



## ***SOUTH FEATHER WATER & POWER AGENCY***

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**TO: Board of Directors**

**FROM: Michael Glaze, General Manager**

**DATE: May 30, 2007**

**RE: Conveyance Agreement – Acacia Estates  
Agenda Item for 6/26/07 Board of Directors Meeting**

Attached is a standard Conveyance Agreement that has been executed by Acacia Park LLC (a subsidiary of Village Contractors with offices in Chico and Salt Lake City), developer of Acacia Estates Subdivision, a 20-lot residential subdivision on the east side of Acacia Avenue, at the west end of Parkwood Drive.

Part A, Section 4.A of the Agency's Rules & Regulations specifies the following:

After completion of plans and specifications...and prior to commencement of construction, the developer shall enter into a Conveyance Agreement with the Agency, approved by the Board of Directors, describing the conditions upon which the Agency will accept the developer's completed water system improvements.

Water Division Manager Matt Colwell has approved the construction drawings for the project, and the attached Conveyance Agreement describes the conditions upon which the Agency will accept the project's water system into its maintained system.

The developers have satisfied all conditions necessary for your consideration of the Conveyance Agreement, including payment of plan-check and inspection fees.

Your approval of the Conveyance Agreement is recommended as follows:

**"I move approval of the Conveyance Agreement with Acacia Park LLC, specifying the terms and conditions, together with those contained in the Agency's Rules and Regulations Governing Water Service, whereby the Agency is willing to accept, upon completion of the water distribution facilities within Acacia Estates Subdivision, if it is constructed in accordance with the approved plans and specifications thereof, and in a manner meeting the Agency's approval."**

**AGREEMENT**  
(Conveyance)

THIS AGREEMENT, made and entered into this 22 day of May, 2007, by and between the SOUTH FEATHER WATER AND POWER AGENCY, hereinafter referred to as "Agency" and ACACIA PARK, LLC, hereinafter referred to as "Developer".

**RECITALS**

WHEREAS, Developer has prepared or caused to be prepared, at Developer's sole cost, expense, and responsibility, plans and specifications entitled Acacia Estates Subdivision, as prepared by Arpen Engineering Group for construction of water-system improvements as shown on the Improvement Plans for the subject project, to provide treated water to the 20 residential lots that will be subdivided from APN 033-360-067 and 068, a copy of which is attached hereto marked Exhibit "A" and made a part of this Agreement; and,

WHEREAS, the plans and specifications contained in Exhibit "A" have been accepted by the Agency's engineer; and,

WHEREAS, the facilities and lands to be served treated water by said water-system improvements lie within the boundaries of the Agency and are identified in Exhibit "A"; and,

WHEREAS, Developer desires Agency to accept said water-system improvements into Agency's overall water system upon completion; and,

WHEREAS, Agency, subject to the following terms and conditions, as well as those contained in the Agency's Rules and Regulations Governing Water Service (hereinafter referred to as "Rules and Regulations"), is willing to accept said water-system improvements upon completion, provided the water-system improvements are constructed in accordance with the plans and specifications and in a manner meeting Agency's approval.

NOW, THEREFORE, the parties mutually agree as follows.

ARTICLE 1 – RECITALS. The recitals contained herein are an integral part of this Agreement.

ARTICLE 2 – PLANS. Attached hereto, marked Exhibit "A" and made a part of this Agreement is one set of plans reduced to 11" x 17", prepared by the Developer's licensed civil engineer, and consisting of 12 sheets, and specifications for construction of water-system improvements. The Agency's acceptance of these plans and specifications does not constitute a warranty or guaranty by Agency of proper design nor does it relieve Developer of responsibility for the proper design and construction of the improvements thereon.

ARTICLE 3 - CONNECTION FEES: Attached hereto, marked Exhibit "B" and made a part of this Agreement is Part D of the Rules and Regulations, entitled "Water Rates". Developer understands and agrees to be bound by any Agency alterations, additions, amendments, revisions or modifications to Part D or any other Agency policies, rules, or regulations. All parties hereby agree that Agency is entitled to those

connection fees (the sum of the New Service Charge, Meter Set Fee, and System Capacity Charge) as specified in Part D. Agency shall collect said connection fees on a lot-by-lot basis at the time application for water service is made for each lot. It shall be incumbent upon the water service applicant to pay the then-current connection fees and all other then-applicable fees and charges.

