



CITY COUNCIL MEETING

Notice is hereby given that the City Council will hold a City Council meeting at **7:00 pm, on Wednesday, September 11th, 2024**, in the City Council Chambers at **38 West Center Street**.

AGENDA

1. Roll Call
2. Invocation/Inspirational Thought
3. Pledge of Allegiance
4. Public Forum (Individuals' public comments shall be limited to 3 minutes and must be pertinent to the scope of city authority and jurisdiction. Comments may be delivered in person at the meeting or submitted to the City Recorder prior to 5:00 pm on the meeting date for presentation to the Council)
5. Minutes –
 - a. August 21st, 2024, Regular Council Meeting Pgs 2-6
6. Bills for the period ending September 6th, 2024, totaling \$709,969.71 Pg 7
7. Discussion and Possible Action - New Items
 - a. Public Works Wage Study Pg 8
 - b. 2023 CDBG Ballfields Enhancement Project Changes Pg 9
 - c. Purchase or Lease of Real Property Agreement #2024-02 Pg 10
8. Discussion and Possible Action - Previous Items
 - a. Storm Drain Improvements along 100 West Pgs 11-12
 - b. DFCM \$5.5 Grant Agreement Pgs 13-21
 - c. Purchase or Lease of Real Property from SITLA for Tarr Canyon Well Pg 22
9. Reports of Officers, Staff, Boards and Committees
10. Reports by Mayor and Council Members
11. EXECUTIVE SESSION (May be called to discuss the character, professional competence, or physical or mental health of an individual)
12. EXECUTIVE SESSION (May be called to discuss the pending or reasonably imminent litigation, and/or purchase, exchange, or lease of real property)
13. Adjournment

ADA NOTICE If you are planning to attend this Public Meeting and due to a disability need assistance in understanding or participating in the meeting, please notify the City Office ten or more hours in advance and we will, within reason, provide what assistance may be required.

CERTIFICATE OF MAILING/POSTING

The undersigned duly appointed City Recorder for the municipality of Gunnison City hereby certifies that a copy of the foregoing Notice and Agenda was posted on www.gunnisoncityutah.org, as well as posted on the State of Utah's Public Notice Website.

BY: _____
Valerie Andersen, City Recorder



City Council Meeting

August 21st, 2024

City Council Chambers, 38 West Center

7 P.M. Mayor Nay opened the meeting.

Roll Call:

Donald Childs, Mike Wanner, Shawn Crane, Stella Hill, Robert Andersen, Lori Nay

Invocation/Inspirational Thought:

Given by Valerie Andersen

Pledge of Allegiance:

Led by Mayor Nay

Minutes

August 7th, 2024, Regular Council Meeting:

Councilor Wanner made the motion to approve the minutes for the August 7th, 2024, regular council meeting, Councilor Childs seconded the motion.

Roll Call:

Childs: Yes, Wanner: Yes, Shawn: Obtain, Hill: Yes, Andersen: Yes

Bills for period ending August 19th, 2024, totaling \$324,665.46:

Councilor Wanner made the motion to approve the bills for the period ending August 19th, 2024, totaling \$324,665.46, Councilor Childs seconded the motion.

Roll Call:

Childs: Yes, Wanner: Yes, Crane: Yes, Hill: Yes, Andersen: Yes

Discussion and Possible Action Items

G Hill Trail Phase 4 and 5 Project Amendments:

Trailhead Parking Lot at 200 West 250 South:

Addition of a Riverwalk Trailhead parking lot at 200 West 250 South (Estimated \$32k). This element will provide 10-11 parking stalls at the Riverwalk trail head and extend the 200 West pavements approximately 200 feet toward the river.

Councilor Andersen made the motion to approve the trailhead parking lot at 200 West 250 South, Councilor Hill seconded the motion.

Roll Call:

Childs: Yes, Wanner: Yes, Crane: Yes, Hill: Yes, Andersen: Yes

The Council, Public Works Director JD Bunnell, City Administrator Dennis Marker, and Kelly Chappell with Ensign Engineering went out into the field so that they could look at these projects in person.

Intersection reconstruction at 200 West Center Street:

Reconstruction of the intersection at Center Street and 200 West (Estimated \$15k). The new cross-gutter on the east side of the road creates a "speed dip"/traveling annoyance. This proposal would reduce the slopes for East-West traffic. The Council discussed why the cross gutter was put in. JD and Kelly let them know that they it was designed to get water runoff back to the river, rather than putting in a sump that would cost around the same. JD suggested that they give the changes time to see if they will solve the issue before doing more. They discussed options to reduce the slope. Kelly let them know that the degree of the cross gutter did not bother him when it was designed. Mike Wanner suggested that they leave it as a get a road sign for the bump/dip. The council agreed that they were ok with leaving it the way that it is.

Councilor Andersen made the motion to not make any changes to the cross-gutter on the east side of Center Street and 200 West, Councilor Hill seconded the motion.

