

HOS0312S

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF CONTRACTOR: HOSPICE AND PALLIATIVE CARE OF WESTERN  
COLORADO INC.

SUBJECT/PROJECT: HOSPICE CAMPUS AND PRIMARY CARE PARTNERS  
MEDICAL SERVICES

LOCATION: 3090 N 12<sup>TH</sup> STREET

TAX PARCEL #: 2945-013-00-008

FILE #: FP-2003-173

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2003

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

## DEVELOPMENT/IMPROVEMENTS AGREEMENT

The parties to this DEVELOPMENT/IMPROVEMENTS AGREEMENT ("Agreement") are HOSPICE AND PALLIATIVE CARE OF WESTERN COLORADO, INC. ("Developer") and the CITY OF GRAND JUNCTION, COLORADO ("City"). The Effective Date of the Agreement shall be the date that it is signed by the Community Development Director, which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

### RECITALS

A. The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as Hospice Campus and Primary Care Partners Medical Services has been reviewed and approved under Community Development file # PDR-2003-036 ("Development" or "the Development").

*EP-2003-173*

B. The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

C. A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this Agreement is not executed for the benefit of material men, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owner(s), purchaser(s) or user(s) of the Property.

D. The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

NOW, THEREFORE AND IN CONSIDERATION of the mutual promises of the parties to this Development/Improvements Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Improvements:** The Developer shall design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("Improvements" or "the Improvements").

a. On and after the Effective Date of this Agreement the Developer agrees to pay the City reasonable costs incurred by the City for necessary administration and inspection of the Development ("Administration and Inspection"). The hourly rate is

\$45.00/hour for Administration and Inspection conducted by the City; however, in no event shall the Developer be required to pay the City more than Five Hundred and no/100 Dollars (\$500.00) for costs incurred by the City for Administration and Inspection. Administration and Inspection includes, but is not limited to, the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than litigation, this agreement and/or the approved development plan. Making disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 17 concerning attorneys' litigation fees.

b. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay reasonable costs for necessary inspection services performed by independent consultant(s) if the independent consultant(s) and the inspection services to be performed by the independent consultant(s) are approved by Developer prior to the inspection services being performed.

c. The Developer's obligation to complete the Improvements is and shall be independent of any obligations of the City contained herein.

2. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee. The Developer is required to post security in an amount of One Hundred Twenty Thousand Seven Hundred Twenty-Six and no/100 Dollars (\$120,726.00) (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

[Select one: Cash \_\_\_ Letter of Credit (LOC) \_\_\_ Disbursement Agreement X

3. **Standards:** The Developer shall construct the Improvements according to the City's standards and specifications.

4. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The

Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of Twenty Thousand One Hundred Twenty-One and no/100 Dollars (\$20,121.00) (Line G2, Exhibit B, City Security).

b. The Maintenance Guarantee shall be secured by a letter of credit, cash escrow or other form acceptable to the City.

5. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements on the Commencement Date.

a. The Developer shall complete the Improvements by the end of the twelfth month from the Commencement Date; that date is known as the "Completion Date."

b. The Developer shall not cease construction for any period of more than sixty (60) consecutive days. If construction is ceased for sixty (60) or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

c. The Commencement date and the Completion Date are as follows:

Commencement Date:	In or about February 2005
Completion Date:	In or about February 2006

6. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

7. **Notice of Defect:** The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

8. **Acceptance of Improvements:** The City shall not accept and/or approve any or all of the Improvements until the Developer presents a document or documents for the benefit of the City showing that the Developer owns the Improvements in fee simple, or as accepted by the City Attorney, and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted by the City Attorney.

a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance during the warranty period.

b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

9. **Reduction of Security:** Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of One Hundred Thousand Six Hundred Five and no/100 Dollars (\$100,605.00) (Line G1, Exhibit B, Total Improvement Costs).

a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

10. **Use of Proceeds:** The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

11. **Events of Default:** The following conditions, occurrences or actions shall constitute a default by the Developer:

a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the

Developer. In such event the City may immediately declare a default without prior notification to the Developer;

d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

12. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include, but are not limited to, contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be prima facie evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

