

INSTRUMENT OF AGREEMENT

BETWEEN

Hunter Water Corporation

AND

Sovechles Developments Pty Ltd

INSTRUMENT OF AGREEMENT

2014-535

BETWEEN HUNTER WATER CORPORATION

('the Corporation')

AND

SOVECHLES DEVELOPMENTS PTY LTD

('the Contractor')

IT IS AGREED

- 1 In consideration of the parties entering the agreement the Contractor shall carry out the works referred to in the Schedule ('the Works') in accordance with the Corporation's current Standard Construction Practice and Standard Technical Specifications (excluding STS903 Work As Executed Information).
- 2 The Corporation's Conditions of Contract for Construction of Water and Sewerage Services to New Developments (March 2003 attached) shall form part of this agreement.

SCHEDULE (The Works)

Construct works, in accordance with the plans attached hereto and marked S14-535.

Signed by

the Contractor

Signed by

as the duly authorised signatory for and on behalf of the Hunter Water Corporation

Witness

Witness

AGREEMENT made this

08th

day

September

20 15

ESTIMATED START DATE (Month/Year):

SEPTEMBER 2015

ESTIMATED COMPLETION DATE (Month/Year):

OCTOBER 2015

Hunter Water Corporation

**CONDITIONS OF CONTRACT FOR
CONSTRUCTION OF WATER AND SEWERAGE SERVICES
TO NEW DEVELOPMENTS**

Revision B: 27 October 2004

AMENDMENTS

Date	Amendments to the October 1997 Version.
March 2003	<p><i>Provision</i> replaced with <i>Construction</i> in document name.</p> <p>Table <i>AMENDMENTS</i> added.</p> <p>Clause Nos replaced with clause names generally.</p> <p>Clauses on <i>Insolvency, Termination By Frustration, Long Service Levy, Operations and Maintenance Manuals, Amendments To STS401 & STS400</i> deleted.</p> <p>Clause 30 <i>Disputes</i> and clause 14 <i>OHS&R Management</i> added.</p> <p>Minor revisions to clauses generally. Note clause 15 <i>Quality System</i> requirement for provision of Inspection and Test Plan by the Contractor to the Superintendent.</p>

Responsible Officer: Manager Contracts, Hunter Water Corporation

Phone: 02 4979 9722

Fax: 02 4979 9468

E-mail: GREG.SMALL@HUNTERWATER.COM.AU

CONDITIONS OF CONTRACT FOR PROVISION OF WATER AND SEWERAGE SERVICES TO NEW DEVELOPMENTS

CONTENTS

	Page
1. NATURE OF CONTRACT	1
2. EVIDENCE OF CONTRACT	1
3. INTERPRETATION	1
4. DISCREPANCIES IN CONTRACT DOCUMENTS	1
5. DEFAULT	1
5.1. Failure to Comply With Obligations	1
5.2. Substantial Breaches	1
6. CONSEQUENTIAL DAMAGES	2
7. SERVICE OF NOTICES	2
8. SUBCONTRACTING AND CONSULTING	2
9. INTELLECTUAL PROPERTY	2
10. STATUTORY REQUIREMENTS	2
10.1. Compliance with Statutory Requirements	2
10.2. Notification of Entry	2
10.3. Notices, Fees and Approvals	2
10.4. Amendments to Achieve Compliance	2
11. PROTECTION, DAMAGE AND INSURANCE	3
11.1. Protection of People and Property	3
11.2. Damage to Work Under the Contract	3

11.3.	Public Liability Insurance	3
11.4.	Workers Compensation	3
11.5.	Proof of Insurance Policies	3
12.	KEY PERSONNEL	3
12.1.	Superintendent	3
12.2.	Superintendent's Representative	3
12.3.	Inspectors	3
12.4.	Contractor's Representative	4
13.	PROGRESS AND PROGRAMMING OF THE WORK	4
13.1.	Progress	4
14.	OHS&R MANAGEMENT	4
14.1.	Site Specific Safety Management Plan	4
15.	QUALITY SYSTEM	4
15.1.	General	4
15.2.	Construction	4
15.3.	Audit	4
16.	COMMENCEMENT OF WORK ON SITE	4
17.	WORKING HOURS ON SITE	5
18.	SETTING OUT THE WORKS	5
19.	CONTROL OF EMPLOYEES AND SUBCONTRACTORS	5
20.	MATERIALS AND WORK	5
21.	INSPECTION AND TESTING	5
21.1.	Notice of Inspection	5
21.2.	Independent Testing Authority	5

