TEMPORARY PERMITTED USE, CONSTRUCTION AND ACCESS AGREEMENT FOR THE CONSTRUCTION OF THE HORIZON PLACE ROADWAY FROM 261/2 ROAD TO AND INCLUDING A PORTION OF COMMUNITY LANE

This Agreement is made and entered into this // day of June 2020 by and between Winterfell Mesa View (CO) Owner, LLC, a Delaware Limited Liability Company (hereafter, "Owner" or "the Owner"), whose address is 590 Madison Avenue, 34th Floor, New York, NY 10022 and the City of Grand Junction, a Colorado home rule municipality, (hereafter, the "City"), whose address is 250 N. Fifth Street, Grand Junction, Colorado 81501.

RECITALS:

- A. As a part of Mesa County Valley School District No. 51 (School District) developing its site at 615 Community Lane in the City, it must provide access. The access will be through Horizon Place. The School District and the City have agreed that the School District will design the roadway for access and the City will construct the public improvements for Horizon Place as a roadway between 26½ Road and Community Lane (Project). The School District has completed the design and civil plans for the Project and the City will install and construct the roadway, curb and gutters.
- B. The Winterfell Mesa View (CO) Owner LLC is the owner of the parcels of land addressed as 601 Horizon Place, Grand Junction, CO 81506 with a tax parcel number of 2945-023-24-004 (Owner's Property) and more particularly described in the document recorded in the Mesa County Clerk and Recorder's records with Reception Number 2725667.
- C. In order to construct the Project improvements temporary construction use is needed on both sides of Horizon Place right-of-way abutting Owner's Property. The use of these areas is needed for the duration of the construction and installation.
- D. The Owner has agreed to allow the City to use the following areas for construction related activities required for construction of the Project improvements and those improvements for Owner as set forth herein.

NOW, THEREFORE, based on the recitals above and in consideration of their mutual promises and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

 The Owner hereby grants to the City from the date of this Agreement and for the duration of the construction of the Project improvements being no later than December 31, 2020, use and access across and within the Owner's Property land described and outlined on the attached as more particularly described on the attached plans for construction of Horizon Place prepared by Austin Civil Group, Inc. dated February 18, 2020 with revisions through June 5, 2020 (herein "Construction Plans") for the construction of the Project and all reasonable and necessary activities incident thereto including uses related to the construction of the Project (herein "City Access").

- 2. In exchange for Owner granting City Access, the City shall pay for and complete the following improvements including any permits or requirements of the City for said construction on the Owner's Property ("Owner Improvements") as more particularly described on the Construction Plans: (i) concrete driveway transition from Horizon Place to the existing driveway on the west end of Owner's Property providing access to the garages on Owner's building; and (ii) concrete driveway transition from Horizon Place to the existing driveway for the parking lot area on the west end of the parking lot in the central area of Owner's Property; and (iii) demolition and construction of a new concrete block and stucco exterior dumpster enclosure and full access swing gates. Owner agrees that the construction of the Project and the Owner Improvements upon the Owner's Property are just consideration enough for the granting of this Agreement; therefore, no additional consideration will be paid by the City.
- a. This Agreement grants to the City the right to use the areas described hereinabove, including for the Owner Improvements, and shall serve as an irrevocable temporary license to use the areas for the purposes aforedescribed until construction of the Project and Owner's Improvements are complete. Said completion of the Project shall be evidenced, at the sole and exclusive discretion of the City, by the City's final acceptance of the work and final payment to the contractor.
 - b. The City agrees to, at the City's sole cost and expense, reasonably repair and restore those portions of Owners' Property affected or damaged by the City's construction activities and to return said affected areas to Owner in a condition substantially similar to that which existed prior to entry by the City.
- 4. All notices shall be deemed sufficiently given if in writing upon mailing, United States mail postage prepaid, to the address set forth below, or by email at the designated email address below:

Winterfell Mesa View Owner (CO), LLC:

Jackie Roy Executive Director Mesa View 601 Horizon Place Grand Junction, CO 81506

Main: 970-242-0772 and Cell: 970-376-5394 Email: mesaviewED@solsticeseniorliving.com

With copy to:

Winterfell Mesa View Owner (CO), LLC 590 Madison Avenue 34th Floor New York, NY 10022

Attention: Legal Department

Email: legal@clny.com

And

Senn Visciano Changes PC, Attn. Michel P. Williams 1700 Lincoln Street, Suite 4300 Denver, CO 80203