Roll Call:

Childs: Yes, Wanner: Yes, Crane: Yes, Hill: Yes, Andersen: Yes

Additional Storm Drain Improvements along 100 West:

Construction of storm drain cross-gutters and other repairs along 100 West. This project would address the overflowing of storm drains on the east side of 100 West and channel the water through intersections toward the San Pitch River, rather than having it pond along the road edges. Engineers are still working on a design and cost estimate at the time this memo was prepared. The Council looked at a few of the problem areas throughout 100 West. JD and Kelly went over a few options for drainage with the Council. The Council felt like they needed to put in some hooded curb inlet boxes. They also discussed putting in another cross gutter and water

way. Then drop the elevation and run a grade. They decided they wanted to see how these changes worked, and that if they continue to have issues that they will put curb and gutter in.

The Council went up to 300 North. Mike Wanner stated that changes to this corner would benefit his property. With the new trail that goes down 300 North Mike stated that he is being forced to put in asphalt, because of the grade change. He stated that he will need to put in 155 feet by 22 feet of asphalt in front of their dance studio. He stated that 12 feet of that is City property, so he would like the City to help pay for their portion. He stated that it would be \$7200. The council agreed that they need to pick up their portion because the road project created the issue. His next concern was that after the water comes around the corner that it will pool in his vacant lot and maybe into the next house's basement. Kelly suggested that they maybe put in a ditch. They discussed putting a sump in on the corner, but don't think that would completely solve the problem. Mike was also concerned about passing the problem from one property to another. JD stated that there is a sump north of the dance studio. JD suggested that they give the project time to be completed, because he believes the water will be directed better. Kelly agreed and stated that the water will be directed better when the road is finished. Mike stated that he would be okay with waiting to see if he is continuing to have issues once the road is paved and see if the one sump will handle it.

Dennis asked Kelly to put numbers together to put in the hooded curb inlets in the problem areas on 100 West.

Councilor Crane made the motion to pay \$7,200 for the Cities 12ft X 155 Ft portion of the asphalt that Mike Wanner will be having installed, Councilor Childs seconded the motion.

Roll Call:

Childs: Yes, Wanner: Abstain, Crane: Yes, Hill: Yes, Andersen: Yes

Reports of Officers, Staff, Boards and Committees

Tyler Donaldson:

New vehicles have been marked.

Vince Buege the school resource officer decided to stay.

Officer Wes Marshall has put in his resignation. Mayor Nay asked about the K9 Duke. Tyler stated that it is a hard thing because he has been trailed and been with officer Marshall for 5 years. He said that normally they would retire the dog and sell him to the handler.

He is hoping to have final budget numbers in the next couple of weeks.

Dennis Marker:

The general plan for OVOV is Monday at Gunnison Middle School at 6:15 P.M.

Planning commission will not be having a meeting this month
Joint meeting with council and planning commission on September 25th

Reports by Mayor and Council Members

Stella Hill:

Working with flowers on main
Sarah Donaldson suggested that they put perennials in the flower boxes rather than annuals.

Mayor Nay:

Wanted to thank the staff for the employee party on Monday
Volunteer party on September 30th at 6 P.M.

Councilor Andersen made the motion to go into executive session to discuss the pending or reasonably imminent litigation, and/or purchase, exchange, or lease of real property, Councilor Crane seconded the motion.

Roll Call:

Childs: Yes, Wanner: Yes, Crane: Yes, Hill: Yes, Andersen: Yes

9:35 P.M. out of executive session

Councilor Crane expressed concern about the viability of the police department under the current circumstances.

9:37 P.M. Adjournment:

Councilor Andersen made the motion to adjourn, Councilor Crane seconded the motion.

Roll Call:

Childs: Yes, Wanner: Yes, Crane: Yes, Hill: Yes, Andersen: Yes

Approval Date: September 11th, 2024

Lori Nay, Mayor

Attest:

Valerie Andersen, City Recorder

Report Criteria:

- Detail report.
- Invoices with totals above \$0.00 included.
- Paid and unpaid invoices included.

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
10-49-62							
4044	DORENE STAMPER	2024-02	PROPERT DAMAGE CLAIM	08/22/2024	1,400.00	1,400.00	08/22/2024
Total 10-49-62:					1,400.00	1,400.00	
10-56-42							
2550	RASMUSSEN EXCAVATION L.L.	4	MILL AND OVERLAY AND MULTI	08/29/2024	297,187.00	297,187.00	09/06/2024
Total 10-56-42:					297,187.00	297,187.00	
50-40-75							
3976	BEH BROTHERS	8.2	PI METER PROJECT REQUEST	08/28/2024	410,799.12	410,799.12	09/04/2024
Total 50-40-75:					410,799.12	410,799.12	
51-81-24							
2445	POSTMASTER	2024.08	WATER-AUGUST 2024	09/04/2024	310.59	310.59	09/04/2024
Total 51-81-24:					310.59	310.59	
Grand Totals:					709,696.71	709,696.71	