13. **City's Rights Upon Default:** When any event of default occurs:

a. the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required, and the City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement;

b. the City shall have the right to complete Improvements itself or it may contract with a third party for completion;

c. the Developer grants to the City, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, inspecting and repairing the Improvements;

d. the City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise; and

i. the subsequent developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

14. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for bodily injury or property damage received or sustained by any person or entity arising out of or resulting from the performance or non-performance of work at the Property, the Improvements, and/or the Development that is being done pursuant to this Agreement, but only to the extent caused by the acts or omissions of the Developer, an independent contractor retained by the Developer, anyone employed by the Developer or by an independent contractor retained by the Developer, or anyone contracting directly with the Developer or with an independent contractor retained by the Developer.

a. The Developer further agrees to defend the City in the event that the City is named as a defendant in an action for bodily injury or property damage received or sustained by any person or entity arising out of or resulting from the performance or non-performance of work at the Property, the Improvements, and/or the Development that is being done pursuant to this Agreement, but only to the extent caused by the acts or omissions of the Developer, an independent contractor retained by the Developer, anyone employed by the Developer or by an independent contractor retained by the Developer, or anyone contracting directly with the Developer or with an independent contractor retained by the Developer, except for a suit wherein the Developer states claim(s) against the City.

b. The Developer is not an agent, partner, joint venturer or employee of the City.

c. Independent consultant(s) retained by the City as contemplated by paragraph 3(b) shall not be an independent contractor with or employee of the Developer or of an independent contractor retained by the Developer.

15. **No Waiver:** No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

16. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

17. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

18. **Vested Rights:** This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.

19. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire Agreement between the parties. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

20. **Third Party Rights:** No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.



21. **Time:** For the purpose of computing the Abandonment Period, Commencement Date, and Completion Date, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition (s) that the Developer asserts do not exist.

22. **Severability:** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall be construed as if the part, term or provision was never part of the Agreement.

23. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

b. There is no prohibition on the right of the City to assign its rights under this Agreement.

c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property; however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

d. When the City has issued its Acceptance regarding the Improvements; the City agrees to state the same in writing, with appropriate acknowledgments.

e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

24. **Notice:** Any notice required or permitted by this Agreement shall be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

Developer: Hospice and Palliative Care of Western Colorado, Inc.  
2754 Compass Drive, Suite 377  
Grand Junction, Colorado 81506

Cc:

If to City: Office of the City Attorney  
250 North 5th Street  
Grand Junction, CO 81501 Agreement (Exhibit D) in the records of the  
Mesa County Clerk and Recorder's Office Developer may, at his/her/its  
option record the entire agreement.

Community Development Department  
250 North 5th Street  
Grand Junction, CO 81501

25. **Recordation:** Developer shall record a memorandum of this Agreement in the form attached as Exhibit D and shall pay the costs to record the memorandum.

26. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

27. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

28. **Acceptance:**

a. If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

i. Furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;

ii. Provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

iii. Provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and (iv) Provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

**29. Mediation:**

a. Any claim arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

b. The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending

mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

c. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Grand Junction, Colorado, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

30. **Arbitration:**

a. Any claim arising out of or related to this Agreement shall be subject to mandatory binding arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 29.

b. Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

c. A demand for arbitration shall be made within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

d. **Claims and Timely Assertion of Claims.** The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

e. **Judgment on Final Award.** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

DATED this 21<sup>st</sup> day of November, 2003.

HOSPICE AND PALLIATIVE CARE OF  
WESTERN COLORADO, INC.

By Christy Whitney  
Christy Whitney, President and CEO

CITY OF GRAND JUNCTION, COLORADO

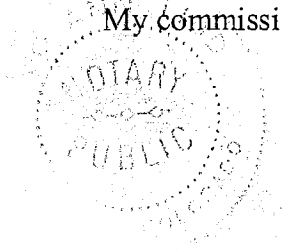
By Luci V. Borew, Senior Planner  
250 North 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

Community Development Department Date

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF MESA        )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of November, 2003, by Christy Whitney, President and CEO of Hospice and Palliative Care of Western Colorado, Inc.

Witness my hand and official seal.  
My commission expires: 11/26/06.



JoAnn Felt  
Notary Public

EXHIBIT A

TYPE LEGAL DESCRIPTION(S) BELOW, USING ADDITIONAL SHEETS AS NECESSARY. USE SINGLE SPACING WITH A ONE INCH MARGIN ON EACH SIDE.