22.	SUSPENSION OF THE WORKS	5
23.	VARIATIONS	6
23.1.	Compliance with Directions to Vary the Works	6
23.2.	Variations due to Amendments to Standard Documents	6
23.3.	Changes to the Contractor's Designs and or Contract Documents	6
24.	ENVIRONMENTAL PROTECTION	6
25.	USE OF WATER FROM CORPORATION'S SYSTEM	6
26.	RESTORATION	6
27.	PAYMENT OF WORKERS AND SUBCONTRACTORS	6
28.	PRACTICAL COMPLETION	6
28.1.	Achievement of Practical Completion	6
28.2.	Certificate of Practical Completion	7
29.	DEFECTS LIABILITY	7
30.	DISPUTES	7

CONDITIONS OF CONTRACT FOR CONSTRUCTION OF WATER AND SEWERAGE SERVICES TO NEW DEVELOPMENTS

1. NATURE OF CONTRACT

The Contractor shall execute and complete the Works and shall supply everything necessary to do so.

This contract shall be governed by and construed with reference to the laws for the time being in force in the State of New South Wales.

2. EVIDENCE OF CONTRACT

No contract based on these Conditions of Contract shall exist between the parties until a formal Instrument of Agreement is formally and validly executed by the parties. The executed formal Instrument of Agreement shall evidence the contract.

3. INTERPRETATION

'Contract Documents' means the executed Formal Instrument of Agreement and those documents identified in the Instrument of Agreement but does not include documents created or submitted as part of the Works.

'Person' includes a firm or body corporate or unincorporate as well as an individual.

'Site' means the lands upon which the Contractor must perform the Works.

'Superintendent' means the person appointed by the Corporation under clause **KEY PERSONNEL**.

'Superintendent's Representative' means the person or persons appointed by the Corporation under clause **KEY PERSONNEL**.

'Inspector' means the person or persons appointed by the Superintendent under clause **KEY PERSONNEL**.

'Standard Documents' means Hunter Water Corporation Standard Technical Specifications, Standard Drawings and Water and Sewer Design Manual.

References to clauses in these Conditions of Contract shall be taken as referring to clauses and sub-clauses in these Conditions of Contract unless stated otherwise.

Clause and sub-clause headings shall not be used in the interpretation of the contract.

Words in the singular include the plural and words in the plural include the singular according to the context.

4. DISCREPANCIES IN CONTRACT DOCUMENTS

On discovering any ambiguity, discrepancy or apparent error or omission in the Contract Documents the Contractor shall request the Superintendent's direction as to the interpretation or details to be followed. The Contractor shall not be entitled to additional payment in respect of any such direction.

5. DEFAULT

5.1. Failure to Comply With Obligations

If the Contractor commits a substantial breach of contract, the Corporation may give the Contractor a written notice proposing to terminate the Contract or to take out of the hands of the Contractor the whole or part of the work remaining to be completed. The notice shall specify the alleged substantial breach, the proposed action and the date and time on which the proposed action shall take effect.

If prior to the date and time specified in the notice the Contractor can show in writing to the Corporation reasonable cause why the proposed action should not be taken, the Corporation may withdraw the notice and advise the Contractor of the withdrawal.

5.2. Substantial Breaches

Substantial breaches include but are not limited to, failure to:

- provide evidence of insurance, in breach of clause **PROTECTION, DAMAGE AND INSURANCE**;
- comply with a direction of the Superintendent, in breach of clause **Superintendent**;
- correct a non-compliance indicated by an Inspector, in breach of clause **Inspectors**;
- proceed with due expedition or suspension of work in breach of clause **Progress**;
- use the materials or standards of workmanship required by the Contract;
- obtain the consents required by clause **Notification of Entry**.