Dated: _____

Mayor: _____

City Council: _____

City Recorder: _____

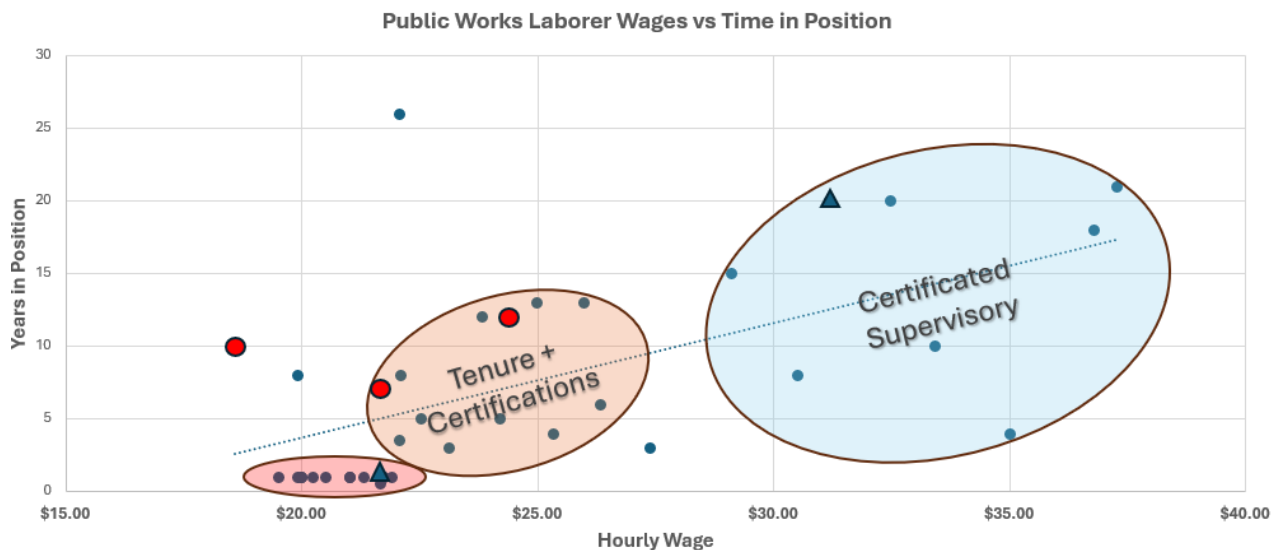


Memorandum

To: Mayor Nay and City Council
From: Dennis L. Marker, City Administrator
Date: September 9, 2024
Re: **Public Works Wage Study**

Centerfield recently conducted a limited wage survey related to their new public works employee position. The survey included the communities of Monroe, Mayfield, Ephraim, Manti and Gunnison. The survey looked at position, years of experience, wages, and benefits.

In order to get a better perspective of the public works labor market, I invited the additional communities of Fairview, Mount Pleasant, Salina, Santaquin, Nephi, and Richfield to share their similar data. Richfield did not respond. The scatter plot below shows all reported positions, except directors, relative to their years of service and their pay from the two combined studies. The red dots indicate Gunnison employees, and the blue triangles are Centerfield's two public works employees. The color circles indicate general clusters of employees' career status.



The starting wages bubble (pink) includes only full-time employees reported and represents an average starting wage of \$21.02. The average wage in the Tenure + Certifications bubble is \$23.39 with an average of 8.6 years of experience.

The Gunnison employees currently make \$18.52 (10 yrs), \$21.72 (7 yrs) and \$24.34 (13 yrs). The first employee splits time between building and grounds maintenance and the library, so it is difficult to draw direct correlations with the study and their wages. The second employee has 7 yrs of experience and state certifications but is making slightly over starting wages within the market area. Although the third Gunnison employee has over a decade of experience, they do not have any system certifications that generally warrant bumps in pay.



Memorandum

To: Mayor Nay and City Council
From: Dennis L. Marker, City Administrator
Date: September 9, 2024
Re: CDBG 2023 Ballfields Enhancement Project - Update

The South Sanpete School District (SSSD) has directed that the ballfield enhancement project must not include perimeter safety netting on the homer dome or high school softball field. This change to the project creates a savings of \$32,000 with eliminating poles and concrete for the safety netting. The school district has asked that the savings be applied to converting another ballfield to LED lighting. The CDBG staff indicate we only need to write a letter requesting the change in scope and it should be approved.

Andy Cox Electric quoted converting another ballfield LED at \$54,654. The SSSD was notified of the LED conversion cost and the netting savings and invited to help cover the difference in cost. We are still waiting for their response.

The overall project estimate was \$336,336 with Gunnison contributing \$86,300. Even with the additional ballfield conversion, the project appears to be coming under budget by roughly \$42,000. Some of that difference is needed as cushion since underground utilities may be affected when the shade structures are installed.



Memorandum

To: Mayor Nay and City Council
From: Dennis L. Marker, City Administrator
Date: September 9, 2024
Re: Purchase or Lease of Real Property Agreement #2024-02

This item should be discussed in an executive session.

A local property owner has offered to sell Gunnison City some water rights. The Council needs to discuss possible terms and options for any purchase agreement.



Memorandum

To: Mayor Nay and City Council
From: Dennis L. Marker, City Administrator
Date: September 9, 2024
Re: Storm Drain Improvements along 100 West

During the August 21 City Council meeting, there was discussion about options for handling more storm water on the corner of 300 North and 100 West. Ensign engineering has prepared a cost estimate and design for one of the options discussed. The cost estimate is between \$25-\$35k.