Email: MWilliams@Sennlaw.com

City of Grand Junction:

City of Grand Junction
Attn: Trent Prall, Public Works Director
333 West Avenue, Building C
Grand Junction, CO 81501
Email: Trentonp@gjcity.org
970-256-4047/970-201-6384

With copy to:

Erice Mocko, Project Engineer Email: ericmock@gjcity.org 970-256-4017

City of Grand Junction Assistant City Attorney 250 N 5th Street Grand Junction, CO 81501 Email: jamieb@gjcity.org

- This Agreement embodies all agreements between the parties hereto and no other promises, terms, conditions or obligations, oral or written, have been made which might serve to modify, add to or change the terms and conditions of this Agreement.
- 6. This Agreement shall be deemed a contract extending to and binding upon the parties hereto and upon their respective heirs, successors and assigns. If either party is in default of the terms and conditions hereof with respect to their

- agreements, upon no less than ten days written notice and opportunity to cure, either party shall have the right to an action for specific performance or damages.
- 7. This is a legal instrument. The Owner is advised to seek the advice of its own legal and tax counsel before signing this Agreement.
- 8. The Owner and the City approve the use of electronic signatures for execution of this Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 through 24-71.3-121.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

By:

Print name: Ann B. Harrington

Print Title: Authorized Signatory

For the City of Grand Junction:

Greg Caton, City Manager

Winterfell Mesa View (CO) Owner LLC:

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By:
Print name:
Print Title:
For the City of Grand Junction:
Charles and the second
Greg Caton, City Manager

EXHIBIT A Plans for Construction of Horizon Place Pages C-1 to C-7 Dated February 18, 2020 with revisions through June 5, 2020

CITY OF GRAND JUNCTION

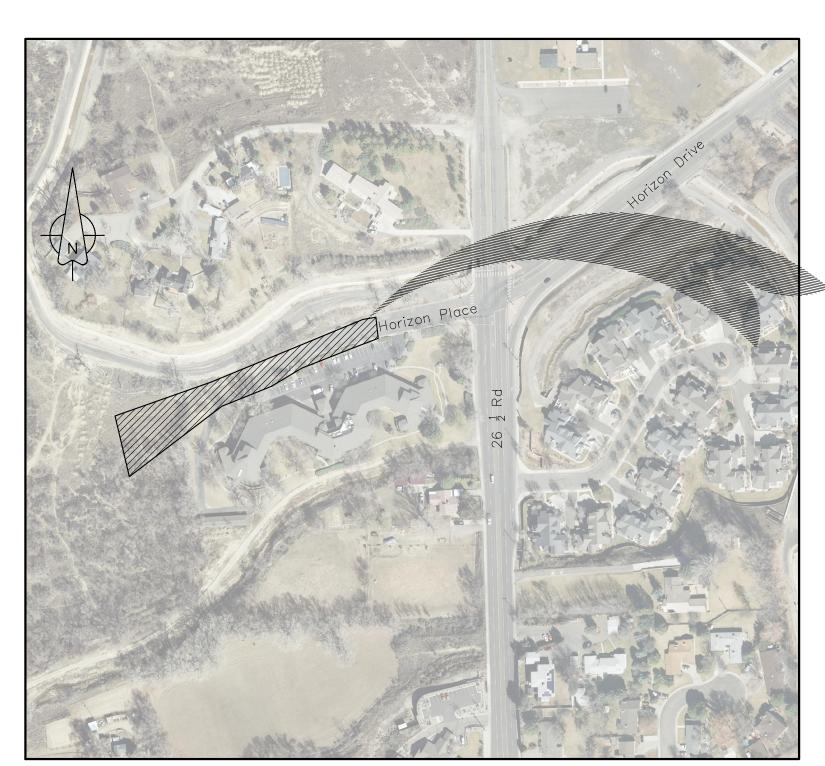
250 NORTH 5TH STREET Grand Junction, Colorado 81501 (970) 244-1501

PLANS FOR CONSTRUCTION OF

HORIZON PLACE

FEBRUARY 18, 2020





VICINITY MAP

PROJECT LOCATION NO. TITLE

C1 COVER
C2 TYPICAL CONSTRUCTION NOTES
C3 DEMOLITION PLAN
C4 SITE PLAN
C5 UTILITY COMPOSITE PLAN
C6 HORIZON PLACE PLAN & PROFILE
C7 GRADING PLAN COMMUNITY
LANE/DUMPSTER ENCLOSURE

