

**CENTRAL GIPPSLAND REGION WATER
CORPORATION**

AND

[INSERT CONTRACTOR]

**DESIGN AND
CONSTRUCTION
CONTRACT
(AMENDED FROM
AS 4902-2000)**

**## [INSERT NAME AND ADDRESS OF
DEVELOPMENT]**

MILLS OAKLEY

Level 6, 530 Collins Street
MELBOURNE VIC 3000
Telephone: +61 3 9670 9111
Facsimile: +61 3 9605 0933
DX 558, MELBOURNE
www.millsoakley.com.au
Ref: PFGM/5344710

This document is based on Standards Australia Ltd copyrighted material that is distributed by SAI Global Ltd on Standards Australia Ltd's behalf. It may be reproduced and modified in accordance with the terms of SAI Global Ltd's Licence 1808-c048 to Mills Oakley Lawyers (Vic office) ('the Licensee'). All amended, marked-up and licensed copies of this document must be obtained from the Licensee. Standards Australia Ltd's copyright material is not for resale, reproduction or distribution in whole or in part without written permission from SAI Global Ltd: tel +61 2 8206 6355 or copyright@saiglobal.com.

FORMAL INSTRUMENT OF AGREEMENT

Table of Contents	FORMAL INSTRUMENT OF AGREEMENT	1
1	DEFINITIONS	2
2	CONTRACT SUM	3
3	PERFORMANCE OF THE WORKS.....	3
4	CONTRACT	3
5	CONTRACTOR'S ACKNOWLEDGEMENT	4
6	PRIOR WORKS	4
7	PRINCIPAL SUPPLIED DOCUMENTS	4
8	DOCUMENTS AND INFORMATION.....	4
9	ENTIRE AGREEMENT	5
10	COSTS.....	5
11	AMENDMENT	5
12	UNENFORCEABLE PROVISIONS	5
13	PARTIES TO GIVE EFFECT TO CONTRACT	5
14	FURTHER ASSURANCES	5
15	COUNTERPARTS	6
16	INDEMNITIES AND WARRANTIES.....	6
17	WAIVER OF CONDITIONS.....	6
18	SURVIVING OBLIGATIONS.....	6
19	CONTRA PROFERENTEM.....	6
20	EXECUTION OF CONTRACT.....	6
	APPENDIX A AS 4902-2000 (AS AMENDED) GENERAL CONDITIONS OF CONTRACT	8
	APPENDIX B SPECIFICATIONS	9
	APPENDIX C PROGRAM.....	10
	APPENDIX D PRINCIPAL'S PROJECT REQUIREMENTS.....	11
	APPENDIX E DRAWINGS.....	12
	APPENDIX F PLANNING PERMIT MATRIX	13
	APPENDIX G UTILITIES FEES MATRIX	14
	APPENDIX H PLANNING PERMIT	15
	SCHEDULE ANNEXURE TO THE AUSTRALIAN STANDARD GENERAL CONDITIONS OF CONTRACT	1

THIS AGREEMENT is made on

20

PARTIES

CENTRAL GIPPSLAND REGION WATER CORPORATION trading as GIPPSLAND WATER

ABN 75 830 750 413

of 55 Hazelwood Road, Traralgon Victoria 3844

("Principal")

[INSERT CONTRACTOR]

ACN ##[INSERT ACN]

of ## [INSERT CONTRACTOR'S ADDRESS]

("Contractor")

RECITALS

- A. The *Principal* requires the performance and completion of the *WUC*.
- B. The *Contractor* has represented to the *Principal* that it has the expertise and resources to perform and complete the *WUC* in accordance with the *Contract*.
- C. In reliance on the *Contractor's* representations, the *Principal* engages the *Contractor* to perform and complete the *WUC*, and the *Contractor* agrees to perform and complete the *WUC* in accordance with the terms and conditions of the *Contract*.

THE PARTIES AGREE THAT:

1 DEFINITIONS

In the *Contract*.

- 1.1 "**Appendix**" means an appendix to the *Contract*;
- 1.2 "**Contract**" means the contract between the *Principal* and the *Contractor* contained in those documents and their attachments described in clause 4 of this *Formal Instrument of Agreement*;
- 1.3 "**Drawings**" means the drawings, plans and any other documents listed in *Appendix E*;
- 1.4 "**General Conditions of Contract**" means the Australian Standard General Conditions of Contract (AS 4902-2000) as amended attached to *Appendix A*;
- 1.5 "**Planning Permit**" means planning permit number [insert] a copy of which is attached to *Appendix H*;