GENERAL NOTES

1. ALL WORK TO COMPLY WITH THE GOVERNING AGENCY'S STANDARDS AND SPECIFICATIONS.
 2. ALL IMPROVEMENTS MUST COMPLY WITH ADA STANDARDS AND RECOMMENDATIONS.
 3. ALL WORK SHALL COMPLY WITH THE RECOMMENDATIONS OF THE GEOTECHNICAL ENGINEER POSSIBLY INCLUDING, BUT NOT LIMITED TO, REMOVAL OF UNCONSOLIDATED FILL, ORGANICS, AND DEBRIS, PLACEMENT OF SUBSURFACE DRAIN LINES AND GEOTEXTILE, AND OVEREXCAVATION OF UNSUITABLE BEARING MATERIALS AND PLACEMENT OF ACCEPTABLE FILL MATERIAL.
 4. THE CONTRACTOR SHALL BECOME FAMILIAR WITH THE EXISTING SOIL CONDITIONS.
 5. ELEVATIONS HAVE BEEN TRUNCATED FOR CLARITY. XX.XX REPRESENTS AN ELEVATION OF 48XX.XX ON THESE PLANS.
 6. LANDSCAPED AREAS REQUIRE SUBGRADE TO BE MAINTAINED AT A SPECIFIC ELEVATION BELOW FINISHED GRADE AND REQUIRE SUBGRADE TO BE PROPERLY PREPARED AND SCARIFIED. SEE LANDSCAPE PLANS FOR ADDITIONAL INFORMATION.
 7. SLOPE ALL LANDSCAPED AREAS AWAY FROM BUILDING FOUNDATIONS TOWARD CURB AND GUTTER OR STORM DRAIN INLETS.
 8. EXISTING UNDERGROUND UTILITIES AND IMPROVEMENTS ARE SHOWN IN THEIR APPROXIMATE LOCATIONS BASED UPON RECORD INFORMATION AVAILABLE AT THE TIME OF PREPARATION OF THESE PLANS. LOCATIONS MAY NOT HAVE BEEN VERIFIED IN THE FIELD AND NO GUARANTEE IS MADE AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION SHOWN. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO DETERMINE THE EXISTENCE AND LOCATION OF THE UTILITIES SHOWN ON THESE PLANS OR INDICATED IN THE FIELD BY LOCATING SERVICES. ANY ADDITIONAL COSTS INCURRED AS A RESULT OF THE CONTRACTOR'S FAILURE TO VERIFY THE LOCATIONS OF EXISTING UTILITIES PRIOR TO THE BEGINNING OF CONSTRUCTION IN THEIR VICINITY SHALL BE BORNE BY THE CONTRACTOR AND ASSUMED INCLUDED IN THE CONTRACT. THE CONTRACTOR IS TO VERIFY ALL CONNECTION POINTS WITH THE EXISTING UTILITIES. THE CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGE CAUSED TO THE EXISTING UTILITIES AND UTILITY STRUCTURES THAT ARE TO REMAIN. IF CONFLICTS WITH EXISTING UTILITIES OCCUR, THE CONTRACTOR SHALL NOTIFY THE ENGINEER PRIOR TO CONSTRUCTION TO DETERMINE IF ANY FIELD ADJUSTMENTS SHOULD BE MADE.
 9. ALL STORM DRAIN INFRASTRUCTURE TO BE INSTALLED PER GOVERNING AGENCY OR APWA STANDARD PLANS AND SPECIFICATIONS.
 10. ENSURE MINIMUM COVER OVER ALL STORM DRAIN PIPES PER MANUFACTURER'S RECOMMENDATIONS. NOTIFY ENGINEER IF MINIMUM COVER CANNOT BE ATTAINED.
 11. ALL FACILITIES WITH DOWNSPOUTS/ROOF DRAINS SHALL BE CONNECTED TO THE STORM DRAIN SYSTEM. SEE PLUMBING PLANS FOR DOWNSPOUT/ROOF DRAIN LOCATIONS AND SIZES. ALL ROOF DRAINS TO HAVE MINIMUM 1% SLOPE.
- THE CONTRACTOR SHALL ADJUST TO GRADE ALL EXISTING UTILITIES AS NEEDED PER LOCAL GOVERNING

ENSIGN
THE STANDARD IN ENGINEERING

RICHFIELD
225 N. 100 E.
Richfield, UT 84701
Phone: 435.896.2983

LAYTON
Phone: 801.547.1100

TOOELE
Phone: 435.843.3590

CEDAR CITY
Phone: 435.865.1453

SALT LAKE CITY
Phone: 801.255.0529

WWW.ENSIGNENG.COM

FOR:
GUNNISON CITY
38 W CENTER ST.
GUNNISON, UTAH 84634

CONTACT:
MAYOR LORI NAY
PHONE: 435-528-7969

GUNNISON CITY
MULTI-USE PATH
GUNNISON, UTAH

NO.	DATE	REVISION
1	04/29/24	ADDENDUM 1
2	06/04/24	REVISED SDCB ELEVATIONS
3	07/16/24	REVISED SUMP LOCATION AT 300 N
4	08/15/24	DESIGNED WATER WAY IN PATH