\*\*\*\*\*

The North nine acres of the S½ of the W½ of the NW¼ of the SW¼ of Section 1, Township 1 South, Range 1 West of the Ute Meridian,  
EXCEPTING THEREFROM all that portion conveyed to City of Grand Junction by Quit Claim Deed recorded January 7, 1999 in Book 2536 at Page 90 for Roadway and Utilities right of way purposes;  
EXCEPTING THEREFROM all that portion conveyed to City of Grand Junction by Special Warranty Deed recorded January 7, 1999 in Book 2536 at Page 93 for Roadway and Utilities right of way purposes;  
AND EXCEPTING THEREFROM all that portion conveyed to City of Grand Junction by Warranty Deed recorded June 1, 1999 in Book 2592 at Page 947 for Roadway and Utilities right of way purposes,  
Mesa County, Colorado.

ALSO DESCRIBED by ALTA/ACSM Survey dated January 28, 2002 prepared by Richard A. Mason, Registered Professional Land Surveyor No. 18469 as follows:

Commencing at a 3½ inch alloy cap (LS 20677) for the NW¼ SW¼ of Section 1, Township One South, Range One West of the Ute Meridian, Mesa County, Colorado, from whence a Mesa County Survey Marker for the southwest corner of said Section 1 bears S00°00'00"W 1318.44 feet; thence N32°20'24"E 77.87 feet to the point of beginning; thence the following courses and distances:

1. N56°57'28"W, on the easterly right-of-way line of 12th Street, for a distance of 3.06 feet;
2. N06°03'53"W 19.81 feet;
3. N00°00'00"E 351.38 feet;
4. N06°07'31"E 93.72 feet;
5. N00°00'00"E 56.88 feet;
6. N42°43'49"E 19.35 feet;
7. N89°55'19"E 5.10 feet;
8. N00°04'41"W 55.83 feet to the northerly line of the SW¼ NW¼ SW¼ of said Section 1;
9. Leaving said easterly right-of-way line, S89°54'54"E 595.45 feet to the northeast corner of the SW¼ NW¼ SW¼ of said Section 1;
10. S00°01'32"E on the west line of "The Fountains" for a distance of 593.24 feet;
11. N89°55'05"W 619.55 feet to the point of beginning,

Mesa County, Colorado.