6. CONSEQUENTIAL DAMAGES

Notwithstanding any other provision in this Agreement the Contractor acknowledges that in no event shall the Corporation be liable for indirect, special, incidental or consequential damages (including loss of anticipated revenue) for any breach of this Agreement in any manner whatsoever, even if the Corporation has been advised of the possibility of such damages.

7. SERVICE OF NOTICES

A notice to be served on a person shall be deemed to have been given when the notice is received by the person or is delivered to the person's last notified address.

The Contractor, the Corporation and the Superintendent shall notify each other in writing of any change of address.

8. SUBCONTRACTING AND CONSULTING

The Contractor shall only engage subcontractors approved by the Corporation to undertake water and sewer infrastructure works (*refer Approved Contractors – Developer Works on <http://www.hunterwater.com.au/contractors.asp>*). The Contractor shall provide to the Superintendent particulars in writing of the work to be subcontracted, the name and address of the proposed subcontractor(s) and any other information reasonably requested by the Superintendent. For the purposes of this contract any consultants engaged to perform part of the Works shall be deemed to be subcontractors.

9. INTELLECTUAL PROPERTY

The Contractor warrants that any designs, materials, documents and methods of working provided by the Contractor will not infringe any patent, registered design, trademark or name, copyright or other protected right.

Copyright in documents, designs and computer programs created for the purposes of the Works shall belong to the Corporation.

The Contractor shall obtain an assignment to the Corporation from any consultant or other person who owns or has an interest in the copyright. The Corporation shall have the right to reproduce and use the documents, designs and computer programs for any purpose including construction of other projects.

10. STATUTORY REQUIREMENTS

10.1. Compliance with Statutory Requirements

The Contractor shall comply with the requirements of;

- acts and ordinances of the Commonwealth of Australia and the State of New South Wales;
- ordinances, regulations, by-laws, orders and proclamations under the Acts and Ordinances; and
- directions given by persons enabled by statutory powers to give such directions.

Attention is particularly drawn to the Roads Act 1993 and requirements of the Mines Subsidence Board and Environment Protection Authority.

The Contractor shall obtain the consent of the relevant Road Authority before opening or interfering with any road.

10.2. Notification of Entry

Before the Contractor carries out the Works the Contractor shall, at the Contractor's cost, obtain the consent of the owners and occupiers of any land to be entered for the purpose of carrying out the Works.

10.3. Notices, Fees and Approvals

The Contractor shall give all notices and pay all fees necessary to comply with the requirements referred to in clause **Compliance with Statutory Requirements**. The Contractor shall submit to the Superintendent copies of documents, receipts or approvals issued to the Contractor in respect of those requirements prior to commencement of the Works.

10.4. Amendments to Achieve Compliance

If a requirement referred to in clause **Compliance with Statutory Requirements** is at variance with a provision of the Contract or with designs or details previously submitted by the Contractor, as soon as the Contractor discovers the variance the Contractor shall notify the Superintendent in writing specifying the difference and proposing amendments that would allow compliance with the requirement. The Superintendent shall direct the Contractor as to the amended provisions or details to be followed in carrying out the work. The Contractor shall not be entitled to any additional payment in respect of any such direction.

11. PROTECTION, DAMAGE AND INSURANCE

11.1. Protection of People and Property

In performing the Works the Contractor shall:

- (i) provide all things and take all measures necessary to protect people and property;
- (ii) shall avoid unnecessary interference with the passage of people and vehicles; and
- (iii) shall prevent nuisance and unreasonable noise and disturbance.

The Contractor shall make good any loss of or damage to property which is caused by the Contractor or the employees or agents of the Contractor.

The Contractor shall indemnify the Corporation against loss of or damage to property of the Contractor and claims by any person against the Corporation in respect of personal injury or death or loss of or damage to property.

11.2. Damage to Work Under the Contract

The Contractor shall be responsible for the care of the Works until 5.00pm on the Date of Practical Completion. The Contractor shall make good any loss or damage to the Works which occurs while the Contractor is responsible for its care.

11.3. Public Liability Insurance

From before commencing the Works the Contractor shall effect and maintain a Public Liability Policy of insurance covering loss of or damage to property and injury or death of any person not covered by Workers Compensation Insurance under clause **Workers Compensation**.

