OFFICE OF THE
STATE AUDITOR

September 7, 2017

Steve DeBry, Chair
Salt Lake County Council
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

Dear Chair DeBry:

We have considered the questions in your letter dated July 17, 2017 regarding the Mountain Accord program. Our response to each question (italicized for emphasis) is noted below:

1) *Were the procedures used to reach [the Mountain Accord Study] conclusions proper and fact based?*

   We reviewed a number of progress reports submitted by the Mountain Accord program facilitator (LJ Consulting, LLC), the environmental services consultant (Parametrix, Inc.), and two transportation consultants (Fehr & Peers and Parsons Brinkerhoff, Inc.) and determined that the Utah Transit Authority (UTA) and the Wasatch Front Regional Council (WFRC) appear to have satisfactorily monitored progress on objectives established under the contract. Determination of whether procedures used by the contractors were proper and fact-based would be the responsibility of the contracting agencies during the monitoring process. Others are free to review and reach their own conclusions.

2) *What remedies may now be necessary to cure the problem of non-compliance with open and public meetings law?*

   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 of our concerns regarding noncompliance. Its Civil Review Committee handles compliance issues regarding OPMA.

   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.

3) *Were proper bidding, oversight and accounting procedures followed?*

   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 (contracted through UTA and WFRC), the environmental services consultant, and two transportation consultants (contracted through WFRC) 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.

Financial reports for the Mountain Accord program may be found on our website at auditor.utah.gov. Their detailed revenue and expense transactions may be viewed on the Utah Public Finance website at transparent.utah.gov.

4) *Did the consultants selected have any conflicts of interest?*

The procurement process for contracts established under the Mountain Accord program required an open process in which the requests for proposal were advertised and a number of respondents submitted proposals for consideration. All proposals received were reviewed for responsiveness. All responsive submitted proposals were reviewed and scored individually by selection committee members who met to go over scores and determine an overall score for each proposer. A competitive range was then determined and interviews conducted with the proposers in the competitive range. After the interviews, the selection committee met to select the successful proposers. The selection committee for the program facilitator was made up of members from the Executive Committee of the Mountain Accord program. The selection committees for the environmental services consultant and the transportation consultants were made up of designees from various participating entities.

Given that there was an open process for procurement and that no one agency held a majority of the selection committees representation, it appears the risk of conflict of interest issues was minimized.

5) *Was the level of compensation paid to the consultants customary and reasonable?*

We reviewed a number of invoices submitted by the program facilitator, the environmental services consultant, and the transportation consultants. The invoices provide the number of hours worked by specific individuals during the invoice period along with the rates charged for each individual/hour. In addition, the invoices detailed what was accomplished in each of the objectives established under contract. Based on the information we reviewed, there was nothing to indicate the level of compensation paid to the consultants was not reasonable and customary.

6) *Has the Study accomplished the goals set for it by the Legislature and other policy makers?*

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.

7) *What decision making should be used to expand the Study beyond its current status into the proposed Central Wasatch Commission?*

Based on our review, we do not have any input into decision making of the stakeholders of the Mountain Accord program or the newly formed Central Wasatch Commission. We would leave decision making regarding the direction and objectives of the Central Wasatch Commission to those member entities who formed this new interlocal entity.

Regardless, due to fiscal policies and procedures, as well as accountability and transparency requirements established for interlocal entities in state law, we expect the governing board of the new interlocal entity to be diligent in ensuring established laws are understood and followed by both the governing body and its staff.

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 the Mountain Accord program, 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
	$ 3,132,422.66	$ 569,105.95	$ 3,059,195.60	$ 930,680.93	$ 13,958.47	$ 7,705,363.61

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

Source: Utah Public Finance Website (as of August 24, 2017)
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