Formal Instrument of Agreement

- 1.6 “**Planning Permit Matrix**” means the Planning Permit Matrix attached to *Appendix F*;
- 1.7 “**Principal’s Project Requirements**” means the Principal’s Project Requirements attached to *Appendix D* and where stated in *Item 11* of the *General Conditions of Contract* includes a *preliminary design*;
- 1.8 “**Program**” means the program attached to *Appendix C* as replaced or updated in accordance with clause 32 of the *General Conditions of Contract*;
- 1.9 “**Specifications**” means the Specifications listed in *Appendix B*;
- 1.10 “**Utilities Fees Matrix**” means the Utilities Fees Matrix attached to *Appendix G*; and
- 1.11 all terms which are defined in the *General Conditions of Contract* and which are referred to in this *Formal Instrument of Agreement* have the same meaning as given to them in the *General Conditions of Contract* and all terms which are defined in this *Formal Instrument of Agreement* and which are referred to in the *General Conditions of Contract* have the same meaning as given to them in this *Formal Instrument of Agreement*.

Headings are for reference only and do not form part of this *Formal Instrument of Agreement*.

2 CONTRACT SUM

The *contract sum* is a lump sum \$###[INSERT] (inclusive of GST) as adjusted in accordance with the *Contract*.

The *contract sum* includes all *provisional sums* and *prime cost items*.

3 PERFORMANCE OF THE WORKS

In consideration of the *Contractor* performing and completing *the Works* by the *date for practical completion*, the *Principal* shall pay the *Contractor* the *contract sum* at the times and in accordance with the *Contract*.

4 CONTRACT

The following documents only and their attachments, if any, together constitute the *Contract* between the *Principal* and the *Contractor*:

- 4.1 the Formal Instrument of Agreement;
- 4.2 the *General Conditions of Contract*;
- 4.3 the *Principal’s Project Requirements*;
- 4.4 the *Planning Permit*;
- 4.5 the *Drawings*;
- 4.6 the *Specifications*;
- 4.7 the *Program*;
- 4.8 the *Planning Permit Matrix*; and

4.9 the *Utilities Fees Matrix*.

Documents, *Specifications* and *Drawings* that are listed but not attached to the *Appendices* are incorporated into the *Contract* by reference.

5 CONTRACTOR'S ACKNOWLEDGEMENT

The *Contractor* acknowledges that:

- (a) it has examined the *Drawings* and *Specifications* and the *site* and its surroundings to the extent necessary to design and perform *the Works* under the *Contract*;
- (b) it has examined all the information relevant to the risks, contingencies and other circumstances affecting *the Works*;
- (c) it is satisfied as to the correctness and sufficiency of its tender and that the *contract sum* accounts for and includes an allowance for the cost of complying with the *Drawings* and *Specifications* and all the matters and things necessary for the due and proper design, execution and completion of *the Works* and the performance of the *Contractor's* obligations under the *Contract* in accordance with the requirements of the *Contract*;
- (d) the *Contractor* acknowledges that the *Principal* has entered into the *Contract* in reliance upon the *Contractor's* representation that it possesses the particular skill, expertise, experience and ability necessary and is able in all respects to design and perform *the Works* and all of its obligations under the *Contract*; and
- (e) the *Contractor* acknowledges that the *Principal* makes no warranties or representations that the information it provides to the *Contractor* in connection with the *Contract* is adequate or free of inaccuracies. The *Contractor* acknowledges that it must satisfy itself as to the adequacy of any such information and advises the *Principal* of any inadequacy or inaccuracy it discovers.

6 PRIOR WORKS

The *Contractor* acknowledges and agrees that any works undertaken by the *Contractor* or *subcontractors* at the *site* in connection with *the Works* prior to the date of the *Contract*, shall be deemed to form part of *the Works* carried out pursuant to the *Contract* and any payments made by or on behalf of the *Principal* to the *Contractor* with respect to *the Works* described in this clause shall form part of the *contract sum*.

7 PRINCIPAL SUPPLIED DOCUMENTS

The *Principal* shall provide to the *Contractor* copies of the *Drawings* and the *Specifications*. They shall remain the *Principal's* property and shall be returned by the *Contractor* to the *Principal* on written demand and not be used or copied or reproduced by the *Contractor* for any purpose other than with respect to the *WUC*.

8 DOCUMENTS AND INFORMATION

The *Contractor* acknowledges and agrees that it has not relied on any information provided by or on behalf of the *Principal* which does not form part of the *Contract* and that

Formal Instrument of Agreement

it has used and relied on its own endeavours, efforts and investigations to verify the accuracy and sufficiency of that information.

The *Contractor* warrants that it is entering into the *Contract*:

- (a) solely on the basis of its own investigations and determinations as to the obligations, liability and risk assumed or to be assumed by the *Contractor* in entering into the *Contract*; and
- (b) without relying on any representation by the *Principal* or any other person purporting to represent the *Principal*.