ARTICLE 4 - ENGINEERING, PLAN-CHECK, AND INSPECTION SERVICES PERFORMED BY AGENCY. Agency and Developer understand and agree that Developer shall assume the cost and expense of Agency's performance of engineering, plan-check, and inspection services, in connection with Developer's construction of water-system improvements described in Exhibit "A" attached hereto.

Prior to, or in conjunction with, the first submittal of plans and specifications for review by Agency's engineer, Developer deposited the sum of \$1,441.44, being 3% of Developer's engineer's estimate of the cost to construct that portion of the water system that will be conveyed upon completion to the Agency, which sum was payment for engineering and plan-check services performed by Agency in connection with Developer's construction of treated water system facilities described in Exhibit "A", attached hereto. Agency's acceptance of payment for engineering and plan-check services performed is not a warranty or guarantee by Agency of proper design or proper specifications of materials for construction. If construction is not commenced within 12 months after approval of the plans and specifications by Agency's engineer, Developer may be required to make additional payments to Agency for plan-check and review services. Such additional payments may not be in excess of 3% of Developer's engineer's estimate.

Prior to commencement of construction of any portion of the water system that will be conveyed upon completion to the Agency, Developer shall deposit the sum of \$1,441.44, being 3% of Developer's engineer's estimate of the cost to construct that portion of the water system that will be conveyed upon completion to the Agency, which sum shall be payment for construction-inspection services performed by Agency in connection with Developer's construction of treated water system facilities described in Exhibit "A" attached hereto. Agency's acceptance of payment for construction-inspection services performed is not a warranty or guarantee by Agency of proper design or proper specifications of materials for construction, or that the water system was constructed without fault, failure or omission.

ARTICLE 5 - LABOR AND MATERIAL PAYMENT BONDING REQUIREMENTS. Developer shall defend and indemnify Agency against all claims for nonpayment of labor, material, and other obligations incurred by Developer, its agents, contractors, employees and assigns. The cost of construction of the water-system improvements is estimated by Developer's engineer to be \$48,048.

At the time of offering the water-system improvements to the Agency, in addition to supplying a written "OFFER OF DEDICATION" in the form as described in Exhibit "C", Developer shall either submit a "RELEASE" agreement in the form of Exhibit "D", attached hereto and made a part hereof, from each and every contractor, subcontractor, corporation, firm, person, or business entity furnishing materials for or performing labor or other services in performing the terms and provisions of this Agreement, or a Labor and Material Payment Bond to the Agency in the form prescribed by Exhibit "E", attached hereto and made a part hereof, the principal sum of which shall be not less than the estimated construction cost as provided herein. In addition, Developer shall maintain an accurate and current list of all contractors, subcontractors, business entities, corporations, firms, and/or persons performing the terms and provisions of this Agreement, and shall make this list available to the Agency's engineer or General Manager upon request.

ARTICLE 6 - INSURANCE REQUIREMENTS. Prior to Developer's commencement of construction of the water-system improvements as otherwise set forth in the terms and provisions of this Agreement, general liability insurance naming Agency as additional named insured shall be obtained and maintained for the duration of this Conveyance Agreement by Developer or Developer's contractor for claims for damages to property, personal injury, bodily injury, and accidental death. The types of insurance covered under the general liability policy shall include, but not be limited to, comprehensive form, premises-operations, underground hazard, products/ completed operations hazard, broad form property damage, independent contractor, and personal injury. Prior to any blasting operations for removal of rock, stumps, or other materials from the work area, the general liability policy must also contain explosion and collapse hazard coverage. It shall also include coverage for Products-Completed Operations liability losses for a period of 12 months from the date of Agency's acceptance of the completed works. (This time period corresponds with the 12-month maintenance bond requirement.) All insurance acquired under the terms of this article must be obtained through an insurance company authorized and licensed to do business in the State of California. The general liability policy shall contain limits of liability as follows:

1. Bodily Injury: \$1,000,000 for each occurrence, \$2,000,000 aggregate
2. Property Damage: \$1,000,000 each occurrence, \$1,000,000 aggregate.

General Liability Insurance policies having combined single limits damage combined of liability shall carry limits for bodily injury and property damage combined of \$1,000,000 each occurrence and \$1,000,000 aggregate.

The certificate of insurance shall also have a description of operations/locations/vehicles that refers specifically to the water-system improvements.

Proof Of Insurance. Developer shall submit or cause to be submitted a copy of the insurance policy(ies) with endorsements and exclusions, and shall submit to Agency a certified copy of the endorsement naming Agency as additional insured as proof of general liability insurance required by this Agreement. Developer shall receive Agency approval that the insurance requirements of this Agreement have been met. The Developer must receive this approval prior to the start of construction pursuant to the terms of this Agreement.