GRADING AND DRAINAGE PLAN

PROJECT NUMBER: 8074S
PRINT DATE:
DRAWN BY: W. PAYNE
CHECKED BY: K. CHAPPELL
PROJECT MANAGER: K. CHAPPELL

C-300



Memorandum

To: Mayor Nay and City Council
From: Dennis L. Marker, City Administrator
Date: June 14, 2024
Re: Direct Grant Award Agreement with DFCM for \$5.5 Million

A meeting was held between Gunnison City, DFCM and the Governor's office on Wednesday, September 3. Several concerns were raised during the meeting about restricted water rates, impact fee calculations, and duration of restrictions if the city accepted the grant. The state conceded that any uniform rate adjustments should apply to CUCF the same as the rest of the city. They want the city to assure that any rate increases necessary to cover project financing will not apply to CUCF. Furthermore, it is proposed that the grant be considered as a credit against future impact fees.

The attached agreement attempts to address all negotiated elements. The state has not responded with acceptance of the language as of yet.

It is proposed that the Council accept the drafted language and authorize the Mayor to execute the DFCM Grant Agreement pending final approval from the state.

**DIRECT AWARD GRANT AGREEMENT
(Multi-Year Grant Period)**

This Direct Award Grant Agreement (this “Agreement”) is made and entered into this ____ day of September 2024 by and between the State of Utah, Division of Facilities Construction and Management, an agency of the State of Utah (“DFCM”) and Gunnison City, a political subdivision of the State of Utah and municipal corporation (“Gunnison”).

RECITALS

- A. DFCM will transfer Two Million Five Hundred Thousand Dollars (\$2,500,000) to Gunnison from Fiscal Year 2025 Capital Improvement funding and Three Million Dollars (\$3,000,000) to Gunnison from Fiscal Year 2026 Capital Improvement funding.

- B. The Five Million Five Hundred Thousand Dollars (\$5,500,000) to be transferred to Gunnison is referred to herein as the “Grant”.

- C. The Grant is governed by Utah Code, Title 63G, Chapter 6b *State Grants* (the “Grant Statute”).

- D. Gunnison shall use the Grant funds for the expansion and improvement of the existing Gunnison culinary water system infrastructure for the benefit of and to facilitate the expansion of the Central Utah Correctional Facility (“CUCF”) operated by the Utah Department of Corrections (“UDOC”), as well as for the benefit of the citizens of Gunnison (the “Project”).

A G R E E M E N T

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, DFCM and Gunnison agree as follows:

- 1. INCORPORATION OF RECITALS.** The Recitals of this Agreement are incorporated in this Agreement.

- 2. AWARD.** Upon receipt of the Grant funds by DFCM, DFCM agrees to provide the Grant funds in the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000) to Gunnison for the Project consistent with the Grant Statute and the requirements of this Agreement.

- 3. GRANT PERIOD.** The Grant Period commences July 1, 2024 and shall end no later than December 31, 2027.

- 4. GUNNISON’S EXPENDITURE OF GRANT FUNDS.** Gunnison shall only expend the Grant funds for the Project consistent with the Grant Statute and the requirements of this Agreement.

4.1 BUDGET AND DISTRIBUTION SCHEDULE. Before DFCM will disburse any of the Grant funds, Gunnison shall provide DFCM, for DFCM’s acceptance and written approval, a proposed detailed budget demonstrating how Gunnison will use the Grant funds (“Budget”) and a proposed Distribution Schedule for disbursement of the Grant funds (“Distribution Schedule”).

4.1.1 Budget. The Budget shall be set forth on DFCM’s Capital Improvement Projects FY2026 Capital Budget Estimate (CBE) available at dfcm.utah.gov/construction-management/standard-documents/ or substantial equivalent. Gunnison shall make such changes to the Budget as may be requested by DFCM in DFCM’s discretion.

4.1.2 Distribution Schedule. The Distribution Schedule shall ensure Gunnison’s accountability for use of the Grant funds and shall allow for DFCM’s responsible oversight of Gunnison’s use of the Grant funds. Gunnison shall make such changes to the Distribution Schedule as may be requested by DFCM in DFCM’s discretion. DFCM will not disburse all Grant funds in a single payment unless such single payment is made after Gunnison satisfies all of the Gunnison’s performance obligations under this Agreement. DFCM will not make a final disbursement to Gunnison until Gunnison delivers the Final Report described in section 4.5.2 to DFCM. Gunnison shall not be entitled to interest on undisbursed Grant funds.

4.2 PERFORMANCE METRICS. The Project shall be prosecuted in a commercially reasonable and efficient way and completed in a good and workmanlike manner, using good quality materials and in compliance with all applicable laws, regulations, ordinances, industry standards and requirements of governmental entities having jurisdiction over the Project.

4.2.1 CUCF Requirements. Gunnison acknowledges that UDOC is currently planning an expansion of the CUCF that may double the inmate capacity of the CUCF. The Project will be designed and constructed so as, at a minimum, to increase the current culinary water supply to the Gunnison water system to accommodate such expansion. Gunnison shall endeavor to minimize disruption of the CUCF during the construction of the Project.

