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Prepared for:

Utah Transit Authority

Initial Report of the
Federal Monitor

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EXECUTIVE SUMMARY

This is the initial report of the independent monitor (the "Monitor") of the Utah Transit Authority ("UTA"), pursuant to a 2017 Non-Prosecution Agreement ("NPA") between UTA and the United States Attorney's Office for the District of Utah (the "USAO"). It is the first of six total reports contemplated under the terms of the NPA and monitorship, which consist of this initial report, four semi-annual interim reports, and a final report.

This monitorship stems from the USAO's investigation into problematic activities involving UTA's corporate operations and some of its former senior leadership. Under the terms of the NPA, the monitorship is focused on four core issues (the "Four Core Issues") that were central to the USAO's investigation. These Four Core issues are:

- (1) Inadequate Controls Over Federal Funds and Drawdowns from Federal Grants;
- (2) Improper Handling and Disclosure of Property Acquisitions and Disposition;
- (3) Non-Compliance with Ethical Standards Resulting in Benefits to UTA Employees and Board Members; and
- (4) Improper Approval of Executive Bonuses.

The USAO's investigation and the identification of the Four Core Issues stemmed from a series of audits of UTA conducted by Utah's Legislative Auditor from 2010-2014. The shortcomings highlighted by the audits and in the NPA reflect ethics, compliance, and corporate culture failures at UTA. In October 2016, prior to entering the NPA with the USAO, UTA made assurances to the USAO that it took substantial steps toward addressing these failures through a series of reforms that relate to the Four Core Issues. As a first step in the monitorship, this Initial Report is intended to assess UTA's implementation of these reforms.

Our assessment began in earnest in January 2019 when the Monitor's initial Work Plan was approved. We, as the monitorship team, collected documentation from UTA, reviewed publicly available materials concerning the agency, and interviewed current and former employees and stakeholders of the agency. It became clear that UTA had evolved significantly since it first described its 2016 reforms to the USAO.

The senior leadership of the agency has turned over extensively – with some senior positions turning over more than once. In addition, recent legislation has substantially altered the structure of the agency, including (a) replacing its former 16-member, part-time Board of Trustees with a three-member full time Board of Trustees, (b) eliminating UTA's General Counsel's office and making the Utah Attorney General the agency's counsel, and (c) creating a new nine-member, part-time appointed advisory council with oversight authority over the agency that is both brand new and, it seems, not well-understood by key UTA stakeholders. UTA's professional staff has also experienced turnover, and its policies and procedures have continued to develop. With so much recent change at UTA, the Monitor necessarily focused this initial stage of the monitorship on understanding the current state of the agency and its reform efforts. This initial learning process has put the monitorship team in a position to focus on and test specific aspects of UTA's reform efforts and corporate operations during the remaining phases of the monitorship.

In keeping with this history and the goals of the initial phase, we have structured this initial report as follows:

- First, we provide a brief overview of UTA, and the history that led to the commencement of the monitorship.
- Second, we describe the scope and phases of the monitorship.
- Third, we assess several categories of reforms cited by UTA to the USAO in October 2016 as reflecting how UTA had addressed the problematic issues identified during the Legislative Audits and at issue in the USAO investigation. These reforms informed the terms of the NPA and the scope of the monitorship.
- Fourth, with respect to each reform, we describe (a) the state of the reform as cited by UTA in October 2016, (b) the ways in which those reforms have changed or evolved since, and (c) the Monitor's conclusions and initial recommendations with respect to each category of reform.

The Monitor's conclusions and recommendations identify specific areas of UTA's corporate operations and compliance efforts that have a close nexus to the Four Core Issues and will be the subject of additional review and analysis in the remaining phases. We also provide our impressions on aspects of UTA's compliance work and governance.

