



OFFICE OF THE
STATE AUDITOR

September 7, 2017

Representative Kim Coleman
and
Representative Ken Ivory
Utah State House of Representatives
350 North State, Suite 350
P.O. Box 145030
Salt Lake City, Utah 84114

Dear Representatives:

We have considered the questions in your letter dated April 3, 2017 regarding the Mountain Accord program. Our response to each question (*italicized for emphasis*) is noted below:

1) *OPMA. Did Mountain Accord comply with the Open and Public Meetings Act?*

Prior to your letter, we had determined that Mountain Accord was subject to the Open and Public Meetings Act (OPMA) and had informed the Office of the Attorney General (OAG) of our concerns regarding noncompliance. In turn, we have given your request for answers regarding Mountain Accord's compliance with OPMA to the OAG's Civil Review Committee for investigation.

As you know, there is a lawsuit currently pending in the Third Judicial District Court seeking judgment against Mountain Accord for alleged violations of OPMA. The suit seeks to void all final actions taken by Mountain Accord which arose during alleged violations of OPMA. Recently, Judge Laura S. Scott denied Mountain Accord's Motion to Dismiss, ruling that Mountain Accord is a public body subject to OPMA. It is anticipated that the court will decide the merits of the case and make a ruling in the upcoming months.

2) *GRAMA. Is Mountain Accord subject to GRAMA and if so, did Mountain Accord comply with GRAMA?*

We have determined that the Mountain Accord program is a "joint or cooperative undertaking" as defined in Utah Code 11-13-103. A joint or cooperative undertaking is included as a public body for purposes of the Government Records Access and Management Act (GRAMA) per Utah Code 52-4-103(9)(b). Therefore, we have determined that the Mountain Accord program is subject to GRAMA.

We are aware of two GRAMA requests that were sent in the Fall of 2016 to the Mountain Accord program facilitator, LJ Consulting, LLC. A reply from the associated legal counsel on November 7, 2016 indicated that "since the Mountain Accord is not a governmental entity subject to the Records Request provided for by GRAMA, no records are available for your two requests." The requesters were then directed to Mountain Accord's website for public information.

In this case, the notion that governments can create a governmental program which is not subject to GRAMA does not appear to us to have basis in the law. We believe the governmental entity sponsoring this program, likely UTA, should have responded to these GRAMA requests.

In addition, three GRAMA requests regarding the Mountain Accord program were submitted to the Utah Transit Authority (UTA), one in the Summer of 2015, one in the Summer of 2016, and one in the Fall of 2016. Each of these GRAMA requests were filled by UTA. We are not aware of any appeals filed as a result of UTA's responses. No GRAMA requests regarding the Mountain Accord program were received by the Wasatch Front Regional Council (WFRC).

Of note, contracts established by UTA under the Mountain Accord program indicate that all data and materials developed as part of work performed under the contract are the property of UTA.

- 3) *All amounts spent by Mountain Accord (est. \$8 million). Please examine and determine whether those monies spent were done so with proper bidding, oversight, and accountability. In particular, did Mountain Accord along with its fiscal agents (UTA and WFRC) manage the funds in compliance with Utah Procurement Code 63G-6a?*

According to the financial reports provided by the Mountain Accord program (via UTA), the total expenditures for the program from February 2014 to June 30, 2017 were \$7,457,917.27 (see attached Financial Summary). We reviewed the bidding documents and contracts for the program facilitator (LJ Consulting, LLC), the environmental services consultant (Parametrix, Inc.), and two transportation consultants (Fehr & Peers and Parsons Brinkerhoff, Inc.), to determine compliance with established purchasing policies and the Utah Procurement Code. Payments to these contractors constitute \$6.7 million or 90% of total expenditures during the tenure of the program. It appears that UTA and WFRC followed their purchasing policies and Utah Procurement Code in the procurement process with these entities.

To monitor progress and ensure accountability, UTA and WFRC required each contractor to submit progress reports along with their invoices each month. These invoices and progress reports were properly reviewed and approved. We reviewed a number of progress reports submitted to UTA and WFRC by each contractor to ensure that accountability and monitoring was appropriate.

- 4) *Did Mountain Accord comply with the intent of the Utah Legislature and other government entities as a condition of all amounts awarded (est. \$8 million)?*

Initially, the Legislature appropriated \$2.9 million to UTA for a circulator study and a mountain transport study (HB 377, 2013 General Session, line items 245 – 246, codified in 63B-18-401(4)(a)(xxi)). These funds originated from a 2009 General Obligation Bond authorization for highway projects. It appears that the preliminary funding of \$2.6 million for the Mountain Accord program came from this appropriation.