	REVISIONS			
NO.	DESCRIPTION	DATE	ВУ	
1	RESPONSE TO 2-24-20 COMMENTS	02-28-20 CIM	CIM	
2	2 RESPONSE TO 3-19-20 COMMENTS	03-19-20 CIM	CIM	
3	3 RESPONSE TO 4-8-20 COMMENTS	04-08-20 CIM	CIM	
4	4 RESPONSE TO 5-22-20 COMMENTS	05-28-20 CIM	CIM	
5	5 RESPONSE TO 6-5-20 COMMENTS	06-05-20 CIM	CIM	

	AUSTIN CIVIL GROUP, INC.	Land Planning • Civil Engineering • Development Service	123 North 7th Street, Suite 300 Grand Junction, Colorado 81501
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02-18-20

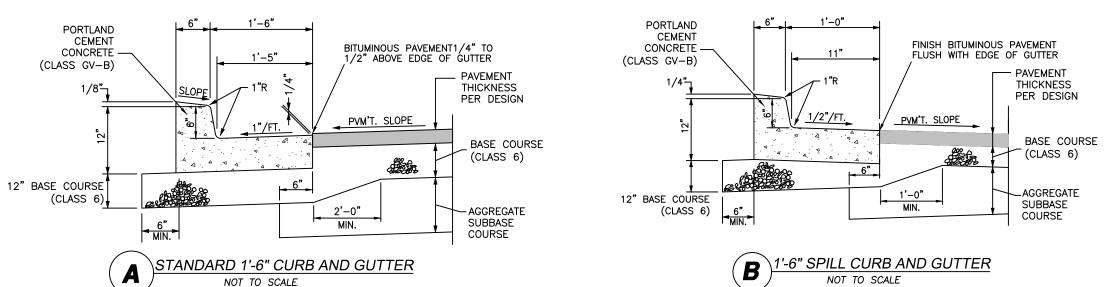
GENERAL CONSTRUCTION NOTES

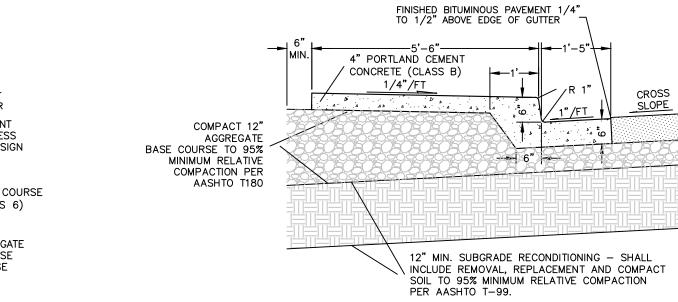
- 1. Contractor shall contact Mark Barslund, City of Grand Junction's Development Inspector and 5-2-1 Drainage Authority Representative, at (970) 201-1362 and Eric Mocko, Project Engineer, at (970) 256-4017 a minimum of 72 hours in advance, for pre-construction meeting prior to beginning work.
- Contractor shall provide 10 days written notice to Jackie Roy from Winterfell Mesa View at mesaviewED@solsticeseniorliving.com and at 970-241-0772 prior to closing a driveway access. Contractor shall alternate construction on the two Winterfell Mesa View driveways to be replaced.
- 2. Locations of existing utilities shown on these plans are approximate only. Contractor is to contact affected utility for specific locations before diaging.
- 3. The Contractor shall notify the engineer if unanticipated conditions area encountered during completion of the work which require modifications to the contract drawings. The engineer can be reached at 970-242-7540.
- 4. Contractor shall give 48-hour notice to all authorized inspectors, superintendents, or person in charge of public and private utilities affected by his operations prior commencement of work. Contractor shall assure himself that all construction permits are current.
- 5. Contractor shall confine his construction operations to the right-of-way, easements, and lots, as shown on plans and plat. Any damage to private facilities outside these limits shall be repaired by the Contractor at no expense to the Owner.
- 6. All construction, related work, materials, performance and quality of work provided shall conform to the requirements of the City of Grand Junction Standard Specifications and Drawings and the applicable sections of the most current edition of the Division of Highways, State of Colorado Standard Specifications for Road and Bridge Construction, Colorado Standard Plans, Division of Highways M & S Standards.
- 7. Contractor shall familiarize himself with the geotechnical testing requirements of the City of Grand Junction. The results of the required types of tests and numbers of passing tests shall be furnished to the Engineer for verification before final acceptance by the Owner will be granted. All failing tests shall be brought to the immediate attention of the Engineer and retests shall be performed until passing results are obtained. All utility lines, including service lines falling shall be tested.