The policy shall note the interest of the Corporation and shall cover the respective rights, interests and liabilities of the Corporation, the Contractor, the Superintendent and all subcontractors including the Contractor's liability to the Corporation and Corporation's liability to the Contractor.

The policy shall be for an amount in respect of any one occurrence not less than ten million dollars (\$10M) in Australian currency.

11.4. Workers Compensation

From before commencing work on site under the Contract the Contractor shall effect and maintain insurance to the extent of the Contractor's full liability and the Corporation's full liability under statute and at common law in respect of all persons employed by the Contractor.

The policy shall be for an unlimited amount.

The Contractor shall ensure that every subcontractor effects and maintains similar insurance.

11.5. Proof of Insurance Policies

Before commencing the Works and whenever requested by the Superintendent, the Contractor shall provide proof to the satisfaction of the Superintendent that all necessary insurance has been effected and is being maintained.

12. KEY PERSONNEL

12.1. Superintendent

For the purposes of this contract the Superintendent is the Corporation's Manager Contracts. The Corporation shall advise the Contractor in writing of any subsequent changes to the appointment of the Superintendent. The Contractor shall comply with any direction given by the Superintendent in exercise of a provision of the Contract. Except where specifically stated otherwise, a direction may be given verbally.

12.2. Superintendent's Representative

The Superintendent's Representative is empowered to exercise all functions of the Superintendent.

12.3. Inspectors

The Superintendent shall advise the Contractor of the appointment of any Inspectors and of any subsequent changes to an appointment.

An Inspector is not authorised to direct or approve variations. If an Inspector draws the Contractor's attention to some area of non-compliance under the Contract, the Contractor shall promptly correct the non-compliance.

12.4. Contractor's Representative

The Contractor may from time to time appoint persons to accept notices and directions under the Contract. The Contractor shall notify the Superintendent in writing of any such appointment and of any subsequent changes. Unless notified otherwise by the Contractor, the Contractor's Representative shall be the subcontractor.

Any notice or direction served on a Contractor's Representative shall be deemed to have been served on the Contractor.

13. PROGRESS AND PROGRAMMING OF THE WORK

13.1. Progress

The Contractor shall proceed with the Works with due expedition and shall not suspend work without the approval of the Superintendent.

14. OHS&R MANAGEMENT

The Occupational Health, Safety and Rehabilitation (OHS&R) requirements contained in these Conditions of Contract:

- (a) may be in addition to, but are not in substitution for, any statutory requirements; and
- (b) do not limit the powers of the Superintendent or the liabilities and responsibilities of the Contractor.

14.1. Site Specific Safety Management Plan

The Contractor shall :

- (a) document and implement a Site-specific Safety Management Plan and Safe Work Method Statements in accordance with the New South Wales Government OHS&R Management Systems Guidelines (refer <http://www.cpsc.nsw.gov.au/ohsr/>).
- (b) submit the Site-specific Safety Management Plan, complete with Safe Work Method Statements, to the Superintendent for review prior to commencement of work.

Approval to commence work will only be given when the Superintendent is satisfied that the Site-specific Safety Management Plan and Safe Work Method Statements comply with the Guidelines.

15. QUALITY SYSTEM

15.1. General

The Contractor shall ensure that all records necessary to verify performance of the Works are systematically controlled, held in safe storage and readily retrievable until completion of the Defects Liability Period.

The Contractor shall provide the Superintendent with an Inspection and Test Plan and associated Check Lists prior to the commencement of the Works.

The Inspection and Test Plan shall comply with the requirements of AS 3905.2 and shall identify all work and materials required by the Contract Documents to be inspected or tested.

15.2. Construction

On completion of the Works, or appropriate stages of the Works, the Contractor shall submit to the Superintendent, copies of all documentation verifying that the Inspection and Test Plan has been satisfactorily followed. Such documentation shall include:

- signed and completed Inspection & Test Plan and Checklists,
- quality and test records obtained from manufacturers and suppliers of materials and equipment,
- test results and certificates relating to the work,
- lists of all materials and equipment incorporated in the Works including class, types, and name of manufacturers and suppliers.