Overall, our impression is that UTA has qualified senior leadership in place who readily convey their commitment to ethical management of the agency in the public interest. Even where we found that UTA personnel may harbor divergent perspectives on some issues, their priorities appeared aligned with UTA's mission. This is not to say that we have no concerns regarding UTA. It remains to be seen how the agency will be impacted by turnover, significant structural and leadership changes, and a new governance structure. In this report, we describe several initial concerns that we identified during our review for this phase, including particularly:

- The departure of most of the UTA leadership identified in the 2016 reforms;
- The lack of clarity regarding the role of the Local Advisory Council and its similarity to UTA's previous board structure; and
- The elimination of UTA's General Counsel's office and the subsequent loss of experienced and compliance-oriented in-house counsel.

Again, however, we consider it encouraging that UTA's senior leadership has adopted sound priorities. We look forward to working with UTA during the remaining phases of the monitorship.

BACKGROUND AND HISTORY OF UTAH TRANSIT AUTHORITY

UTA is the local transit district responsible for providing public transportation to the Wasatch Front region. UTA provides bus, light rail, commuter train, and streetcar services, in a region spanning 77 municipalities in seven counties and more than 1,400 square miles.¹ UTA has one of the largest coverage areas of any public transportation agency in the country.²

I. UTA's History

UTA traces its roots to 1969, when the Salt Lake City Corporation, Union Street Railway, and Salt Lake County sought, and the Utah State Legislature passed, the Utah Public Transit District Act.³ The act allowed individual communities to address transportation needs by forming local transit districts.⁴ UTA itself was founded on March 3, 1970, following votes by the residents of Salt Lake City and the surrounding communities of Murray, Midvale, Sandy, and Bingham.⁵ Weber and Davis counties joined the UTA transit district in 1973.⁶ Utah County joined in 1984.⁷

II. Growth from 1999 to Today

For nearly its first 30 years, UTA provided solely bus service in the Wasatch Front region.⁸ In 1999, UTA added light rail service, called TRAX.⁹ UTA's first TRAX line went from Sandy to Downtown Salt Lake City.¹⁰ In 2001, UTA opened a second TRAX line between Salt Lake City and the University of Utah.¹¹ UTA extended this line in 2003.¹² In 2011, UTA added the Mid-Jordan and West Valley TRAX lines.¹³ In 2013, UTA opened TRAX extensions to Draper and to

¹ UTA History, https://www.rideuta.com/-/media/Files/About-UTA/Fact-Sheets/2017/History_FactSheet_April2017.ashx?la=en (last visited May 27, 2019).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Van C. Wilkins, *Utah Transit Authority Formed, Motor Coach Age*, Part 4, <http://utahrails.net/articles/motor-coach-age4.php> (last visited May 27, 2019).

⁷ *Id.*

⁸ UTA History, https://www.rideuta.com/-/media/Files/About-UTA/Fact-Sheets/2017/History_FactSheet_April2017.ashx?la=en (last visited May 27, 2019).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

the Salt Lake City Airport and the S-Line, a modern streetcar line between South Salt Lake and Salt Lake City's Sugar House District.¹⁴

UTA Light Rail Expansion	
Light Rail Line¹⁵	Date of Completion
Sandy/Salt Lake Line	December 1999
University Line	December 2001
Medical Care Extension	September 2003
Intermodal Hub Extension	April 2008
West Valley Line	August 2011
Mid-Jordan Line	August 2011
Airport Line	April 2013
Draper Line	August 2013
S-Line Streetcar	August 2013

In 2005, UTA began construction of a commuter rail system, called FrontRunner. UTA commenced Front Runner service in April 2008.¹⁶ It initially provided high-speed rail service along a 44-mile path between Weber County and downtown Salt Lake City.¹⁷ In 2012, UTA expanded the FrontRunner system to serve Utah County, as well, for a total of 89 miles of commuter rail.¹⁸

UTA Commuter Rail Expansion	
Commuter Rail Line¹⁹	Date of Completion
Salt Lake to Weber County	April 2008
Salt Lake to Provo	December 2012

As this timeline illustrates, UTA's service portfolio and transit infrastructure have grown substantially over the past twenty years. We consider this relevant context for the compliance issues that gave rise to the monitorship. During our Phase I work, several UTA employees expressed to us that the agency grew very quickly in the last two decades, and some expressed that the agency's documentation and processes had not necessarily kept pace with this growth.

