contract Date. In the event of conflict, this Scope shall prevail. The *services* are to be compliant with the version of the Minimum Technical Requirements.

Document	Document Title	Version No	Issue date
412_13_SD01	Minimum Technical Requirements	Version 9	29/08/18



1 Objectives of the project (project outcomes)

Objective

The aim of Colwick Fish Pass is to provide a fish and eel passage around Holme Sluices. The structure currently poses significant physical barriers to free movement of fish and eels.

This contract is to commission the *Consultant* to act as Environmental Clerk of Works on the Colwick Fish Pass project.

Outcome Specification

The overall objective of this commission is to provide the Environmental Clerk of Works for the delivery of this project.

2 Project team

- 1 The design support consultant is Team Van Oord.
- 2 The Contractor is Jackson Civil Engineering.
- 3 The *Service Manager* is [REDACTED]
- 4 The ECC Project Manager is TBC.
- 5 The Contractor will be appointed using the NEC4 Engineering and Construction Contract option C.
- 6 Cost management will be provided by TBC.
- 7 Principal Designer is [REDACTED]
- 8 BIM Information Manager [REDACTED]



3 **Consultant provides the services**

Environmental Clerk of Works

The *Consultant* must provide a designated Environmental Clerk of Works (ECoW) to monitor the site set-up works, clearance works, construction works, site reinstatement, and supervise any environmental surveys or environmental high risk works for the site.

The Environmental Clerk of Works will need to cover the project for the following durations during the various stages of the project.

- 4th October 2021 to 31st December 2021 – 6 days in total
- 4th January 2022 to 31st October 2022 – 1 day per week (based on site, can be 2 x ½ days as required)
- 1st November 2022 to 19th July 2023 – 1 day per month required on site, can be 2 x ½ days as required)

The ECoW will be responsible for the following activities:

- Advising the Contractor.
- Attending the pre-commencement meeting to explain, or assist the *Client* in explaining, the role of the Environmental Action Plan (EAP) to the project team.
- Providing, or arranging by a competent person environmental toolbox talks, as required by the contractors work programme.
- Completing all actions assigned to the ECoW in the EAP.
- Ensuring that each action of the EAP is completed in the necessary timeframe by the party named in the 'responsibility' column of the EAP for that action. The ECoW will also ensure that the Contractor adheres to all other environmental legislation and EA environmental policies.
- If there are non-conformances the ECoW will immediately inform the *Supervisor* who notifies a defect to the Contractor for corrective action within a timeframe identified by the ECoW. This non-conformance, action required, correction timeframe and completion is to be added to the EAP by the ECoW.
- The ECoW must review current itemised programmes and method statements from an ecology perspective and, must be involved in all discussions regarding any changes and advise the *Client* of the implications of these changes.
- Liaising pro-actively and effectively with the *Client* to obtain any additional licenses or consents as required.
- If applicable, the ECoW will notify and assist the ECC *Project Manager* and *Client* with responding to any environmental incidents for the duration of the services.
- The ECoW must audit the site in advance of progress meetings recording audit details, including photos.
- The ECoW will inform the *Client* upon completion of the EAP actions and ensure that each section is signed off by the *Client*, Contractor and ECoW.

The ECoW will report their activities as described below:

- All written reports will be submitted in both Word and PDF format.
- Attend monthly progress meetings to update the team on compliance with EAP actions.
- Input to the *Supervisor's* Weekly Site Record on all environmental matters, including weekly monitoring of EAP actions, recording environmental issues/non-conformances, actions taken, and changes to design. Monitoring should include inspecting the whole of the project working area and temporary site access routes on a weekly basis.

- Maintain a file of site visit reports, weekly updates, incident reports, correction notices and EAP amendments. This file will be passed to the *Client* on completion of the project and will constitute a condition of Completion.
- The ECoW will inform the *Client* upon completion of each phase of the EAP actions and ensure each phase is signed off by the *Client*, Contractor and ECoW.
- The ECoW will produce a short summary report at the end of the works to compare predicted effects against actual impacts of the temporary and permanent works. This should be supported by photographic evidence, especially of the condition of the site upon completion of site reinstatement, and submitted to the *Client* within 4 weeks of the completion of site reinstatement.

Where the main works contract document is for construction only, the *Consultant* is to refer to the design Consultant for a response to technical queries.

4 Definition of completion and defects

Completion is only achieved when all of the services have been provided and accepted by the *Client*. Population of the *Client*'s latest version of the Project Cost Tool, Carbon Tool and provision of BIM information is an absolute requirement of Completion.

A Defect is any service provided which is not in accordance with the Scope, the law or acceptable good practice in the industry. This includes any service which is not in accordance with the work practices stated as being employed by the *Consultant* to ensure the quality of their services is consistent with their quality plan.

5 Constraints on how the consultant provides the services

The ECoW is not to delegate their duties or powers without prior written agreement from the *Client*.