- 8. Only materials on which a proctor test can be performed and accurate nuclear density tests can be run are approved for utility trench back fill unless otherwise approved by the Engineer.
- 9. All utility installations are to be performed in accordance with the City of Grand Junction Standard Specifications for the Construction of Underground Utilities and Standard Details.
- 10. In the event of a discrepancy between the construction notes contained herein and the notes and details in the City of Grand Junction Standard Contract Documents for Capital Improvements Construction manual, the City's manual shall
- 11. All work within the City of Grand Junction Right—of—Way shall required a "Work in the Right-of-Way" Permit. All construction work shall be in accordance with the latest edition of the City of Grand Junction Standard Specifications.
- 12. All concrete shall have a minimum of 6" of Class VI ABC, unless otherwise noted.
- 13. The Contractor shall be required to comply with the requirements and recommendations of the Huddleston Berry Geotech report titled Juniper Ridge Community School, Project No. 01588-0002 dated November 27, 2018, unless otherwise noted.
- 14. All fill, building, concrete or asphalt pavement areas shall be stripped of a PAVINUTCONSTRUCTION NOTES!
- 1. All road widths and radii are to flow line unless noted otherwise. Any "spot" design elevations are to flow line of curb and gutter unless otherwise noted.
- 2. Prior to pavement placement, the pavement prism should be stripped of all unsuitable materials. It is recommended that the subgrade soils be scarified to a depth of 12-inches, moisture conditioned, and recompacted to a minimum of 95% of the standard Proctor maximum dry density, within $\pm 2\%$ of optimum moisture as determined by AASHTO T-99.
- 3. Contractor to protect existing utilities and appurtenances. Manholes, drainage inlets, utility lines, etc., damaged, covered, or filled with dirt or debris by the Contractor shall be cleaned and repaired at no expense to the Owner.
- 4. Where proposed pavement is to match existing pavement, existing pavement is to be squared cut, full base thickness is to be brought to match line and existing surface is to be tack-coated before proposed surface is placed.
- 5. All handicap ramps, sidewalks and curb and gutter are to be constructed where indicated on the plans and in accordance The City of Grand Junction requirements..
- 6. Curb, gutter, and drainage pans are to have expansion joints at each change in horizontal alignment of curb and gutter, but in no case at a greater distance apart than 100 feet. Locate dummy grooved joints between expansion joints at intervals not exceeding 10 feet. Where length of pour precludes 10 foot intervals, the end sections may be less then 10 feet but not less than 5 feet.
- 7. PAVEMENT SECTION: "Hot-Mix Asphalt" 5-inch HMA over 9-inch CDOT Class 6 over 12—inch scarified & recompacted subgrade. "Rigid Pavement" 8—inch Portland Cement Concrete w/ #5 bars @ 12" cntrs., E.W. over 6-inch CDOT Class 6 over 12—inch scarified & recompacted subgrade.