¹⁴ *Id.*

¹⁵ UTA, Utah Transit Authority Fast Facts, as of January 1, 2017, https://www.rideuta.com/-/media/Files/About-UTA/Fact-Sheets/UTA_2017_FastFacts_FNL_Separate.ashx?la=en (last visited May 27, 2019).

¹⁶ UTA History, https://www.rideuta.com/-/media/Files/About-UTA/Fact-Sheets/2017/History_FactSheet_April2017.ashx?la=en (last visited May 27, 2019).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ UTA, Utah Transit Authority Fast Facts, as of January 1, 2017, https://www.rideuta.com/-/media/Files/About-UTA/Fact-Sheets/UTA_2017_FastFacts_FNL_Separate.ashx?la=en (last visited May 27, 2019).

LEGISLATIVE AUDITS

The Utah Legislative Audit Subcommittee ("Legislative Audit Subcommittee") periodically directs the Utah State Legislative Auditor General ("Legislative Auditor") to audit UTA. Legislative Audits of UTA were completed in 2008, 2010, 2012, and 2014.

- In 2008, the Legislative Audit Subcommittee recognized the "tremendous growth" that UTA was experiencing, and asked Legislative Auditors to evaluate UTA's operations, including cost of service, the level of subsidy required, and other issues related to the agency's ability to manage the transit system.²⁰
- In 2010, the Legislative Audit Subcommittee asked the Legislative Auditor to perform a limited review of the materials and the events leading up to the site location for the proposed Draper/Bluffdale FrontRunner stop. In particular, the 2010 audit reviewed certain conflict of interest allegations concerning a UTA Trustee.
- The 2012 audit was a follow-up to the 2008 performance audit. The 2012 audit reviewed UTA's finances and ridership numbers.²¹
- The 2014 audit assessed at UTA's oversight, controls, and processes.

The 2008 and 2012 audits did not significantly touch upon the issues that are the focus of the monitorship, so we will not discuss them in detail.

The Legislative Auditor's audits of UTA in 2010 and 2014 are important here, however, because they factored significantly into the decision by the United States Attorney's Office for the District of Utah to conduct an investigation of certain UTA actions, which ultimately led to this monitorship.

I. 2010 Legislative Audit

The Legislative Auditor's 2010 audit of UTA was memorialized in its Report Number 2010-17, entitled "A Limited Review of Conflict of Interest Allegations at the Utah Transit Authority Board."²² The Legislative Auditor conducted the audit in order to: (1) determine whether a member of the UTA Board of Trustees had a conflict of interest with respect to the site location for the proposed Draper/Bluffdale FrontRunner stop; (2) determine whether the Trustee in question misused official information for personal financial gain through a company seeking to develop property adjacent to the proposed FrontRunner stop; (3) determine whether the trustee

²⁰ Office of the Legislative Auditor General, State of Utah, Report Number 2008-03, January 2008, "A Performance Audit of the Utah Transit Authority." (available at https://le.utah.gov/audit/08_03rpt.pdf)

²¹ Office of the Legislative Auditor General, State of Utah, Report Number 2012-01, January 2012, "A Performance Audit of the Utah Transit Authority." (available at https://le.utah.gov/audit/08_03rpt.pdf)

²² Office of the Legislative Auditor General, State of Utah, Report Number 2010-17, December 2010, "A Limited Review of Conflict of Interest Allegations at the Utah Transit Authority Board." (available at https://le.utah.gov/audit/10_17rpt.pdf)

improperly interfered with the site selection process for a proposed FrontRunner stop; and (4) evaluate UTA's conflict of interest policies and its compliance with Utah Code 17B-2a-814, governing conflict of interest policies.