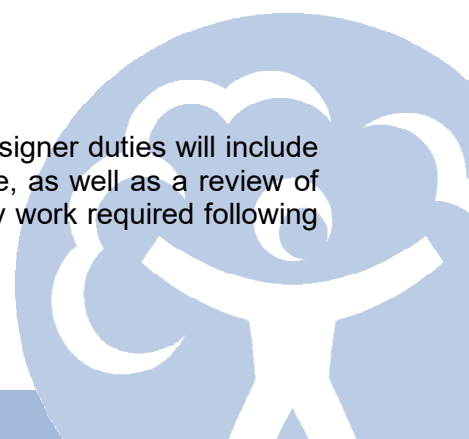
6 Standards to be achieved

6.1 Health and safety

Health, safety, environment, and welfare (HSEW) is of paramount importance to the *Client* and one of the objectives for the contract is that the works should be undertaken in a manner that achieves highest possible standards. Health, safety and welfare provisions must be seen as integral parts of carrying out the works and not as stand-alone considerations. The *Consultant* will take reasonable steps, when considering documents supplied by the Contractor, that the **management arrangements** for HSEW to be adopted by the Contractor are suitable.

6.2 Co-operation with the Principal Designer

There will be a Principal Designer for this scheme. The Principal Designer duties will include for a review of any site based works and notifying the HSE of these, as well as a review of the design. The Principal Designer will comment and include for any work required following review. The ECoW will co-operate with the Principal Designer.



6.3 Specifications or standards to be used

- Weekly Site Record [*Client* document ref 413_13_SD14]

The *Consultant* is to make full use of the *Client's* web based project collaboration tool. Whenever practical all contract records are to be distributed and stored using this project collaboration tool. The *Client's* Contract Management system is FastDraft and document management system is Asite Adoddle.

7 Requirements of the programme

7.1 Programme

Start 4th October 2021. Completion 19th July 2023

The *Consultant* shall provide a detailed project plan in Microsoft project format version 2016 meeting all requirements of Cl.31 of the *conditions of contract*. A baseline plan shall be provided for the project start up meeting and this will be updated monthly for progress meetings with actual and forecast progress against the baseline. The programme also includes alignment and submission of the BEP and Master Information Delivery Plan (MIDP).

The programme shall cover all the activities to be undertaken by the *Consultant*.



8 Services and other things provided by the *Client*

8.1 Contract to be administered

All information referred to in the contract will be available on the Project Collaboration Tools as described in 6.3.

8.2 Training to be provided by the *Client*

The *Client* will provide access to and training on their web based Project Collaboration Tool if required.

8.3 Data and information management and intellectual property rights

All of the data listed as being supplied to the supplier as part of this study remains the Intellectual Property of the *Client*.

8.4 Data custodianship

The data custodian for project deliverables from this commission will be the area PSO team.

8.5 Licensing information

Licences for LiDAR Data, Ordnance Survey mapping, model, survey, hydrometric and historical data will be provided to the *Consultant* upon award of this commission.

8.6 Metadata

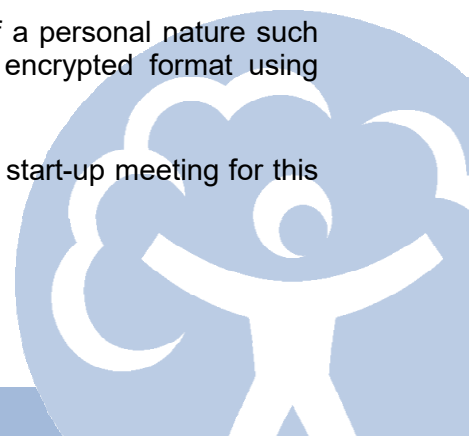
The *Client* populates a metadata database called the Information Asset Register (IAR). It is a requirement that all information produced by modelling work is appropriately tagged with metadata. The *Client's* project manager will supply an IAR spreadsheet (and any supplementary local metadata requirements if appropriate) where all relevant metadata can be recorded and handed over on project completion.

8.7 Data security

All model and survey information will be provided to the supplier in an encrypted format (using WinZip 128 bit encryption) according to *Client* data security policy. It is expected that once the commission is completed, all the original data sent to the supplier, which is classed as commercially sensitive, is returned in an encrypted format using WinZip 128 bit encryption.

Project deliverables such as model files, survey data or anything of a personal nature such as questionnaires or address data must also be returned in an encrypted format using WinZip 128 bit encryption.

Further details regarding security measures will be discussed at the start-up meeting for this commission



8.8 Timesheets

Timesheets as normally utilised by the *Consultant* shall be submitted with fee notes unless otherwise agreed with the *Service Manager*. Electronic submissions would be acceptable.

8.9 Payment procedure

Payment is subject to the procedure agreed in or under the framework

8.10 Quality

The quality management system shall comply with the requirements of ISO9001 and ISO14001.



Appendices

Appendix 1 BIM Protocol – Production and Delivery Table

All *Client* issued information referenced within the Information Delivery Plan requires verifying by the *Consultant* unless it is referenced elsewhere within the *Scope*.

The Information Delivery Plan can be found on the Asite workspace which is ENV0000907C – Colwick-Holme Sluices Fish Pass_BIM.