**EXHIBIT B**

**IMPROVEMENTS COST ESTIMATE**

DATE: 10/07/03

DEVELOPMENT NAME: HOSPICE AND PALLIATIVE CARE OF WESTERN COLORADO

LOCATION: 3050 NORTH 12TH STREET

PRINTED NAME OF PERSON PREPARING: ERIC SLIVON - ROLLAND ENGINEERING

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	" PVC Sanitary Sewer Main	LF		\$	-
2	" PVC Sanitary Sewer Main	LF		\$	-
3	" PVC Sanitary Sewer Main	LF		\$	-
4	Sewer services	EA or LF		\$	-
5	Sanitary Sewer Manhole	EA		\$	-
6	Sanitary Sewer Drop Manhole	EA		\$	-
7	Connection to Existing Manhole	EA		\$	-
8	Concrete Encasement	LF		\$	-
<b>Subtotal Part A Sanitary Sewer</b>					<b>\$ -</b>
<b>B. DOMESTIC WATER</b>					
1	" PVC Water Main	LF		\$	-
2	" PVC Water Main	LF		\$	-
3	" PVC Water Main	LF		\$	-
4	" Gatevalve	EA		\$	-
5	" Gatevalve	EA		\$	-
6	" Gatevalve	EA		\$	-
7	Water Services	EA or LF		\$	-
8	Connect to Existing Water Line	EA		\$	-
9	Fire Hydrant with Valve	EA		\$	-
10	Utility Adjustments	EA		\$	-
11	Blowoff	EA		\$	-
<b>Subtotal Part B - Domestic Water</b>					<b>\$ -</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1</b>	<b>STREETS</b>				
1	" PVC Utility/Irrigation sleeves	LF		\$	-
2	" PVC Utility/Irrigation sleeves	LF		\$	-
3	Reconditioning	SY		\$	-
4	Aggregate Base Course (Class 3)	TN		\$	-
5	Aggregate Base Course (Class 6) (___" Compacted Thickness)	SY		\$	-
6	Aggregate Base Course (Class 6) (___" Compacted Thickness)	SY		\$	-
7	Hot Bituminous Paving, Grading (___" thick)	SY		\$	-
8	Hot Bituminous Paving, Grading (___" thick)	SY		\$	-
9	Hot Bituminous Paving, Patching (___" Thick)	SY		\$	-
10	Geotextile	SY		\$	-
11	Concrete Curb (___" Wide by ___" High)	LF		\$	-
12	Concrete Curb and Gutter (2' wide)	LF		\$	-
13	Concrete Curb and Gutter (1.5' wide)	LF		\$	-
14	Monolithic, Vertical Curb, Gutter and Sidewalk (___' Wide)	LF		\$	-
15	Drive Over Curb, Gutter, and Sidewalk (___' Wide)			\$	-
16	Concrete Sidewalk (10' Wide)	LF	720	\$ 32.00	\$ 23,040.00
17	Concrete Gutter and Driveway Section (___" Thick)	SY		\$	-
18	Concrete Drainage Pan (___' Wide, ___" Thick)	LF		\$	-
19	Concrete Corner Fillet	SY		\$	-
20	Concrete Curb Ramp	SY		\$	-
21	Complete Concrete Corner	SY		\$	-
22	Concrete Driveway (___" Thick)	SY		\$	-
23	Driveway/Concrete Repair	SY		\$	-
24	Retaining Walls	LF		\$	-
25	Street Signs	EA		\$	-
26	Striping (New, Remove/Replace)	LF		\$	-
27	Street Lights	EA		\$	-
28	Signal Construction or Reconstruction	LS		\$	-
29	Flowable Fill	CY		\$	-
30	Sleeves, ___", ___" PVC	LF		\$	-
				\$	-
				\$	-



Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2</b>	<b>BRIDGES</b>				
					\$ -
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS	1	\$ 3,500.00	\$ 3,500.00
					\$ -
					\$ -
	<b>Subtotal Part C - Streets and Bridges</b>				<b>\$ 26,540.00</b>
<b>D1</b>	<b>EARTHWORK</b>				
1	Mobilization	LS	1	\$ 1,000.00	\$ 1,000.00
2	Clearing and Grubbing	AC or LS			\$ -
3	Unclassified Excavation	CY	2000	\$ 1.00	\$ 2,000.00
4	Unclassified Embankment	CY			\$ -
5	Silt Fence	LF	670	\$ 1.00	\$ 670.00
6	Watering (Dust Control)	AC or LS			\$ -
<b>D2</b>	<b>REMOVALS AND RESETTING</b>				
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
<b>D3</b>	<b>SEEDING AND SOIL RETENTION</b>				
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY	450	\$ 4.00	\$ 1,800.00
4	Hydraulic Seed and Mulching	SY			\$ -
5	Soil Retention Blanket	SY			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D4</b>	<b>STORM DRAINAGE FACILITIES</b>				
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	18" RCP Storm Drain Pipe	LF	20	\$ 35.00	\$ 700.00
3	36" RCP Storm Drain Pipe	LF	646	\$ 70.00	\$ 45,220.00
4	" Storm Drain Pipe	LF			\$ -
5	" Storm Drain Pipe	LF			\$ -
6	" Storm Drain Pipe	LF			\$ -
7	" Flared End Section	EA			\$ -
8	" Flared End Section	EA			\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA			\$ -
11	72" Storm Drain Manhole	EA	4	\$ 2,800.00	\$ 11,200.00
12	Manhole with Box Base	EA			\$ -
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA			\$ -
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA			\$ -
17	Detention Area Outlet structure	EA			\$ -
18	Rip-Rap D <sub>50</sub> = ___"	CY			\$ -
19	Sidewalk Trough Drain	EA			\$ -
20	Pump Systems including Electrical	LS			\$ -
	<b>Subtotal Part D - Grading and Drainage</b>				<b>\$ 62,590.00</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1</b>	<b>IRRIGATION</b>				
1	Connect to Existing Pipe	LS			\$ -
2	" Irrigation Pipe	LF			\$ -
3	" Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
<b>E2</b>	<b>LANDSCAPING</b>				
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS			\$ -
5	Irrigation System	LS			\$ -
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	FSF	765	\$ 15.00	\$ 11,475.00
8	1 Year Maintenance Agrmnt	LS			\$ -
9	Topsoil				\$ -
					\$ -
					\$ -
<b>E</b>	<b>Subtotal Part E - Landscaping and Irrigation</b>				<b>\$ 11,475.00</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F.</b>	<b>Miscellaneous Items</b>				
1	Construction staking/surveying	%	2.00%	#####	
2	Developer's inspection cost	%		#####	
3	General construction supervsn	%		#####	
4	Quality control testing	%	2.00%	#####	
5	Construction traffic control	%		#####	
6	City inspection fees	%	0.50%	#####	
7	As-builts	%	2.00%	#####	
<b>E</b>	<b>Subtotal Part F - Miscellaneous Items</b>				<b>\$ -</b>
% = Percentage of total site construction costs					
<b>G.</b>	<b>COST SUMMARY</b>				
1	Total Improvement Costs				<b>\$ 100,605.00</b>
2	City Security (20%)				<b>\$ 20,121.00</b>
3	<b>Total Guarantee Amount</b>				<b>\$ 120,726.00</b>
<b>NOTES</b> 1. All prices shall be for items complete in place and accepted. 2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction. 3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere. 4. All concrete items shall include Aggregate Base Course where required by the drawings. 5. Fill in the pipe type for irrigation pipe and sleeves. 6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides. 7. Units can be changed if desired, simply annotate what is used. 8. Additional lines or items may be added as needed.					
_____ Signature of Developer		_____ Date			
(If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)					
I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.					
_____ City Development Engineer		_____ Date			
_____ Community Development		_____ Date			