FUGITIVE DUST CONTROL PLAN

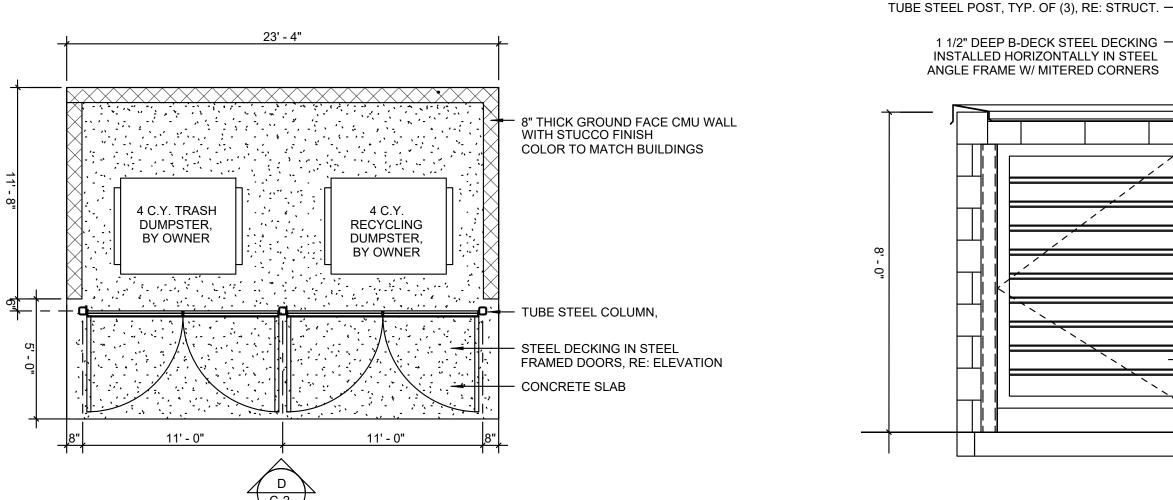
- 1. Before stripping of the site preparation for overlot grading, the surface is to be pre-wet to control dust.
- 2. Any stockpiles of stripping materials are to be periodically sprayed with water or a crusting agent to stabilize potentially wind blown material.
- 3. Haul road both into and around the site are to be sprayed as needed to suppress dust.
- 4. The Storm Water Management Plan and permit shall be obtained and kept onsite before starting any construction work. Gravel pads are to be constructed at the entrances to the site to help in removing mud from the wheels of haulage trucks before they enter onto City streets.
- 5. Trucks hauling import fill are to be tarped to aid in the control of airborne dust.

TYPICAL CONCRETE SECTIONS





NOT TO SCALE



EXISTING STORM SEWER MANHOLE

PROPOSED INLINE DRAIN

—— 27 —— PROPOSED 2" DOMESTIC SERVICE

EXISTING FIRE HYDRANT

EXISTING WATER METER

→ PROPOSED TRAFFIC FLOW

ROOF DRAIN (RD)

STREET LIGHT POLE

PARKING LOT LIGHT

EDGE OF PAVEMENT

POWER POLE

TOC TOP OF CONCRETE

TBW TOP BACK OF WALK

TOP OF CURB

LANDSCAPE AREA

TRANSFORMFER

BOW BOTTOM OF WALL

BOC BACK OF CURB

FLOWLINE

TOW TOP OF WALL

EOP

TC

LS

PROPOSED FIRE HYDRANT

PROPOSED WATER METER

—— 8"W → EXISTING 8" WATER MAIN

——× —— PROPOSED FENCE

— × — EXISTING FENCE

---- GRADE BREAK

PROPOSED STORM SEWER MANHOLE

PROPOSED METER/BACKFLOW VAULT

PROPOSED IRRIGATION MANHOLE

FIRE DEPARTMENT CONNETION

UTILITY PEDESTALS (TEL & ELEC)