4.2.2 Completion. The Project must be substantially complete in accordance with the latest approved Construction Schedule identified in section 4.4.3.2.

4.3 DELIVERABLES. Unless waived in writing by DFCM, Gunnison shall provide the Deliverables listed in this section 4.4 to DFCM. Where the timing for delivery of a Deliverable is not specifically set forth in this Agreement, the timing for delivery of Deliverables shall be coordinated and consistent with the Distribution Schedule.

4.3.1 Water Rights, Water Shares & Easements. No part of the Grant funds may be used for the acquisition of water rights (“Water Rights”) or water shares (“Water Shares”). Any Water Rights or Water Shares required for the Project shall be acquired by Gunnison using funds other than the Grant funds. Gunnison may use the Grant funds for acquisition of easements for the Project (“Easements”). Gunnison shall provide to DFCM all related documentation of Water Rights, Water Shares or Easements acquired during the Grant Period as part of its distribution schedule requests.

4.3.1.1 Water Rights. Notwithstanding that Gunnison shall not use the Grant funds for the acquisition of Water Rights in connection with the Project, Gunnison shall provide DFCM with all documents related to Gunnison's acquisition of Water Rights during the Grant period, including all documents on file or to be filed with the State Engineer.

4.3.1.2 Water Shares. Notwithstanding that Gunnison shall not use the Grant funds for the acquisition of Water Shares in connection with the Project, Gunnison shall provide DFCM with all documents related to Gunnison's acquisition of Water Shares during the Grant Period.

4.3.1.3 Easements. For Easements, Gunnison shall supply DFCM with all documents related to Gunnison's acquisition of Easements for the Project using any Grant funds, including the document granting the Easements to be recorded.

4.3.1.4 Financing Documents. If Gunnison is financing any portion of the purchase price of any real property (including, but not limited to, Water Rights or Easements) or Water Shares for the Project, Gunnison shall provide DFCM with all financing documents associated with such financing.

4.3.2 Design Deliverables. Gunnison shall provide DFCM with the Deliverables described in this section 4.3.2 related to the design of the Project.

4.3.2.1 Design Agreement(s). Gunnison shall provide DFCM with copies of any current or proposed contracts between Gunnison and any design professionals for the Project. DFCM shall review and approve any new design agreements or addendums to any existing agreements and, upon receipt of such written approval, Gunnison shall provide DFCM with an executed copy of any design agreements between Gunnison and any design professionals for the Project.

4.3.2.2 Invoices and Lien Releases for Preconstruction Services. Gunnison shall provide DFCM with all invoices from design professionals associated with the design of the Project. For each progress payment to a design professional for the Project, Gunnison shall deliver to DFCM a *Utah Conditional Waiver and Release Upon Progress Payment* in the form prescribed by Utah Code Ann. § 38-1a-802 from the design professional and the design professional's consultants, if any. For final payment to a design professional for the Project, Gunnison shall deliver to DFCM a *Utah Waiver and Release Upon Final Payment* in the form prescribed by Utah Code Ann. § 38-1a-802 from the design professional and the design professional's consultants, if any.

4.3.2.3 Drawings and Specifications. Gunnison shall provide DFCM with all design Drawings and Specifications for the Project at the Schematic Design, Design Development and Construction Document stages of the design of the Project. DFCM's review of Drawings and Specifications is solely for the purpose of permitting DFCM to fulfill DFCM's responsibilities under the Statute and in no event shall DFCM be responsible or liable for defective Drawings and/or Specifications.

4.3.3 Construction Deliverables. Gunnison shall provide DFCM with the Deliverables described in this section 4.4.3 related to the construction of the Project.

4.3.3.1 Construction Contract. Gunnison shall provide DFCM with the proposed contract between Gunnison and the general contractor for the Project for DFCM’s written approval prior to execution, and, upon receipt of DFCM’s written approval, a copy of the executed contract shall be delivered to DFCM.

4.3.3.2 Construction Schedule. Gunnison shall provide DFCM with the proposed Construction Schedule for the Project for DFCM’s written approval along with any and all updates to such Construction Schedule for DFCM’s written approval.

4.3.3.3 Schedule of Values, Applications for Payment, and Construction Lien Waivers. Gunnison shall provide DFCM with a Schedule of Values as defined in EJCDC Document C-700 (Rev. 1) *Standard Conditions of the Construction Contract* (2013) from Gunnison’s general contractor who will perform the work of the Project. Gunnison shall provide DFCM with fully supported Applications for Payment from Gunnison’s general contractor performing the work of the Project on EJCDC Document C-620 *Contractor’s Application for Payment* (2018) or substantial equivalent. For each progress payment to Gunnison’s general contractor for the Project, Gunnison shall deliver to DFCM a *Utah Conditional Waiver and Release Upon Progress Payment* in the form prescribed by Utah Code Ann. § 38-1a-802 from the general contractor and the general contractor’s subcontractors, sub-subcontractors, and material suppliers, if any. For final payment to Gunnison’s general contractor for the Project, Gunnison shall deliver to DFCM a *Utah Waiver and Release Upon Final Payment* in the form prescribed by Utah Code Ann. § 38-1a-802 from the general contractor and the general contractor’s subcontractors, sub-subcontractors, and material suppliers, if any.