15.3. Audit

At the request of the Superintendent, the Contractor shall make all relevant records available to the Corporation, for the purpose of audit and surveillance and shall provide reasonable assistance during any audit.

16. COMMENCEMENT OF WORK ON SITE

The Contractor shall not commence construction of the Works before submitting to the Superintendent;

- Site-specific Safety Management Plan and Safe Work Method Statements under clause **OHS&R MANAGEMENT**
- proof of insurance required under clause **Proof of Insurance Policies**
- evidence of consents required (if any) under clause **STATUTORY REQUIREMENTS**

The Contractor shall give the Superintendent at least three working days notice before commencing construction of the Works.

17. WORKING HOURS ON SITE

Unless otherwise approved by the Superintendent, the working hours and days on Site shall be between 7.00am and 5.00pm, Monday to Friday excepting Public Holidays and between 8.00am and 3.30pm Saturday.

18. SETTING OUT THE WORKS

The Contractor shall be wholly responsible for the establishment and maintenance of all survey marks necessary for the work under the Contract.

19. CONTROL OF EMPLOYEES AND SUBCONTRACTORS

The Superintendent may direct the Contractor to immediately and or permanently remove from any activity connected with the Works any person employed in connection with the Works who, in the opinion of the Superintendent, is incompetent or negligent or otherwise unacceptable.

20. MATERIALS AND WORK

The Contractor shall use the materials and standards of workmanship required by the Contract Documents. In the absence of any other requirement, the Contractor shall use suitable new materials.

If the Superintendent discovers work which is not in accordance with the Contract Documents, the Superintendent may direct the Contractor to; remove the material from the Site; demolish the work; reconstruct, replace or correct the material or work; or not to deliver the material or work to the Site. The Superintendent may direct the times within which the Contractor must commence and complete the removal, demolition, replacement or correction.

21. INSPECTION AND TESTING

21.1. Notice of Inspection

If the Contract Documents require notice of inspection to be given in respect of any part of the Works, the Contractor shall ensure that the work to be inspected can be conveniently and easily accessible for the purposes of the inspection until such time as the specified inspection has been performed or until such time as the Superintendent approves in writing.

Unless otherwise specified the Contractor shall give not less than one working day's notice that the required work will be ready for inspection.

21.2. Independent Testing Authority

Any testing required to be by an independent authority shall be carried out by an authority registered with the National Association of Testing Authorities Australia (NATA) to perform the specified testing.

22. SUSPENSION OF THE WORKS

The Superintendent may direct that work on the whole or part of the Works be suspended for such time as the Superintendent thinks fit;

- because of an act or omission of the Contractor, a subcontractor or an employee or agent of either; or
- for the protection or safety of any person or property; or
- to comply with an order of a court.

If directed by the Superintendent to suspend work the Contractor shall immediately comply with the direction and shall not recommence the work which has been suspended until the expiry of the time indicated by the Superintendent.

Any cost incurred by the Contractor by reason of a suspension under this clause shall be borne by the Contractor.

23. VARIATIONS

23.1. Compliance with Directions to Vary the Works

The Contractor shall construct the Works strictly in accordance with the Contract Documents and shall only vary the work as directed by the Superintendent or approved in writing by the Superintendent.

Directions issued pursuant to this clause shall be in writing. Unless specifically stated by the Superintendent all costs associated with the variation shall be borne by the Contractor.

23.2. Variations due to Amendments to Standard Documents

If the Superintendent directs a variation due to an amendment to Standard Documents, the cost to the Contractor of complying with the direction shall be borne by the Corporation. Unless the Superintendent and the Contractor agree upon the cost of complying with the direction, the cost shall be determined by the Superintendent.

23.3. Changes to the Contractor's Designs and or Contract Documents

If the Superintendent determines that some detail of the design and or Contract Documents is in error, or has been omitted then the Superintendent may direct the Contractor to investigate, detail and implement any changes necessary to correct the detail.

The Contractor shall execute the direction and shall bear all costs associated with the direction.