ARTICLE 7 - HOLD HARMLESS AND INDEMNIFICATION. Developer shall hold Agency and Agency's agents, officers, and employees harmless from any and all claims, lawsuits, acts or omissions arising out of Developer's performance of the terms and conditions of this Agreement. Likewise, Developer shall defend and/or pay the cost of defending and indemnifying Agency together with Agency's agents, employees and officers from all civil proceedings, claims and/or judgments including, but not limited to, payment of all attorney fees and litigation costs.

ARTICLE 8 - INSPECTION OF WORK. Developer shall give two working days' advance notice prior to Developer's contractor starting any work associated with the water-system improvements and shall keep Agency informed of construction schedules throughout the course of the work in order for Agency to properly schedule inspection personnel. It is suggested that Developer's contractor provide Agency submittals on any materials proposed for the water-system improvements for approval prior to purchase.

ARTICLE 9 - BEGINNING OF WORK OR TERMINATION. This Agreement shall terminate and be of no further force or effect at Agency's discretion should Agency determine that Developer has failed to cause

construction of the water-system improvements as shown on Exhibit "A" to commence within 12 months from the date of this Agreement.

For purposes of this Article, Developer's commencement of construction shall not be deemed to have occurred upon one or any combination of the following actions or events:

1. Bid advertisement
2. Execution of contracts or bonds
3. Ordering of material and supplies or the delivery and stockpiling of materials and supplies on the job site.
4. Clearing and grubbing for, or construction of roads, including the completion of rough subgrade work.

Agency and Developer understand and agree that construction of the water-system improvements shall be deemed to have commenced when Developer causes its properly-licensed contractor to excavate and backfill pipeline in excess of 10% of the total water system to be constructed pursuant to the terms of this Agreement. The Agency's engineer shall make the determination as to the percentage of water system caused to be constructed and installed by Developer.

ARTICLE 10 – CONSTRUCTION. Developer shall cause the water-system improvements described in Exhibit "A" to be constructed by a properly licensed contractor, without expense to Agency, and Agency shall not be responsible for any of the cost of said improvements. Developer is not acting as a contractor, agent, official, or representative of Agency in constructing or providing such water-system improvements, or in causing such improvements to be installed. This Agreement simply provides for the transfer and assumption of responsibility for such water-system improvements to be installed upon completion and upon performance of all terms of this Agreement to be performed by Developer. The approval of the plans and specifications as presented by Developer shall not be deemed as a warranty or guarantee by Agency of proper design or proper specifications of materials or construction. Agency specifically relies upon the design and specifications as prepared or caused to be prepared by Developer as being in keeping with the requirements of Agency, as being in accordance with the conditions of the geography, and as having specific materials and equipment of the highest practicable quality and character. The Developer will provide a licensed civil engineer to act as the project engineer during construction.

All proposed field modifications shall be identified for review by Agency's engineer. No field modifications shall be made prior to approval by Agency's engineer.

Developer's contractor shall provide and keep on site an up-to-date "as-built" set of plans that show changes from the original plans approved by Agency's engineer prior to commencement of construction.

ARTICLE 11 - NOTIFICATION OF DEVIATIONS OR FAILURES: Agency agrees to notify Developer in writing as to any deviations or failure in construction of the water-system improvements pursuant to said plans and specifications, and the requirements of said Agency as soon as any deviation is brought to Agency's attention, and Developer shall immediately cause such deviation or failure to be corrected at the sole cost of Developer. Developer agrees that Agency is not, by inspection of the construction or installation of the improvements, representing Developer or providing a substitute for inspection and control of the work by Developer. Developer agrees that any inspections and observations of the work by Agency are for the sole purposes of providing notice of the stage and character of the work. Developer agrees that the failure of the

Agency to note variances from the plans and specifications for the project does not excuse or exempt Developer from complying with all terms of these plans and specifications.

