

FOR BOARD ACTION

Agenda Item # 7

Meeting Date:

8/29/06

SUBJECT: AGREEMENT TO HOLD THE CITY OF ROCHESTER HARMLESS
Grandville at Cascade Lake Limited Partnership

PREPARED BY: Doug Rovang, Senior Civil Engineer *DR*

ITEM DESCRIPTION:

As noted on the attached Agreement to Hold the City of Rochester Harmless / Waiver of Water Service Rules and Regulations, water service lines to two buildings in the Grandville at Cascade Lake Subdivision have been inadvertently constructed which do not comply with paragraph 404.2 of Section 400 of RPU Water Service Rules and Regulations (that being, for “. . . two attached dwelling units . . . no part of an individual water service shall . . . pass under or through another dwelling unit”).

The developer has asked for a waiver from the Water Rules to allow the two existing water service lines to remain in place. After consultation with the City Attorney's office, the attached Agreement has been prepared which provides a waiver allowing the two water service lines subject to specific conditions and developer responsibilities, to include the developer assuming all costs for any necessary future repairs related to the non-complying water service lines, and the developer holding the City harmless from any and all related claims for damages resulting from the non-complying water service lines.

UTILITY BOARD ACTION REQUESTED:

Staff is requesting that the Utility Board approve the attached Agreement to Hold the City of Rochester Harmless / Waiver of Water Service Rules and Regulations, and authorize the Mayor and City Clerk to execute the Agreement.

Terry Koshir

General Manager

Aug 29, 2006

Date

ROCHESTER PUBLIC UTILITIES

AGREEMENT TO HOLD THE CITY OF ROCHESTER HARMLESS
WAIVER OF WATER SERVICE RULES AND REGULATIONS

THIS AGREEMENT, made this 7th day of July, 2006, between the **City of Rochester**, a Minnesota municipal corporation, hereinafter referred to as "City", and **Grandville at Cascade Lake, Limited Partnership**, a ~~Minnesota~~ **Florida** limited partnership, hereinafter referred to as "Grandville."

WITNESSETH THAT:

1. WHEREAS, Grandville owns the Grandville at Cascade Lake subdivision in the SE ¼ of Section 33, Township 107 N, Range 14 W (PIN Number 64942), in the City of Rochester, upon which has been constructed a residential subdivision.

2. WHEREAS, Grandville has subsequently constructed water service lines to two buildings within the subdivision which do not comply with paragraph 404.2 of Section 400 of RPU Water Service Rules and Regulations (that being, for “. . . two attached dwelling units . . . no part of an individual water service shall . . . pass under or through another dwelling unit”), the two buildings being:

Building #6, located at 131 Grande Valley Ave SW

Building #37, located at 206 Grandville Rd SW

which are located within **Lot 1, Block 1, Grandville at Cascade Lake First Replat.**

3. WHEREAS, Grandville seeks a waiver from the Rules to allow the two existing water service lines to remain in place despite the lines not complying with RPU Water Service Rules and Regulations.

4. WHEREAS, the City is willing to grant this waiver upon the terms and conditions contained herein, which terms and conditions apply to Grandville, its successors and assigns, and all references to Grandville throughout this document shall include any successors or assigns in possession of the property underlying the two buildings.

NOW, THEREFORE, IT IS MUTUALLY AGREED by the City and Grandville as follows:

1. The City hereby authorizes Grandville to maintain the non-complying water service lines subject to the terms and conditions contained herein. Grandville shall perform all work and bear all costs associated with the maintenance and repair of the non-complying water service lines, as well as any damage that may occur to adjacent building units resulting from the non-complying water service lines.

2. Grandville, including its successors and assigns, shall hold the City, its officers, agents and employees harmless, and must defend and indemnify the City for any and all claims for damages resulting from Grandville's installation of the non-complying water service lines under the grant of authority and waiver contained herein.

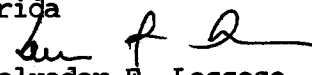
3. Grandville shall not receive any prescriptive rights by this Agreement, nor shall it seek or be entitled to any relocation costs or other damages from the City for relocation of the non-complying water service lines.

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

CITY OF ROCHESTER, a Minnesota
municipal corporation

By _____
Its Mayor

GRANDEVILLE AT CASCADE LAKE, ~~LLP~~ LIMITED
a ~~Minnesota~~ limited partnership PARTNERSHIP
Florida

By  _____
Its President of general partner

Attest: _____
City Clerk

By _____
Its _____

STATE OF MINNESOTA)
) SS
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Ardell F. Brede and Judy K. Scherr, the Mayor and City Clerk, respectively, of the City of Rochester, a Minnesota municipal corporation, for and on behalf of the corporation.

Notary Public

STATE OF Florida)
) SS
COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 7th day of July, 2006, by Salvador V. Lecuense and na, the President and na respectively of Grandeville at Cascade Lake LP, a Minnesota limited partnership, for and on behalf of the partnership. Limited Partnership Florida

Darlene D. Mahanke

Notary Public

This Instrument Drafted By:
City Attorney's Office
201 4th Street SE, Room 247
Rochester, MN 55904
(507) 285-8066





RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to request the Mayor and the City Clerk execute the

Agreement to Hold the City of Rochester Harmless/Waiver of Water Service Rules and Regulations

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29th day of August, 2006.

President

Secretary