**DISBURSEMENT AGREEMENT  
EXHIBIT C**

(Improvements Guarantee)

**DEVELOPER:** Hospice and Palliative Care of Western Colorado

**BANK:** Wells Fargo Bank – Downtown – Grand Junction, Colorado

**PROPERTY:** 3050 North 12<sup>th</sup> Street, Grand Junction, Colorado 81506

**DISBURSEMENT AMOUNT:** For the construction of improvements to the Property in an amount not to exceed \$120,726.00.

This Agreement is entered into by and between ("Developer"), ("Bank") and the City of Grand Junction, Colorado ("City").

**RECITALS**

Developer has been required by the City to construct certain improvements to 3050 North 12<sup>th</sup> Street, Grand Junction, Colorado ("Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the Improvements.

The City Engineer has approved an estimate of the costs of the Improvements and that amount or an amount not to exceed \$120,726.00, whichever is greater, shall be referred to as the "Funds."

The parties desire to secure the full and complete performance of the Developer's obligations and to secure that the Funds are disbursed only to pay for the Improvements.

**NOW, THEREFORE, THE PARTIES AGREE:**

1. **BANK PROMISES.** Bank shall dedicate or set aside the Funds on behalf of Developer and for the City's benefit within twenty-four hours of execution of this Disbursement Agreement.

Bank warrants: that the Funds are to be held in trust solely to secure Developer's obligations under the Improvements Agreement; that the Bank shall act as agent of the City in holding the Funds; that the Funds will not be paid out or disbursed to, or on behalf of, the Developer except as set forth in this document and/or as set forth in the Improvements Agreement; and that the Bank may not modify or revoke its obligation to disburse funds to or on behalf of the Developer or the City. The Bank warrants that the Funds are and will be available exclusively for payment of the costs of satisfactory completion of the Improvements.

2. **DISBURSEMENT PROCEDURES.** The Funds shall be advanced for payment of costs incurred for the construction of Improvements on the Property in accordance with the Improvements List/Detail attached to the Improvements Agreement, the terms of which are incorporated by this reference. All disbursements must comply with the following procedures:

(a) **Request for Advance.** Developer shall deliver to the Bank a written request for the disbursement of funds on forms acceptable to the Bank. Such requests shall be signed by Developer, Developer's General Contractor, Project Engineer and Architect, if applicable, and the City Engineer. By signing the request for disbursement the Developer is certifying: that all costs for which the advance is being requested have been incurred in connection with the construction of the Improvements on the Property; that all work performed and materials supplied are in accordance with the plans and specifications submitted to and approved by the City; that the work has been performed in a workmanlike manner; that no funds are being requested for work not completed, nor for material not installed; the Project Engineer has inspected the Improvements for which payment is requested; and that such improvements have been completed in accordance with all terms, specifications and conditions of the approved plans. Attached hereto is the list of those individuals, and their respective signatures, required to sign the above described request(s) for disbursement of funds.