24. ENVIRONMENTAL PROTECTION

In performing the Works the Contractor shall take all reasonable care to construct the Works in a manner which does not unduly harm the environment.

Without limiting its generality environmental harm includes;

- disposal, placement, spillage, leakage and escape of any matter which changes the physical, chemical or biological condition of the environment
- introduction of any matter or the carrying out of an act which is likely to make the environment unclean, noxious, poisonous, impure or detrimental to the health, safety, welfare, amenity or property of persons, or harmful to animals, aquatic life or birds.

25. USE OF WATER FROM CORPORATION'S SYSTEM

Where water is required from the Corporation's watermains for the purposes of construction and testing of pipelines, a metered standpipe obtained from the Corporation is required.

26. RESTORATION

The Contractor shall promptly and progressively restore the Site as each area of work is completed. Restoration shall, as a minimum, restore the value and amenity of the Site to the owners.

27. PAYMENT OF WORKERS AND SUBCONTRACTORS

Before the issue of the Certificate of Practical Completion, the Superintendent may direct the Contractor to provide the Superintendent with a statutory declaration stating that;

- no wages are due and owing by the Contractor or a subcontractor in respect of the Works;
- no payment to a subcontractor is due and owing by the Contractor in respect of the Works.

28. PRACTICAL COMPLETION

28.1. Achievement of Practical Completion

The Date of Practical Completion shall be the earliest date upon which all of the following are true;

- The Superintendent has received a copy of the register of product and service compliance records, in accordance with clause **QUALITY SYSTEM**.
- The Superintendent has received a statutory declaration in relation to payment of workers and subcontractors, in accordance with clause **PAYMENT OF WORKERS AND SUBCONTRACTORS**.

- The Superintendent has received any other documents including completed Inspection and Test Plans, Checklists, test results, certificates, O&M Manuals and schedules required under the Contract to be submitted before Practical Completion.
- The Site has been restored in accordance with clause **RESTORATION** and any other requirement under the Contract in relation to restoration.
- The Works are suitable for use for the intended purpose;

28.2. Certificate of Practical Completion

The Contractor may request in writing that the Superintendent issue a Certificate of Practical Completion. Within 14 days of receipt of the request the Superintendent shall issue the Certificate or advise the Contractor in writing the reasons why the Superintendent does not agree that Practical Completion has been achieved.

The Certificate of Practical Completion shall state the Date of Practical Completion. The issue of the Certificate shall not constitute approval of any work or other matter nor shall it prejudice any claim by the Corporation.

29. DEFECTS LIABILITY

At any time up to twelve (12) calendar months after the Date of Practical Completion the Superintendent may direct the Contractor to rectify any omission or defect in the Works. The direction shall identify the omission or defect and state a date by which the Contractor shall complete the rectification.

At any time up to twelve (12) calendar months after the completion of any rectification work the Superintendent may direct the Contractor to rectify any omission or defect in the previous rectification work.

The direction shall identify the omission or defect and state a date by which the Contractor shall complete the rectification.

The Defects Liability Period shall be deemed to be complete twelve (12) months after the Date of Practical Completion or twelve (12) months after any rectification whichever is later.

30. DISPUTES

If a dispute arises out of or relates to this agreement, or the breach, termination, validity or subject matter thereof, or as to any claim in tort, in equity or pursuant to any domestic statute or law, the parties to the agreement and to the dispute expressly agree to settle the dispute by Expert Determination administered by the Australian Commercial Disputes Centre (ACDC) Ltd Sydney (<http://www.austlii.edu.au/au/other/acdc/>).

- (a) A party claiming that a dispute has arisen, must give written notice to the other parties to the dispute specifying the nature of the dispute.
- (b) On receipt of the notice specified in (a), the parties to the dispute must within seven (7) days of receipt of said notice seek to resolve the dispute.
- (c) If the dispute is not resolved within seven (7) days or within such further period as the parties agree then the dispute is to be referred to ACDC.
- (d) The Expert Determination shall be conducted in accordance with ACDC Expert Determination Guidelines which set out the procedures to be adopted, the process of selection of the expert and the costs involved and which terms are hereby deemed incorporated.
- (e) This clause shall not merge upon completion.