

SETTLEMENT AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of the 3rd of March, 2009, by and between West Independent, LLC (hereinafter referred to as “West”) and the City of Grand Junction (herein “City”).

RECITALS

West is the owner of real property located at 1548 West Independent Avenue, Grand Junction, Colorado 81501 (“the Property” or “Property”). During its construction of West Independent Avenue, the City constructed a temporary access for the Property. West claims that neighboring property owners drove over the Property due to City action, resulting in cracked concrete on the Property.

West and the City disagree about the City’s liability for damage that the Property incurred as well as the extent of the alleged damage incurred. The City asserts that it is not liable under Colorado law; West asserts that the Property was damaged following and as a result of the City’s actions or inaction relative to the temporary access.

The fault, if any, of either the City or West, or both, is not at issue nor relevant to this Agreement. What is instead relevant, important and forms the basis for this Agreement is that the City and West agree as a matter of the City’s “good neighbor policy” that upon payment of a stipulated sum that the matter will be lawfully and completely ended without resorting to litigation. In the interest of being “good neighbors” it is the expectation of the City and of West that neither shall disparage nor unfairly characterize the other.

West discussed, negotiated and agreed with the City, by and through its attorney, the desire to settle all claims by and between West and the City on the payment of a stipulated sum and the terms and conditions provided for herein.

The following provisions are the mutually agreeable terms negotiated by and between and mutually acceptable to West and the City:

IN CONSIDERATION of the above recitals and the mutual covenants and agreements contained herein, West and the City agree as follows:


1. West and the City hereby end and resolve the dispute between them. West agrees that upon the payment of \$3089.20, as a stipulated settlement amount, that West is and will be compensated for its damages. Furthermore, West agrees that adequate consideration exists for the other terms of this Agreement as detailed more fully herein.

2. West and the City acknowledge and agree to waive any and all claims and defenses, including but not limited to claims of defenses arising out of under this Agreement. West and the City agree that such waiver(s) is with and/or that adequate consideration supports the same.
3. The customary rule of construction that ambiguities in an agreement are construed against the drafter is expressly waived.
4. This Agreement shall provide for and be construed to release any and all claims, demands, or causes of action that West may have now or hereafter acquire against the City as the result of damage to the Property that resulted on or before the signing of this Agreement. The release of claims, demands or causes of action include but are not limited to any and all claims, demands, obligations, actions, liabilities, damages and attorneys' fees, known or unknown, of whatsoever kind and nature arising from or in any way arising out of, any and all known and unknown, foreseen and unforeseen, damages, injuries or losses which West may have or which may result or be claimed to result, directly or indirectly, from the claim, the dispute and/or this Agreement. Said release specifically includes, but is not limited to, claims, causes of action, demands or suits arising from damage to personal property relating in any way to the condition of the Property, direct or indirect damages which have been discovered or filed or may be discovered or filed arising out of or occasioned by the actions or inactions of the City, including but not limited to claims of lost profit or commercial or financial advantage as well as personal injury or damage claims in whatever form. Claims and damages resulting from negligent acts of the City, its officers, agents and employees that preceded the signing hereof, are specifically included within the scope of this release.
5. West affirmatively represents that it is aware of no liens of materialmen, laborers, craftsmen or tradesmen, no claims, demands, obligations or causes of action, liabilities or damages filed, pending or accrued against West arising out of the repair or restoration of the Property, for which the City may be held to be liable. West agrees to indemnify and hold the City harmless for any and all such claims.
6. West shall have no claim against the City for stress or mental injury, stress related disorders, personal physical injury or disease for any person for stress or mental injury, stress related disorders or for any and all other claims which have been made or may be made arising out of or occasioned by the circumstances described in, implied by or related to this Agreement.
7. West and the City have negotiated and agreed on a sum of money to be paid in full and final settlement and in satisfaction of all West's claims. That sum is \$3078.20.

8. The representations and agreements of this Agreement are not mere recitals but are contractual in nature. An unjustified breach of this Agreement by either West or the City shall be a basis for suit, claim or demand against the other.
9. By the signatures below West acknowledges the foregoing and that any waiver, release and agreement are voluntarily made and are with full knowledge and understanding of the consequences. Furthermore, West acknowledges that it has been represented by or has chosen to be unrepresented by legal counsel prior to execution of this Agreement.
10. West, by and through the signature below, does bind itself and any person claiming by, under or through it, including but not limited to any lienholders on the property to the foregoing terms, conditions, stipulations and agreements. West represents that it has full and complete authority to bind itself and all lienholders to each and every term of this Agreement.
11. The City, by and through the signature below, does bind itself to the foregoing terms, conditions, stipulations and agreements. The City represents that the signer has full and complete authority to sign this Agreement.

DATED as of the day and year first written above.

West Independent, LLC

By: 

Alex Mirrow

City of Grand Junction, a Colorado
home rule municipality,

By: 

Tim Moore

Director of the Department of Public Works and Planning

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	AMOUNT
RimRock	03/09/2009	Repair broken concrete Rimrock project	3,078.20