PROPOSED BUILDING LIGHT

LEGEND

----PROPERTY LINE

----EXISTING EASEMENT

******** EXISTING BUILDING

----PROPOSED EASEMENT

EXISTING CURB/GUTTER

PROPOSED SPILL CURB/GUTTER

PROPOSED TRANSITION CURB/GUTTER

- PROPOSED 1-FT CONTOUR

PROPOSED HEAVY DUTY ASPHALT

EXISTING SANITARY SEWER MANHOLE

PROPOSED SANITARY SEWER MANHOLE

PROPOSED SANITARY SEWER CLEANOUT

PROPOSED CONCRETE
PROPOSED HEAVY DUTY CONCRETE

- EXISTING SANITARY SEWER

EXISTING STORM SEWER

EXISTING STORM SEWER INLETPROPOSED STORM SEWER INLET

PROPOSED CURB/GUTTER

EXISTING RETAINING WALL

---- EXISTING 1-FT CONTOUR

EXISTING GRAVEL

---- EXISTING 5-FT CONTOUR

PROPOSED 5-FT CONTOUR

PROPOSED GRAVEL

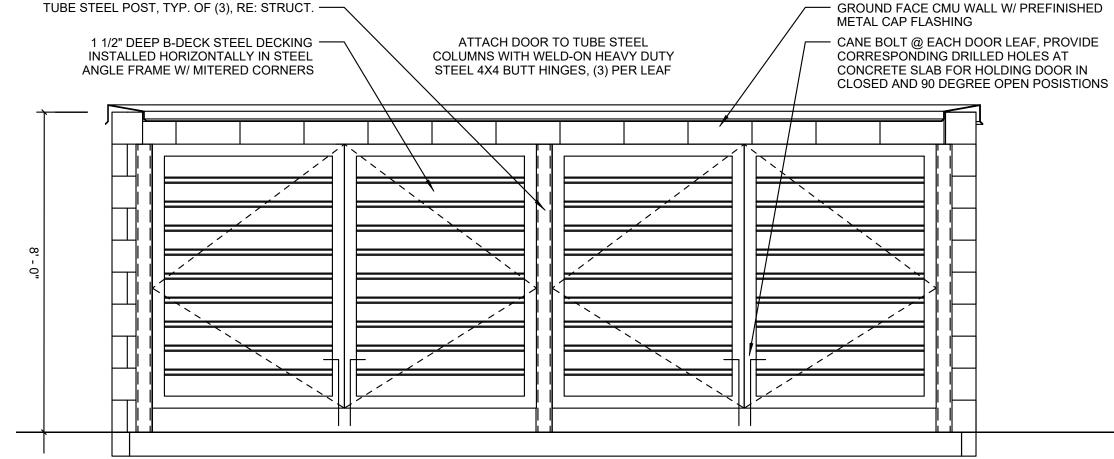
PROPOSED ASPHALT

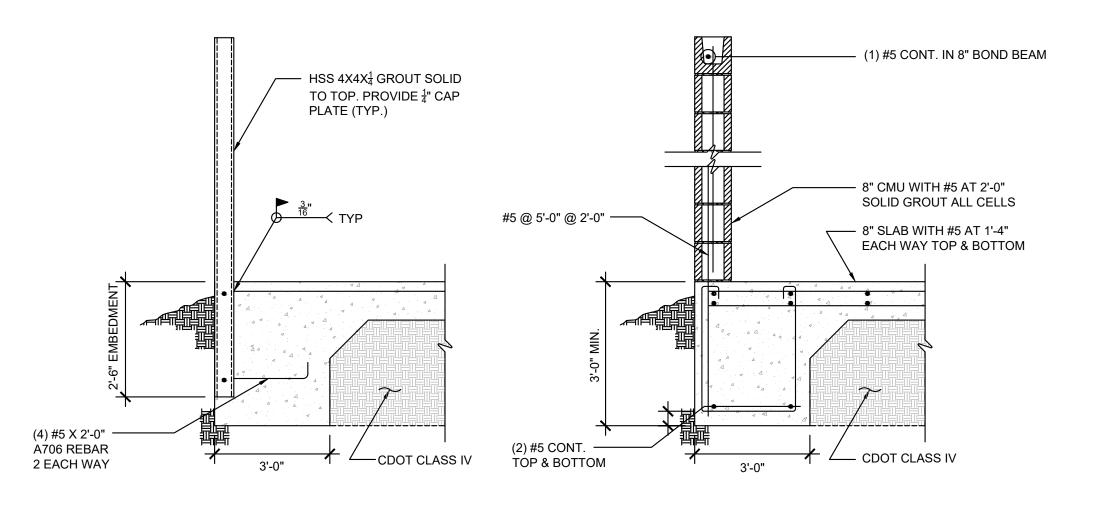
EXISTING CONCRETE

─── ¶ PROPOSED STORM SEWER

PROPOSED CONCRETE

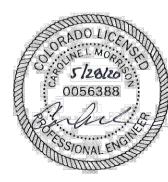
EXISTING ASPHALT





TRASH ENCLOSURE

UTILITIES AND	AGENCIES	
CITY OF GRAND JUNCTION PUBLIC WORKS	MARK BARSLAND	244-1554
GRAND VALLEY IRRIGATION	PHIL BERTRAND	242-2762
CITY OF GRAND JUNCTION PUBLIC WORKS	MARK BARSLAND	244-1554
XCEL ENERGY	BRENDA BOES	244-2681
CENTURY LINK	CHRIS JOHNSON	244-4333
CHARTER	JOHN VALDEZ	245-8750



REVISIONS			
DESCRIPTION	DATE	ВҮ	
24-20 COMMENTS	02-28-20 CIM	CIM	
19-20 COMMENTS	03-19-20 CIM	CIM	
8-20 COMMENTS	04-08-20 CIM	CIM	
22-20 COMMENTS	05-28-20 CIM	ΝΙЭ	_

ON
A.C.Q

PLACE CONSTRUCTION HORIZON

1382.0001 02-18-20 NTS

SHEET NO: C-2