Subsequently, the Legislature appropriated \$3 million to the Utah Department of Transportation (UDOT) for the Mountain Accord program (HB 2, 2014 General Session, line item 18). This line item had no intent language as to its use. In the following year, the Legislature moved the money from UDOT to the Governor's Office of Economic Development (GOED) (SB 3, 2015 General Session, line items 8 and 11). Line item 11 includes intent language that says, "The Legislature intends that \$3,000,000 provided by this item be used to support the Mountain Accord and that, under section 63J-1-603 of the Utah Code, up to \$3,000,000 not lapse at the close of fiscal year 2015."

Given the extremely limited intent language of the Legislature, it appears the appropriated funds were used in accordance with the Legislature's intent.

- 5) *To what extent did Mountain Accord accomplish objectives and deliverables established by the Legislature, other government entities, or by Mountain Accord itself? Did Mountain Accord establish clearly ascertainable objectives and deliverables?*

Per review of the contracts for the program facilitator, the environmental professional firm, and the transportation project consultant, it appears that clear objectives and deliverables were established as part of the contract process. Regular progress reports submitted by the contractors allowed UTA and WFRC to monitor the progress of accomplishment of those goals and objectives. Based on our review of a number of progress reports, we did not detect any significant lapses in accomplishing established objectives and deliverables.

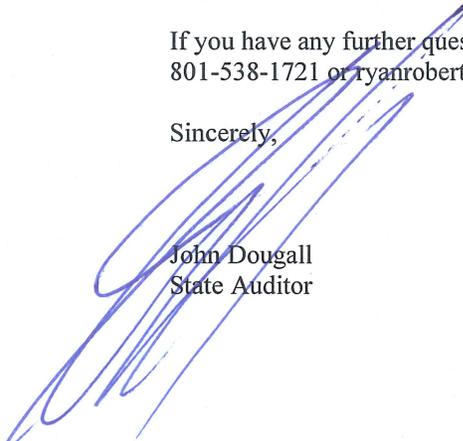
Ultimately, the Mountain Accord program appears to have been a vehicle to direct money to UTA. We noted that UTA represented that it was acting as a "steward" of the Mountain Accord program funds. As such, for all major contracts under the program, UTA issued the requests for proposal, acted as the contracting agency, and reviewed the invoices for payment under the Mountain Accord program. Given UTA's significant role in the financial affairs of Mountain Accord, UTA should have been more proactive in providing timely financial information regarding the

expenditure of public funds to the Office of the State Auditor, the Utah Public Finance Website, and to the public. We determined that WFRC appropriately included expenditure of public funds under the Mountain Accord program in their financial statements and in their uploads to the Utah Public Finance Website.

Finally, the manner in which the Mountain Accord program was established created confusion with the public and program participants as to the program's governmental duties, including transparency and accountability requirements under the law. This lack of clarity resulted in limitations in public oversight.

If you have any further questions regarding this program, please direct them to Ryan Roberts, Audit Supervisor, at 801-538-1721 or ryanroberts@utah.gov.

Sincerely,



John Dougall
State Auditor

Mountain Accord Program — Financial Summary of Revenues

	FY2013	FY2014	FY2015	FY2016	FY2017	Totals
Alta Ski		\$ 15,000.00				\$ 15,000.00
Alta Ski Area		\$ 10,000.00				\$ 10,000.00
Brighton Resort		\$ 5,000.00				\$ 5,000.00
City of Cottonwood Heights	\$ 25,000.00		\$ 25,000.00	\$ 50,000.00		\$ 100,000.00
Contributions		\$ 9,572.20				\$ 9,572.20
Deer Valley Resort		\$ 5,000.00				\$ 5,000.00
Draper City				\$ 60,000.00		\$ 60,000.00
Interest - PTIF	\$ 7,422.66	\$ 9,527.45	\$ 2,595.39			\$ 19,545.50
Interest - Zions Bank		\$ 6.30	\$ 24.80	\$ 75.36		\$ 106.46
Interest Allocation			\$ 1,575.41	\$ 5,510.75		\$ 7,086.16
Metro Water District	\$ 50,000.00	\$ 50,000.00				\$ 100,000.00
Metropolitan Water District of Salt Lake				\$ 100,000.00		\$ 100,000.00
Park City	\$ 50,000.00					\$ 50,000.00
Park City		\$ 50,000.00		\$ 100,000.00		\$ 150,000.00
Salt Lake City		\$ 200,000.00		\$ 200,000.00		\$ 400,000.00
Salt Lake County	\$ 100,000.00	\$ 100,000.00		\$ 200,000.00		\$ 400,000.00
Sandy City	\$ 50,000.00	\$ 50,000.00		\$ 100,000.00		\$ 200,000.00
Snowbird		\$ 15,000.00				\$ 15,000.00
Snowpine, LLC			\$ 5,000.00			\$ 5,000.00
State of Utah	\$ 2,600,000.00		\$ 3,000,000.00	\$ 50,000.00		\$ 5,650,000.00
Summit County	\$ 25,000.00		\$ 25,000.00	\$ 50,000.00		\$ 100,000.00
Town of Alta		\$ 25,000.00		\$ 15,000.00		\$ 40,000.00
UTA	\$ 200,000.00					\$ 200,000.00
Wasatch County	\$ 25,000.00	\$ 25,000.00				\$ 50,000.00
(Not Provided)				\$ 94.82	\$ 13,958.47	\$ 14,053.29
	<u>\$ 3,132,422.66</u>	<u>\$ 569,105.95</u>	<u>\$ 3,059,195.60</u>	<u>\$ 930,680.93</u>	<u>\$ 13,958.47</u>	<u>\$ 7,705,363.61</u>

