

CAC03CRO

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	CACHE PROPERTIES LLC
SUBJECT/PROJECT:	STORM WATER DRAINAGE RIGHT-OF-WAY
LOCATION:	2738 CROSSROADS BLVD
PARCEL#:	2701-362-35-007
FILE#:	SPR-2003-114
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	2003
EXPIRATION DATE:	NONE (PERPETUAL)
DESTRUCTION DATE:	NONE

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

This INDEMNIFICATION AND HOLD HARMLESS AGREEMENT ("Agreement") is made and entered into this 3rd day of October 2003 by and between Cache Properties, LLC, ("Developer") and the City of Grand Junction, Colorado, its official officers, agents and employees, collectively 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 or placement of drainage facility(ies), conveyance(s), structure(s) and point(s) of discharge in and concerning the development described in the City's site plan review # 2003-144 ("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 public right-of-way servicing the Project and which is owned and managed by the City. From the City street, the storm, drainage and other surface water ("storm water") will eventually drain into what is termed the Government High Line Canal, operated by the Grand Valley Water Users Association ("Water Users") as an agent of the United States.
- B. The Developer disclaims any ownership or control over the drainage systems of the City or of the Grand Valley Water Users Association. The Developer represents that the discharge from the Project will not exceed historical levels and will not contain unusual or regulated amounts of pollutants.
- C. The Developer does not have specific permission to discharge any of the Project storm water into the canal operated by the Water Users.
- D. The Developer has designed the Project with storm water detention and/or retention drainage facilities. The City cannot, and does not by review and approval of the Project, authorize discharge into the facilities of others.
- E. The City is not and cannot be the arbiter of the competing legal claims of the Developer and the Grand Valley Water Users Association and/or the United States Bureau of Reclamation. The City is unwilling to accept any liabilities, duties of obligation or costs or expenses associated with or resulting from the Developer's decision to discharge as designed.
- F. The Developer chooses to design the Project to drain as described above thereby allowing the Developer to avoid additional on-site retention/detention or alternative disposal of its storm water.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the City's approval of the Project, the sufficiency and adequacy of which is acknowledged, the Developer agrees as follows:

- 1. The Project was designed and approved for development as described in the

City's Community Development file # SPR-2003-144. The Grand Valley Water Users Association asserts a claim and interest in the canal or drain system that receives discharge from the City streets which service the Project and from the storm water discharge of the Project. The Water Users may assert, among other things, that it may limit/preclude the introduction of new and/or developed flows, directly or indirectly to its ditches, drains or canal, *etc.* The Developer asserts, among other things, that it has a right based on historic use, to use the drainage system of the Water Users and specifically that the historical drainage from the subject property has drained into the Water User's canal. Developer asserts that no consent of the Water User is required.

2. The Water Users and/or the Developer each may have certain relative remedies, privileges, obligations and/or rights, however the City cannot fully or finally determine those rights, remedies or privileges. The City has no authority to resolve such issues between such parties.

3. The City's role is to review and approve the Project. The City does not and cannot resolve such issues. Therefore, the Developer has agreed to knowingly and voluntarily, and as an inducement to the City:

(a) indemnify and hold harmless the City from and against any and all claims, suits, damages, costs, expenses, liabilities, actions or proceedings whether administrative or judicial, arising from injury, loss or damage, or any other loss of any kind whatsoever, including property damage and/or bodily or personal injury, which arise out of or are in any manner connected with the design, construction, use and/or approval of the drainage system drains and/or drainage facilities described herein and/or as constructed by the Developer.

(b) The Developer shall indemnify and hold harmless the City from any and all loss, liability, claims, damages, fines or penalties asserted, assessed, adjudged or imposed against the City by any federal, state or local agency, court or tribunal 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 and/or the City having failed to stop Developer's storm waters from reaching or flowing to any facility, drain or canal of the Water Users or the United States.

(c) Further, the Developer voluntarily and knowingly warrants and agrees to bear all costs and expenses of the indemnification and hold harmless provided for herein including but not limited to, court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false or fraudulent.

(d) The Developer may retain legal counsel of its choosing to defend any such claims against the City 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 any such claims, suits, actions or proceedings described in this paragraph 3; subject however to the right of the City to require that Developer obtain substitute legal counsel, without cause being stated.

4. The person(s) signing this Agreement, whether as individual(s) or in a representative capacity, represents that he/she/it has the authority and is authorized to sign the Agreement and bind him/her/themselves and the entity that on whose behalf he/she/they sign.

5. This Agreement shall be perpetual, unless terminated by a written instrument executed by the City.

6. The recitals are a substantive part of this Agreement.

7. The Developer enters into these obligations knowingly and voluntarily. Developer has investigated the risks and potential liabilities associated with this Agreement, and the Project to the degree deemed reasonable by the Developer. Developer has obtained such legal and other advice as Developer has deemed necessary to protect Developer's interests.

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

"DEVELOPER"

CACHE PROPERTIES, LLC

BY: *Sid Squirrell*

Sid Squirrell

TITLE: Manager

"CITY"

CITY OF GRAND JUNCTION, COLORADO

BY: *Carlye Steward*

TITLE: *Community Development Director*