The Legislative Auditor found that allegations of a conflict existing on the UTA Board involving the Trustee were valid, but that the Trustee disclosed the conflict as required by Utah Code. However, the Legislative Auditor noted that "the same action today would be prohibited under UTA's recently strengthened conflict-of-interest policy." The auditor found no evidence that the Trustee interfered in the site selection of a FrontRunner commuter rail stop in Draper, but concluded that the Trustee "may have violated a specific provision of the Public Transit District Act concerning the misuse of official information" by seeking to develop land adjacent to the proposed FrontRunner stop. The report recommended that the Utah Legislature review sections of the Public Transit District Act to ensure that the statute still meets legislative intent and that the Legislature's Audit Subcommittee consider referring the possible misdemeanor violation to the Utah Attorney General for possible investigation. The report also recommended that the UTA board "enhance transparency of its operations by providing additional policy clarification" concerning transit-related development.

II. 2014 Legislative Audit

The Legislative Auditor's 2014 audit was memorialized in its Report Number 2014-06, entitled "A Performance Audit of the Utah Transit Authority".²³ Among other things, the Legislative Auditor found that UTA's development projects needed additional controls and oversight relating to the Transit Oriented Development ("TOD") process. The report specifically cited the Draper FrontRunner Parking Structure and Jordan Valley TOD projects as problematic because of a questionable prepayment decision, procurement process concerns, and overly favorable contracts to developers.

These findings are described in more detail below.

A. Transit Oriented Development

The Legislative Auditor's 2014 report described a number of problematic issues with respect to UTA's Draper FrontRunner Parking Structure and Jordan Valley TOD projects.

(1) Draper FrontRunner Parking Garage

The 2014 audit criticized UTA's prepayment of \$10 million to a developer for the future construction of a parking garage at the Draper FrontRunner station. At the time of the payment, there were no design specifications or immediate plans for construction, and no legitimate reason to prepay the developer in full. After prepaying the funds, UTA ultimately chose to hire a different developer to construct the garage two-and-a half years later. By this time, the original

²³ Office of the Legislative Auditor General, State of Utah, Report Number 2016-06, August 2014, "A Performance Audit of the Utah Transit Authority." (available at https://le.utah.gov/audit/14_06rpt.pdf)

developer did not have sufficient funds to repay to UTA \$1.7 million of the original \$10 million pre-payment.²⁴

The report further found that the \$10 million prepayment is against UTA's policies and historical practice. Moreover, the auditors raised a host of other concerns: the lack of a cost-benefit analysis for the project; the inadequacy of the legal documentation for development projects; UTA's decision to release valuable collateral – in the form of a deed of trust on the developer's property – for questionable collateral; releasing the deed of trust to aid economic development efforts in attracting a major technology company [eBay] to the site; difficulties relating to UTA's \$1.5 million in site preparation work; and the general lack of documentation and changing explanations the auditors encountered while conducting their audit. The auditors concluded that the lack of sufficient controls and oversight for the Draper Frontrunner project put taxpayer funds at risk.

(2) Jordan Valley Transit Oriented Development

The 2014 audit also criticized the procurement process used to select the developer for UTA's Jordan Valley TOD project. The auditors found that the development agreement was overly-favorable to the developer. An independent law firm, Snell and Wilmer, corroborated the auditor's findings. Snell and Wilmer found that some of the provisions of the development agreement were "far out of market" in a manner that was favorable to the developer.

(3) Legislative Auditor's Recommendations Regarding Transit Oriented Developments

The auditors concluded that the number and severity of concerns identified in the Draper FrontRunner and Jordan Valley TOD projects warranted "increased procedures, better controls, and improved oversight" of development projects at UTA. In particular, the auditors found that UTA's placement of the TOD function under the Office of the General Counsel created a "significant segregation of duty concern," because the General Counsel served as both the operational manager of TOD projects and the attorney conducting the legal review of each project – which significantly compromised the General Counsel's neutrality. The auditors recommended that UTA's internal auditor take on a more visible role with TOD oversight and provide better information to UTA's board about such projects.

In response to the auditor's findings, UTA's board created a new position for TOD oversight separate from the general counsel's office. The board also approved new policies that implemented some of the auditors' recommendations.