Source: Utah Public Finance Website (as of August 24, 2017)
 Minor modifications made to descriptions to improve readability.

Mountain Accord Program — Financial Summary of Expenses

	FY2013	FY2014	FY2015	FY2016	FY2017	Totals
213D Stereo Imaging		\$ 500.00				\$ 500.00
Apple Spice Junction	\$ 149.30	\$ 232.50				\$ 381.80
CallingCards Conference	\$ 100.00	\$ 100.00				\$ 200.00
Dell Marketing LP	\$ 1,907.77		-\$ 1,907.77			\$ -
Deloretto, Mary Louise		\$ 764.39	\$ 40.00	\$ 51.84	-\$ 51.84	\$ 804.39
Department Transfer	\$ 108.00		-\$ 108.00			\$ -
En Pointe Technologies IN++	\$ 264.63		-\$ 264.63			\$ -
ESRI			\$ 10,000.00			\$ 10,000.00
Grand America Hotel & Towers			\$ 6,736.86			\$ 6,736.86
Granite School District		\$ 1,498.00	\$ 456.00			\$ 1,954.00
Homestead Resort		\$ 9,354.46				\$ 9,354.46
Hyatt House SLC Downtown			\$ 274.37			\$ 274.37
Intrepid		\$ 1,256.47				\$ 1,256.47
Jason's Deli	\$ 28.71					\$ 28.71
L2 Data Collection Inc					\$ 8,900.00	\$ 8,900.00
LJ Consulting, LLC	\$ 77,972.10	\$ 314,123.18	\$ 478,618.13		\$ 8,240.00	\$ 878,953.41
Newpark Resort		\$ 1,629.20				\$ 1,629.20
Parametrix, Inc.	\$ 62,010.68	\$ 2,362,259.66	\$ 1,100,133.60			\$ 3,524,403.94
Perkins Coie LLP		\$ 21,631.16				\$ 21,631.16
Reclassify AP Entries		\$ 1,124.19	-\$ 1,124.19			\$ -
Salt Lake Climbers Alliance			\$ 20,000.00			\$ 20,000.00
Salt Lake County				\$ 249,988.00		\$ 249,988.00
SQ Isabella's Catering			\$ 889.35			\$ 889.35
Summit County				\$ 399,820.00		\$ 399,820.00
Twin Peaks Properties LC				\$ 2,060.00	\$ 12,360.00	\$ 14,420.00
U of U Alumni Association		\$ 250.00				\$ 250.00
Utah Ski & Snowboard Association				\$ 5,000.00		\$ 5,000.00
Walmart		\$ 2.89				\$ 2.89
Wasatch Front Regional Council*	\$ 1,846.10	\$ 212,526.11	\$ 85,338.19	\$ 718,924.54	\$ 1,281,073.32	\$ 2,299,708.26
Wholesale Transfer Sheet		\$ 1,038.00	-\$ 1,038.00			\$ -
Zions Bank		\$ 130.00	\$ 225.00	\$ 325.00	\$ 150.00	\$ 830.00
	\$ 144,387.29	\$ 2,928,420.21	\$ 1,698,268.91	\$ 1,376,169.38	\$ 1,310,671.48	\$ 7,457,917.27

***Wasatch Front Regional Council Expenses Related to the Mountain Accord Program:**

Fehr & Peers	\$ 1,846.10	\$ 212,526.11	\$ 85,338.19			\$ 299,710.40
LJ Consulting, LLC				\$ 581,932.46	\$ 418,067.00	\$ 999,999.46
Parsons Brinkerhoff, Inc.				\$ 136,992.08	\$ 863,006.32	\$ 999,998.40
	\$ 1,846.10	\$ 212,526.11	\$ 85,338.19	\$ 718,924.54	\$ 1,281,073.32	\$ 2,299,708.26

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 Minor modifications made to descriptions to improve readability.