9 ENTIRE AGREEMENT

The *Contract* constitutes the entire agreement between the parties and sets out a full statement of the contractual rights and liabilities of the *Principal* and the *Contractor* in relation to *the Works* and no negotiations between them nor any document agreed or signed by them prior to the date of the *Contract* in relation to the Works is of any contractual effect.

10 COSTS

Each party shall bear their own legal and other costs, charges and expenses of and incidental to the preparation, review and execution of the *Contract*.

11 AMENDMENT

The *Contract* may only be amended or varied if such amendment or variation is in writing and signed by the parties.

12 UNENFORCEABLE PROVISIONS

In the event that any of the provisions (or part thereof) of the *Contract* should be invalid, illegal, unenforceable or void in any respect, the validity, legality and enforceability of the remaining provisions (or part thereof) of the *Contract* shall not be affected or impaired in any way.

13 PARTIES TO GIVE EFFECT TO CONTRACT

Each party agrees that they shall do everything reasonably necessary to give effect to the *Contract*.

14 FURTHER ASSURANCES

Each party shall exercise all such powers as are available to it, do all such acts, matters and things and sign, execute and deliver all such documents and instruments as may be necessary or reasonably required to give full force and effect to the provisions of the *Contract*.

15 COUNTERPARTS

The *Contract* may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

16 INDEMNITIES AND WARRANTIES

Each indemnity and warranty given under the *Contract* is a continuing obligation separate and independent from other obligations under the *Contract* and notwithstanding anything else in the *Contract* is enforceable and survives completion of *the Works* or the termination, or expiry of the *Contract*.

17 WAIVER OF CONDITIONS

Except as provided at law or in equity or elsewhere in the *Contract*, none of the terms of the *Contract* shall be varied, waived, discharged or released, except with the prior consent in writing of the *Principal* in each instance.

18 SURVIVING OBLIGATIONS

All obligations of the *Contractor*, and all warranties and representatives contained in the *Contract* and rights of the *Principal* arising out of or in any way in connection with the *Contract* which are capable of surviving the termination or expiration of the *Contract* shall survive the termination or expiration of the *Contract*.

19 CONTRA PROFERENTEM

This *Contract* is not to be interpreted or construed against the interests of a party merely because that party proposed or drafted this *Contract* or proposed or drafted a clause in this *Contract*.

20 EXECUTION OF CONTRACT

The *Principal* shall following acceptance of the *Contractor's* tender send the *Contract* to the *Contractor* for execution. Within 7 days after receiving the *Contract*, the *Contractor* shall execute all copies of the *Contract* received and return the executed copies of the *Contract* to the *Principal*. Within 7 days after receiving them, the *Principal* shall execute the copies of the *Contract* and send one executed copy to the *Contractor*.



Formal Instrument of Agreement

EXECUTED as an agreement.

Signed by [redacted] a duly
authorised officer for and on behalf of
CENTRAL GIPPSLAND REGION WATER
CORPORATION in the presence of:

Witness

Name of Witness (print)

EXECUTED by ## [INSERT CONTRACTOR]
(ACN ## [INSERT ACN]) by its authorised
officers in accordance with section 127(1) of the
Corporations Act 2001 (Cth):

Signature of Director

Signature of Director / Secretary
(delete as applicable)

Name of Director
(Please print)

Name of Director / Secretary
(Please print)

Usual Address

Usual Address



Formal Instrument of Agreement

**APPENDIX A
AS 4902-2000 (AS AMENDED) GENERAL CONDITIONS OF CONTRACT**



**APPENDIX B
SPECIFICATIONS**



Formal Instrument of Agreement

APPENDIX C
PROGRAM



**APPENDIX D
PRINCIPAL'S PROJECT REQUIREMENTS**



Formal Instrument of Agreement

**APPENDIX E
DRAWINGS**



Formal Instrument of Agreement

**APPENDIX F
PLANNING PERMIT MATRIX**



Formal Instrument of Agreement

**APPENDIX G
UTILITIES FEES MATRIX**



Formal Instrument of Agreement

**APPENDIX H
PLANNING PERMIT**

SCHEDULE
ANNEXURE TO THE AUSTRALIAN STANDARD GENERAL CONDITIONS OF CONTRACT

The attached comparison between Australian Standard AS 4902-2000 General conditions of contract for design and construct and the amended AS 4902-2000 General conditions of contract for design and construct does not form part of the Contract, but is provided for the information of the parties only to highlight the clauses which have been deleted, amended or differ from the Australian Standard AS 4902-2000 General conditions of contract for design and construct.