

NPD06OES

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	NORTHWEST PLATEAU DEVELOPMENT INC.
SUBJECT/PROJECT:	OLD ORCHARD ESTATES SUBDIVISION INDEMNIFICATION AGREEMENT
LOCATION:	774 OLD ORCHARD ROAD
PARCEL#:	2701-352-00-012
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING DEPARTMENT
YEAR:	2006
EXPIRATION DATE:	NONE

INDEMNIFICATION AGREEMENT

This INDEMNIFICATION AGREEMENT ("Agreement") is made and entered into this 7th day of December 2005 by and between Northwest Plateau Development Inc.(Developer) and the City of Grand Junction, Colorado, its officers, agents and employees, hereinafter referred to as the "City".

This Agreement specifies terms, conditions, responsibilities and duties of the Developer to indemnify and hold harmless the City, pertaining to the development, use and placement of drainage facility(ies), conveyance(s), structures(s) and points(s) of discharge in and concerning Old Orchard Estates Subdivision("the Project" or Project").

RECITALS

- A. The Developer has designed and developed the Project, such that storm and/or surface water will be discharged into Drain Ditch "E" a facility owned/managed by Grand Valley Water Users Association (GVWUA).
- B. The (owner/manager) has claimed and otherwise asserted an interest in the Drain Ditch "E". Because of that asserted claim and interest the GVWUA has not consented to accept the surface water from the Project.
- C. The Project does have surface and storm water detention and/or retention drainage facilities constructed to City standards. The City cannot and does not by review and approval of the Project authorize discharge into the facilities of others. The storm water discharge has an intervening natural drainage course prior to reaching Drain Ditch "E".
- D. The City is not and cannot be the arbiter of the competing legal claim of the Developer and the GVWUA and as such the City is unwilling to accept any liabilities, costs or expenses associated with or resulting from the Developer's decision to discharge as designed.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the approval of the Project the Developer agrees as follows:

1. The project was designed and approved for development as detailed and described in Community Development file #FP-2005-2002. The GVWUA asserts a claim and interest in the Drain Ditch "E", the facility to which the developer has proposed storm water to be discharged. The GVWUA asserts, among other things, that it may limit/preclude the introduction of new and/or developed flows to its Drain Ditch "E". The Developer asserts, among other things, that it has a right based on historic use.
2. GVWUA and/or the Developer each may have certain legal rights but the City cannot fully or finally determine those rights.
3. By virtue of the City's role in reviewing and approving the Project the City does not and cannot determine which if any right is preeminent. Therefore, the Developer has agreed in consideration of the City approving the Project, the sufficiency of which consideration is acknowledged, to indemnify and hold harmless the City of Grand Junction and its officers, agents, and employees from and against any and all claims, suits, damages, costs, expenses, liabilities, actions or proceedings arising from bodily injury, loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the design, construction, use and/or as constructed by the Developer.
4. The Developer shall indemnify and hold harmless the City of Grand Junction, its officers and employees, from any and all loss, liability, claims, damages, fines or penalties asserted, assessed or imposed against the City by any Federal, State or local agency concerning an environmental release or discharge from the Project or violation of environmental laws, rules or regulations that occur, result or are claimed to occur or result by or from the City's approval of the Project.

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5. The indemnification provided for herein shall include but not necessarily be limited to, property damage and/or personal injury.
6. The Developer shall bear all costs and expenses of the indemnification provided for herein including but not necessarily limited to, court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false or fraudulent. The Developer may retain legal counsel of its choosing so long as any such counsel retained to defend the Developer and/or the City is licensed by and in good standing with the arising from bodily injury, loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the design, construction or use of the drainage system and/or drainage conveyance referred to herein. The City may disapprove such legal counsel, without cause being stated.
7. The persons(s) signing this Agreement, whether as individuals or in a representative capacity, shall have authority and be authorized to sign the Agreement and bind themselves or the entity that on whose behalf h/she/they sign. This Agreement shall be perpetual and shall not be terminated except by a written instrument executed by the City.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first written above.

"DEVELOPER"

Northwest Plateau Development, Inc.

BY: Stan R. Hyl

TITLE: President

"CITY"

CITY OF GRAND JUNCTION

BY: Pat Cain

TITLE: Development Services Supervisor