DISBURSEMENT AGREEMENT (page 2 of 4)

(b) **Documentation, Waivers and Checks.** Each request for disbursement of funds shall be accompanied by: (i) one original and one copy of each invoice to be paid; (ii) checks drawn on Developer's construction loan account with the Bank, made payable to the payee(s) and for the amount of each invoice presented for payment; (iii) lien waivers in a form approved by the Bank prepared for signature by each payee; and (iv) postage paid envelopes addressed to each payee for the mailing of checks presented to the Bank.

The Bank shall verify its receipt of all lien waivers relating to any prior disbursements, which lien waivers shall be properly executed and contain no alterations or modifications from those lien waivers that have been previously presented to the Bank.

Upon approval by Developer, the Project Engineer and the Bank of the invoices being presented to the Bank, the Bank shall advance funds into the checking account designated for the payment of the invoices and mail the checks to the payee(s) in the envelopes presented to the Bank, together with lien waivers and copies of supporting invoices.

Under no circumstances shall the Bank make a disbursement for the payment of an invoice if it in good faith believes that: (i) the work has not been completed; (ii) the work has not been completed in a workmanlike manner; (iii) written approval has not been received from the Project Engineer; or (iv) any lien waiver has been altered or modified or has not been returned to the Bank.

□.(c) **Default.** Upon default of the Developer on any obligation to the Bank or under the Improvements Agreement, the Bank shall disburse no funds to, or at the direction of, the Developer except to the City under the terms of the Improvements Agreement. The Bank shall immediately notify the City, in writing, of any event of default or event of default as provided for in the Improvements Agreement and/or as provided herein.

□.(d) **Disbursement to City.** In the event the Improvements are not satisfactorily and timely constructed, or upon any default or event of default, the City Engineer shall notify the Bank to immediately cease disbursement of funds to the Developer and disburse the full amount of the remaining undisbursed funds to the City. Upon such notice, the Bank shall promptly honor the demand of the City Engineer to disburse the Funds to the City or a third party or parties designated in writing by the City. Upon final completion and acceptance of the performance required under the Improvements Agreement, the City shall refund to the Bank any funds disbursed, if any, which are not actually expended to pay all costs, expenses and liabilities, including attorney fees, incurred in completing the Improvements.

1. **3. DEVELOPER CONSENT:** The Developer, by the signature of Christy Whitney, President and CEO, consents to disbursements and other actions authorized and provided for by the terms of this Agreement and/or the Improvements Agreement.

2. **4. LIABILITY FOR LOSS:** If the Bank fails to disburse funds in accordance with the procedures set forth, and the City suffers loss or damage, the Bank shall be liable to the City for the City's direct and consequential damages and all fees, costs and expenses, including attorneys fees.

3. **5. BINDING EFFECT:** This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the City has accepted the Improvements and has recorded a release of the Improvements Agreement.

4. **6. IMMUNITY:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable state law.

DISBURSEMENT AGREEMENT  
(page 3 of 4)

Dated this 35<sup>th</sup> day of November, 2003

(BANK) Wells Fargo Bank

By: Ronna Capra AVP  
Title

359 main street Grand Junction, CO 81501  
Address

(DEVELOPER) Hospice and Palliative Care of Western Colorado

By: Christy Whitney  
Title President & CEO

P.O. Box 60307, Grand Junction, Colorado 81506  
Address

CITY OF GRAND JUNCTION

By: Pat Carl 12/2/03  
Director of Community Development

Pursuant to the terms of the foregoing Disbursement Agreement (Improvements Guarantee) by and between \_\_\_\_\_ Developer, \_\_\_\_\_ as Bank, and the City of Grand Junction, the following are the individuals authorized to sign written requests for the disbursement of the Funds:

DEVELOPER: Hospice and Palliative Care of Western Colorado

By: Christy Whitney Christy Whitney  
(name) President & CEO (signature)

\_\_\_\_\_  
(name) (signature)

\_\_\_\_\_  
(name) (signature)