4.3.3.4 Change Orders. Gunnison shall provide DFCM with all Change Orders for the Project. Additive Change Orders in excess of Ten Thousand Dollars (\$10,000) require DFCM’s prior written approval.

4.3.3.5 Payment Bond. Gunnison shall provide DFCM with the payment bond required for the Project by Utah Code Title 14, Chapter 1, and any performance bond for the Project.

4.3.3.6 Release of Retention. If Gunnison has withheld retention from the Project pursuant to Utah Code § 13-8-5, Gunnison shall provide DFCM with evidence of release of such retention and the consent of the surety providing the payment bond pursuant to section 4.4.3.5 to such release.

4.3.3.7 Close-out Documents. Gunnison shall provide DFCM with all punch-lists for the Project, the Certificate of Substantial Completion for the Project, if any, and with “as-built” Drawings for the Project with the Final Report described in section 4.5.2.

4.4 REPORTING. Gunnison and DFCM are subject to the reporting requirements of the Grant Statute.

4.4.1 Annual Reports. In the final quarter of each year of the Grant Period, excluding the final year, Gunnison shall deliver to DFCM a report that details Gunnison’s progress towards fulfilling the Grant’s purpose, including the performance metrics established by section 4.3 of this

Agreement and Deliverables to be provided by Gunnison as required by section 4.4 of this Agreement (“Annual Reports”).

4.4.2 Final Report. DFCM will not make the final Grant fund disbursement until Gunnison delivers to DFCM a final report that: (1) details the extent to which Gunnison fulfilled the purpose for which the Grant funds were provided to Gunnison; (2) demonstrates that Gunnison has met the performance metrics established by section 4.3 of this Agreement; and (3) identifies the Deliverables provided by Gunnison as required by section 4.4 of this Agreement (“Final Report”). The Final Report required by this section shall be in such form and in such detail as may be required by DFCM but shall at a minimum be in sufficient detail to identify how the Grant funds were used by Gunnison. DFCM reserves the right to request additional detail in the Final Report and Gunnison shall comply promptly with such request with such additional detail.

5. ADDRESS FOR DELIVERY OF DELIVERABLES, ANNUAL REPORTS AND FINAL REPORT. The Deliverables, Annual Reports and Final Report required by this Agreement shall be delivered to DFCM at 4315 S. 2700 W., Taylorsville, Utah 84119, Attn. Assistant Director – Capital Improvements.

6. DISBURSEMENT OF GRANT FUNDS SUBJECT TO LEGISLATIVE APPROPRIATION. Disbursement of the Grant funds is subject to Legislative appropriation. Immediately upon written notice delivered to Gunnison, this Agreement and/or any transfer of Grant funds under this Agreement may be reduced, terminated and/or modified in whole or in part at the sole discretion of DFCM, if DFCM reasonably determines that: (1) a change in Federal or State legislation or applicable laws materially affects the ability of either the State or Gunnison to perform under the terms of this Agreement or Gunnison’s financial circumstance materially affect the ability of Gunnison to perform under this Agreement; or (2) that a change or probable change in available funds affects DFCM’s ability to pay under this Agreement. A change or probable change in available funds as used in this section includes, but is not limited to, a change or probable change in Federal or State funding, whether as a result of a legislative act, a legislative failure to act, or by order of the President or the Governor. If a written notice is delivered under this section, DFCM and the State will not be liable for any funding, performance, commitments, compensatory, consequential, or liquidated damages, penalties, expenses and/or costs of any nature whatsoever arising under and/or related to this Agreement and/or arising out of, related to and/or caused by a change or probable change in available funds. Gunnison acknowledges and agrees that the Utah Legislature may modify, terminate and/or reduce funding under this Agreement at any time and any actions taken by Gunnison under this Agreement in reliance on the funding currently provided herein is at Gunnison’s sole risk.

7. DFCM’S RIGHT TO WITHHOLD DISBURSEMENT OF GRANT. Notwithstanding anything in this Agreement to the contrary, DFCM reserves the right, in DFCM’s discretion, to withhold disbursement of all or any part of the Grant funds if at any time it appears that disbursement of Grant funds would not be consistent with the requirements of this Agreement.

8. RETURN OF GRANT. If Gunnison does not use the Grant funds in accordance with this Agreement, the State and DFCM reserve all rights in law and equity to obtain a return of the Grant funds, including the legal rate of interest and reasonable attorney fees and costs expended in obtaining the return of the Grant funds.

9. AUDIT. Gunnison’s use of the Grant funds is subject audit by DFCM and/or the legislative auditor general. Gunnison shall maintain all records necessary to properly account for Gunnison’s expenditure of the Grant funds and Gunnison’s performance under this Agreement. These records shall be retained by Gunnison for at least six (6) years after final disbursement of the Grant funds, or until all audits initiated within the six (6) years have been completed, whichever is later.

10. LAWS AND REGULATIONS. At all times during this Agreement, Gunnison and all goods obtained and/or services performed pursuant to this Agreement shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.