ARTICLE 12 - REIMBURSEMENT FOR FUNDS EXPENDED BY DEVELOPER. Should Developer desire reimbursement for funds expended in the installation and construction of water-system improvements that benefit non-project parcels as provided in the terms and provisions of this Agreement in addition to all other funds expended for the acquisition of rights of way and employment of engineers and contractors for construction, planning, and design of the water-system improvements, then Developer shall request such reimbursement in writing and deliver such writing to the Agency's main business office 30 days prior to conveyance of the water-system improvements to Agency as provided in Article 16 herein. Agency, upon receiving Developer's written request for reimbursement of funds expended pursuant to the terms and provisions of this Agreement, will then determine if Developer is entitled to reimbursement pursuant to Agency policies, rules, and regulations then in effect. Should Agency determine that Developer may be entitled to reimbursement, then Agency, in its sole discretion, may enter into a reimbursement agreement with Developer that shall provide for the method and manner by which Developer would achieve reimbursement of funds expended for the construction and installation of the water-system improvements. Should Agency, in its discretion, determine to enter into a reimbursement agreement with Developer, such agreement shall be prepared and entered into prior to Developer's conveyance of water distribution facilities to Agency, all as set forth in Article 16 herein. The reimbursement agreement shall provide for the method and manner by which Agency may assist Developer in obtaining reimbursement of a portion of funds expended by Developer for the water-system improvements constructed pursuant to the terms of this Agreement.

Developer is advised that, for facilities installed with public funds, the Labor Code requires that all craftsmen, mechanics and laborers be paid the local prevailing wages. Agency has not ascertained if reimbursement could be construed as public funding. Developer assumes all risk as to whether reimbursement could be construed as public funding, and indemnifies Agency from all liability claims arising or alleged to arise from construction wages not conforming to local prevailing wages.

ARTICLE 13 - PREVAILING WAGES. The State's Attorney General has opined that, in certain circumstances, construction of facilities for provision of public utility service, with the understanding and agreement that said facilities will be turned over to the Agency for ownership, operation and maintenance at the conclusion of construction, may be subject to the prevailing wage laws of the State of California.

It is Developer's responsibility to determine if the Attorney General's opinion affects the wages paid by him/her to workers employed on water facilities constructed for their project. However, should it be determined that the prevailing wage laws of the State (Labor Code §1770, et seq.) apply to the work performed for the project, then Developer will be required and shall agree to defend and hold the Agency harmless from any liability, claims, damages, or costs in any way associated with said determination by the State. Further, Developer shall take all necessary and appropriate action, including payment of back wages, and any associated penalties that may be required, due to enforcement of the prevailing wage law in connection with construction of the water system.

The Agency will not represent or advise Developer in connection with this matter except to advise him/her of their potential liability. Developer should not rely upon any opinion or information of the Agency in making his/her determination in connection with the payment or nonpayment of wages.

ARTICLE 14 - COMPLETION OF WORK OR TERMINATION: This Agreement shall terminate and be of no further force or effect at Agency's discretion should Agency determine that Developer has failed to cause construction of the water-system improvements as shown on Exhibit "A" to be completed within one and one-half (1½) years from the date of this Agreement.

For the purposes of this Article, Developer's completion of the construction shall occur upon Agency's accepting conveyance of the water-system improvements pursuant to Article 15 ("Conveyance") of this Agreement. Developer further understands and agrees that Agency may withhold acceptance of Developer's proposed dedication of the facilities should Agency's engineer determine that any portion of the water-system improvements have failed to pass appropriate pressure and leakage tests or that samples of water taken from the treated water lines and tested are determined not to be safe by the Agency's engineer. Developer understands and agrees that Agency may also withhold acceptance of the proposed dedication of the water system should Agency's engineer determine that Developer failed to complete all other construction either over, under or adjacent to the water-system improvements including but not limited to final road grade, paving, curbs, gutters, sidewalks, all other utilities, and restoration of rights of way.

ARTICLE 15 - CONVEYANCE. Upon completion of the water-system improvements in a manner meeting Agency's approval, Developer shall immediately convey said improvements and title thereto free and clear of all liens, encumbrances and expense to Agency by such conveyance and documents as deemed necessary by Agency, including but not limited to the following:

1. An executed "OFFER OF DEDICATION" (Exhibit "C") offering the water-system improvements shown on Exhibit "A" to Agency.
2. "RELEASE" statements (Exhibit "D") from every contractor, subcontractor, corporation, firm or business entity furnishing materials for or performing labor or other services, OR a Labor and Material Payment Bond (Exhibit "E"), all as specified in Article 5.
3. Developer shall provide Agency with proof satisfactory to Agency that Developer has acquired all local, state, and federal permits, maps or licenses and that Developer shall comply with all local, state and federal rules, ordinances and regulations relevant to the real property on, over or under which the water-system improvements are situated.
4. Payment of System Capacity Charges due Agency pursuant to then-current Agency rules and regulations and as specified in Article 3 of this Agreement.
5. Payment of any balance due for engineering, plan-check, and inspection services performed by Agency.
6. One complete set of "as-built" drawings with the notation "As-Built" entered in the revision block, dated and initialed by Developer's engineer. Delivery of the as-built drawings shall include BOTH electronic copies (delivered on CD media and not spanned over more than one disk containing all the digital CAD files – i.e., .dwg, .dxf – files for the entire drawing set, or as otherwise specified by the Agency's engineer) and hard copies (24"x 36" reproducible copies on Mylar or material of suitable durability) of the improvements constructed.
7. All easements and rights of way required by Agency, including reasonable documentation of title provided at Developer's expense to confirm authority to convey the easements and facilities.
8. Approval by LAFCo of any annexation application needed for the project site to be included within the Agency's boundaries.
9. The Developer-constructed water-system improvements shall be flushed (or re-flushed) and shall pass bacteriological testing no earlier than 14 calendar days prior to the date Agency's General Manager accepts the Offer of Dedication. Developer shall provide for proper drainage and de-chlorination equipment during flushing operations.

10. Developer shall furnish a Maintenance Bond in the form prescribed in Exhibit "F" attached hereto and made a part hereof in an amount of not less than 25% of cost of construction of the water-system improvements at the time of offering the water-system improvements to the Agency, protecting Agency against any failure of the work due to faulty materials, poor workmanship, or defective equipment within a period of one year following acceptance of the "OFFER OF DEDICATION" of the water-system improvements by Agency's General Manager.

In place of a Maintenance Bond, the Developer may offer a certificate of deposit or an irrevocable letter of credit meeting the Agency's approval as to form and financial institute utilized. Certificates of deposit used in lieu of a maintenance bond must be opened either in the Developer's name and specifically assigned to the Agency or opened on behalf of the Agency only. The signatory for the Agency shall be the General Manager or Treasurer of the Agency.

Upon written certification by Developer and the Developer's engineer that the water system improvements have been completed in conformance with the Agency's Rules and Regulations Governing Water Service, its Development Standards for Treated Water Systems and the approved project plans and specifications, and upon concurrence by Agency's engineer and General Manager, the General Manager will accept the "OFFER OF DEDICATION" of the completed water-system improvements and include said improvements into the Agency's overall water system and shall operate, maintain, and repair said improvements except as specified during the warranty period.

ARTICLE 16 - APPLICATION FOR WATER. No water shall be delivered to or conveyed by or through the water-system improvements shown on Exhibit "A", other than for testing purposes and construction purposes authorized by Agency's General Manager, until said water system is conveyed to Agency, formally accepted by Agency, and proper applications for water service have been filed with Agency and approved.

ARTICLE 17 - OBLIGATION FOR PIPELINES AND/OR FACILITIES. Agency shall be under no obligation to provide additional pipelines and/or facilities in order to serve water to Developer's project. Upon acceptance of the water-system improvements by Agency, it shall become the sole property of Agency and shall be used and operated at Agency's sole discretion.

ARTICLE 18 - RULES AND REGULATIONS. Upon acceptance of the water-system improvements by Agency, Developer, its successors and assigns, shall be subject to and shall comply with all of the rules and regulations of Agency and shall pay the water rates, tolls and charges as may be levied and/or established by Agency's Board of Directors from time to time.

ARTICLE 19 - ASSIGNMENT. No transfer or assignment may be made by Developer of this Agreement or any part or interest of law unless such transfer or assignment is approved in writing by Agency, provided further that Agency shall not unreasonably withhold consent to transfer or assign. In the event of such transfer or assignment, Agency may, at its sole option and in addition to any other remedy that it may have, elect to terminate this Agreement.

ARTICLE 20 - NOTICES. The mailing addresses of Agency and Developer for purposes of giving any notice required pursuant to this Agreement are as follows:

**AGENCY**

South Feather Water and Power Agency  
2310 Oro-Quincy Highway  
Oroville, California 95966

**DEVELOPER**

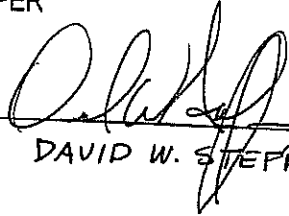
Acacia Park, L.L.C.  
448 East 6400 South, Suite 450  
Salt Lake City, Utah 84107

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

SOUTH FEATHER WATER AND POWER AGENCY

By \_\_\_\_\_  
Michael C. Glaze, General Manager/Secretary

**DEVELOPER**

By  \_\_\_\_\_  
DAVID W. STEFFENSEN

By \_\_\_\_\_