DEVELOPER'S GENERAL CONTRACTOR:

DAVID B. HALL David B. Hall  
(name) (signature)

DEVELOPER'S PROJECT ENGINEER:

ERIC SLIVON Eric Slivon  
(name) (signature)

DEVELOPER'S ARCHITECT:

ROY T. BLYTHE Roy T. Blythe  
(name) (signature)

CITY ENGINEER:

Uma C Lamberty Uma C Lamberty  
(name) (signature)



RECORDING MEMORANDUM

Exhibit D

2163077 12/02/03 0430PM

JANICE WARD CLK&REC MESA COUNTY CO

City of Grand Junction REC FEE \$5.00

SURCHG \$1.00

Community Development Department Community Development

File: # PDR-2003-036

Book 3541 Page 99

This memorandum relates to and confirms that certain Development Improvements Agreement and/or Maintenance Guarantee concerning land in Mesa County, Colorado.

The Agreement is by and between Hospice & Palliative Care of Western Colo.

(Developer) and the City of Grand Junction (City) pertaining to Hospice Campus & Primary Care Partners Medical Services (Project), located at 3050 N. 12th Street and 3150 N. 12th Street

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 20, Pages 65, 66, 67)

The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file # PDR-2003-036. FP 2003-173

The Developer and the City of Grand Junction by and through the signatures of the undersigned have determined and agreed to the type, quality and amount of improvements required and/or necessitated by the approval of the Project and that the improvements are guaranteed by and through the Development Improvements Agreement and /or Maintenance Guarantee. Furthermore, the Developer and the City agree that the Development Improvements Agreement and/or Maintenance Guarantee are contractual in nature and that the obligations under the Development Improvements Agreement and/or Maintenance Guarantee shall not be assigned except as provided in the agreement(s).

By virtue of this notice being recorded in the land records of the Mesa County Clerk and Recorder, subsequent owners and/or those that claim by, through or under the Developer are on notice of the Developer's obligations under the agreement(s).

NOW THEREFORE, the Developer and an official of the City of Grand Junction, both possessing and representing by their signatures that they possess sufficient authority, do hereby memorialize the relative, rights and obligations contained in the Development Improvement Agreement and/or Maintenance Guarantee herein characterized.

DEVELOPER: Hospice and Palliative Care of Western Colorado

By: Christy Whitney 12/21, 2003  
Date

(Print Name) Christy Whitney, President and CEO

CITY OF GRAND JUNCTION:

In accordance with the above, I hereby certify that the Development Improvement Agreement and/or Maintenance Guarantee are made of record by this memorandum and that the same may be inspected and/or copied at the City of Grand Junction, Community Development Department, 250 N. 5th Street, Grand Junction Colorado.

Rut Carl 12/2/03  
Community Development Department Date

## INDEMNIFICATION AGREEMENT

This INDEMNIFICATION AGREEMENT ("Agreement") is made and entered into this 1<sup>st</sup> day of December, 2003, by and between West Tocol Development, LLC ("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 PCP/Hospice ("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 a drain/a facility which the City believes it owns and controls.
- B. The Grand Valley Water Users' Association ("GVWUA") has claimed and otherwise asserted an interest in the drain/facility. Because of that asserted claim and interest the GVWUA has not consented to accept the developed surface water flow 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 of developed flows into the facilities of others without their permission.
- D. The City is not and cannot be the arbiter of the competing legal claims 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. <sup>FP-2003-113</sup> The Project was designed and approved for development as detailed and described in Community Development file #PDR 2003-036. The GVWUA asserts a claim and interest in the "D" drain, the facility to which the developer has proposed stormwater to be discharged. The GVWUA asserts, among other things, that it may limit/preclude the introduction of new and/or developed flows to the drain. The Developer asserts, among other things, that it has a right based on historic use, to use the drain.

2. GVWUA and/or the Developer each may have certain legal rights but those rights cannot be fully or finally determined by the City.

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 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, personal injury, attorney fees and/or cost of restoration/reclamation.

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, without 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"

WEST TOCOI DEVELOPMENT, LLC

BY: *Daniel E. M. [Signature]*  
TITLE: Asst. Mgr.

"CITY"

CITY OF GRAND JUNCTION, COLORADO

BY: \_\_\_\_\_