11. RIGHT TO INSPECT PROJECT. DFCM shall have the right, but not the obligation, to inspect the Project from time to time upon reasonable notice to Gunnison. Any such inspections are made solely for the benefit of DFCM in order for DFCM to evaluate Gunnison’s compliance with the terms of this Agreement. No inspection by DFCM shall make DFCM in any way responsible or liable for the quality of the Project, the performance of persons designing or constructing the Project, the compliance of the Project with applicable law and/or injury to persons or property or death of any person arising out of, connected with, or related to the Project.

12. NOT PART OF STATE OR DFCM. Gunnison, in its design and construction of the Project with the Grant funds received pursuant to this Agreement, shall act in an independent capacity and not as a representative, employee or agent of DFCM or the State. Gunnison’s representations or performance shall in no way lead to any liability or responsibility of DFCM or the State to third persons and Gunnison shall indemnify, defend, and hold harmless DFCM and the State from and against any and all claims, costs, expenses and/or damages arising out of, related to, or connected with the Project and/or this Agreement.

13. NO THIRD-PARTY BENEFICIARIES. No person or entity is a third-party beneficiary of this Agreement, and no cause of action is created by this Agreement in favor of any third-party, provided, however, that notwithstanding anything in this Agreement to the contrary, UDOC and the CUCF are intended third party beneficiaries of this Agreement.

13.1 Water Rates. The Parties recognize that Gunnison collects monthly water service fees from all users of the Gunnison culinary system. Such fees are established by resolution of the City Council and collected to cover annual operation and maintenance costs, capital expenses, and debt obligations related to the service.

13.1.1 Financing Rate Increases. Gunnison may be required to increase its water rates to meet infrastructure financing obligations related to the Project. Gunnison agrees that any water rate increases necessary to cover such infrastructure financing obligations will not apply to DFCM nor the State for culinary water delivered by Gunnison to the CUCF.

13.1.2 Operational Rate Increases. The Parties agree that Gunnison City water rates may be annually adjusted for operation increases and inflationary factors. Any annual adjustments necessary to meet operation and system needs shall be uniformly applied to all Gunnison City water system users so that the state does not bear a relatively disproportionate amount of such increases.

13.2 Impact Fees. The Parties agree that the Grant is provided in lieu of DFCM having to pay equivalent future water impact fees to Gunnison City when the CUCF expansion project or smaller phases thereof (“Expansion”), as noted in paragraph 4.3.1, occurs. The Grant, though received in lieu of impact fees permitted under Utah Code, Title 11-36, shall not be regarded as impact fees collected for future expansion or development of CUCF. Gunnison shall, in accordance with state Impact Fee laws, determine the water impact fees to be paid by the state for any Expansion when an Expansion phase is proposed. The water impact fees shall be based on the average water usage per inmate at CUCF for the prior year, the number of new inmates to be accommodated with the Expansion, and an equivalent number of residential connections to the water system. The impact fees to be paid for any Expansion or phase thereof shall be reduced up to the Grant amount.

14. PUBLIC INFORMATION. Gunnison agrees that this Agreement and related records are subject to Utah Code, Title 63F, Chapter 2, the *Utah Government Records Access and Management Act*.

15. ASSIGNMENT. Gunnison may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Agreement, in whole or in part, without the prior written approval of DFCM.

16. DISPUTE RESOLUTION. Prior to either party to this Agreement commencing litigation, the parties agree to participate in the mediation of any dispute. DFCM, after consultation with Gunnison, may appoint an expert or panel of experts to assist in the resolution of a dispute. If DFCM appoints such an expert or panel, DFCM and Gunnison agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute. In the event litigation is commenced following such mediation, venue shall be in a State or federal Court having jurisdiction in Salt Lake County, State of Utah, and in no other forum, the parties to bear their own costs and attorneys’ fees except as provided in section 8 of this Agreement. In no event shall Gunnison be entitled to suspend, withhold, and/or terminate the delivery of water to the CUCF as a result of any dispute arising out of, related to or connected with this Agreement or the Project or as a remedy for any alleged nonpayment of Grant funds by DFCM or the State. The laws of the State of Utah apply to Gunnison, the expenditure of the Grant funds and the design and construction of the Project and Gunnison shall comply with all State laws applicable to Gunnison, the expenditure of the Grant funds and the design and construction of the Project.

17. INTERPRETATION. This Agreement shall be interpreted so as to be consistent with law and to accomplish the purposes of this Agreement.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between DFCM and Gunnison and supersedes any and all other prior and contemporaneous agreements and understandings between DFCM and Gunnison, whether oral or written.

DFCM

STATE OF UTAH DIVISION OF FACILITIES
CONSTRUCTION AND MANAGEMENT, an
agency of the State of Utah

Date: September____, 2024

By:_____
Darrell Hunting, Assistant Director

APPROVED AS TO FORM
/S/ Mike Kelley
Assistant Attorney General

GUNNISON

GUNNISON CITY, a Utah municipal
corporation

Date: September ____, 2024

By:_____
Lori Nay, Mayor



Memorandum

To: Mayor Nay and City Council
From: Dennis L. Marker, City Administrator
Date: September 9, 2024
Re: Purchase or Lease of Real Property from SITLA for Tarr Canyon Well

This item should be discussed in an executive session.