

ASP05DRA

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: A STORAGE PLACE GRAND JUNCTION EAST

SUBJECT/PROJECT: INDEMNIFICATION AGREEMENT DATED
DECEMBER 5, 2005 PERTAINING TO DRAINAGE
FACILITY CONCERNING A STORAGE PLACE

FILE #: SPR-2005-024

LOCATION: A STORAGE PLACE

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2005

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

INDEMNIFICATION AGREEMENT

This INDEMNIFICATION AGREEMENT ("Agreement") is made and entered into this 5 day of December 2005 by and between A Storage Place Grand Junction East ("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), structure(s) and point(s) of discharge in and concerning A Storage Place ("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 the 30 Road Lateral, a facility used by those persons or entities with water rights assigned to the 30 Road Lateral.

The Developer has designed and developed the project such that storm and/or surface water will be discharged into the Tilton Lateral, a facility owned/managed by the Tilton Lateral, Inc.

The Developer has designed and developed the project such that storm and/or surface water will be discharged into the Fruitvale Drain, a facility owned/managed by the Grand Junction Drainage District.

- B. The (owner/manager) has claimed and otherwise asserted an interest in the Tilton Lateral. Because of that asserted claim and interest the (owner/manager) has consented to accept the storm and/or surface water from the Project.

The (owner/manager) has claimed and otherwise asserted an interest in the Fruitvale Drain. Because of that asserted claim and interest the (owner/manager) has consented to accept the storm and/or surface water from the Project.

The Developer has contacted the users of the 30 Road Lateral concerning discharge of storm and/or surface water into the 30 Road Lateral as there is no legal entity that manages the Lateral. None of the users of the Lateral had objections to discharging into the Lateral.

- 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.
- D. The City is not and cannot be the arbiter of the competing legal claims of the Developer and the (owner/manager) 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.
- E. Excludes all existing storm water from other sources.

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 # SPR-2005-024. The Developer has contacted the users of the 30 Road Lateral because there is not a legal entity that owns/manages the 30 Road Lateral. None of the users of the 30 Road Lateral objected to the

project discharging into the Lateral. The Tilton Lateral, Inc. and Grand Junction Drainage District asserts a claim and interest in the Tilton Lateral and Fruitvale Drain, respectively, the facilities to which the developer has proposed storm and/or surface to be discharged. The Tilton Lateral, Inc. and the Grand Junction Drainage District assert, among other things, that it may limit/preclude the introduction of new and/or developed flows to the Tilton Lateral and Fruitvale Drain respectively. The Developer asserts, among other things, that it has a right based on historic use and permission from Tilden Lateral Inc. and Grand Junction Drainage District (GJDD), to use their respective facilities. The permission and clarification letters from the Grand Junction Drainage District are attached as exhibits A and B.

The easement for the Tilton Lateral, Inc. that grants permission to discharge is attached as exhibit C.

2. (Owner/manager) 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 of 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 approval of the drainage system and/or drainage conveyance described herein 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.

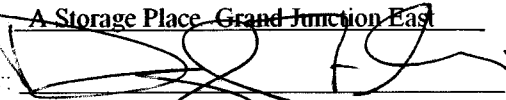
5. The indemnification provided for herein shall include but not necessarily be limited to, property damage and/or personal injury.

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 Colorado Supreme Court and is competent and experienced in defending claims, suits, 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 or use of the drainage system and/or drainage conveyance referred to herein. The City may disapprove such legal counsel, with reasonable cause being stated.

7. The person(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 he/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"

~~A Storage Place Grand Junction East~~
By: 
TITLE Manager

"City"

CITY OF GRAND JUNCTION, COLORADO

By: 

TITLE: Public Works Manager