B. Executive Compensation

The Legislative Auditor found improprieties in UTA's executive compensation determinations and compensation reporting.

²⁴ UTA essentially loaned the developer a significant sum without receiving any interest. See Office of the Legislative Auditor General, State of Utah, Report Number 2016-06, August 2014, "A Performance Audit of the Utah Transit Authority." (available at https://le.utah.gov/audit/14_06rpt.pdf)

The Legislative Auditors found that UTA paid large bonuses and other unusual special benefits to executives unavailable to other UTA employees, including two different kinds of deferred compensation plans, and a car allowance. Further, the auditors found that the two highest-paid UTA employees also received special life insurance benefits not offered to any other UTA personnel. UTA also gave its General Counsel a special retirement package that doubled his years of service credit for his first ten years of employment. This increased his lifetime benefit by about \$50,000 *per year* above what it otherwise would have been.

The audit team compared UTA's executive compensation to the Utah Department of Transportation and Salt Lake City Airport Authority, and concluded that UTA's total compensation was high compared to these agencies. Some of UTA's positions, such as the General Counsel, received salaries significantly higher than at the other regional transportation entities.

C. Reporting Compensation to Utah's Transparency Website

Utah's transparency website, transparent.utah.gov, was created by the Legislature in 2008 to promote transparency and accountability in public agencies. The auditors found that "UTA did not report portions of employee compensation to this website, thus obstructing accountability to the public and circumventing the intent of the statute." In response to the legislative auditor's findings, the UTA board revised its policy to require UTA management to submit all compensation data to Utah's transparency website.

III. No Legislative Audits Since 2014

The Legislative Auditor audited UTA in 2008, 2010, 2012, and 2014, but has conducted no audits since. During the course of our Phase 1 review, the Monitor was unable to identify a reason for this, nor does UTA's leadership seem to have a sense for when the agency might next be audited. Nor, we understand, has the Utah Legislative Auditor been instructed to conduct any new audits of UTA. As the Monitor describes in more detail below, UTA has undergone significant legislative, organizational, policy, and personnel changes since the last audit in 2014. It is unclear to the Monitor why the Legislative Auditor was ordered to perform audits regularly until 2014, but no audits since.

UNITED STATE ATTORNEY'S OFFICE INVESTIGATION

Following the August 2014 Legislative Audit, the United States Attorney's Office for the District of Utah ("USAO") opened an investigation into UTA's operation of mass public transit services, applications for federal grants and funding, expenditure and use of federal funds, and negotiations for or acquisitions of real property, equipment, and other capital improvements related to UTA's operations. This investigation ultimately led to an agreement by the USAO not to prosecute UTA, conditioned, among other things, on UTA agreeing to the monitorship that is the subject of this report.

Below, we describe how the USAO investigation led to this monitorship. We are not familiar with the full scope of the UTA investigation and do not intend to characterize or summarize it, except to the extent necessary to contextualize the reforms implemented by UTA in response.

I. UTA's October 2016 Letter to USAO Regarding The Agency's Reforms Following the 2014 Legislative Audit

On October 4, 2016, during the course of the USAO's investigation, UTA's counsel wrote a letter to the USAO summarizing institutional controls and organizational and personnel reforms that UTA had adopted since the findings of the 2014 Legislative Audit ("October 2016 Letter").

In the letter, UTA assured the USAO that it had "taken many steps to address its previous organizational weaknesses," and that UTA "is committed to remedying its past shortcomings and earning the public's trust." UTA outlined several "institutional reforms" that it had "implemented since the Legislative Audit was released," which UTA acknowledged still constituted a "work in progress."

The Monitor considers this assessment by UTA of its own reforms to be central to Phase I of the monitorship. The reforms, discussed in more detail below, concerned the following: New Leadership, Organizational Changes, Executive Compensation, Conflicts of Interest, Travel, Transit-Oriented Development, Lobbyists, Accounting, Purchase Cards and Recordkeeping, Grant Oversight, and Transparency. Throughout this report, the Monitor refers to the reforms outlined in UTA's October 2016 Letter as the "2016 Reforms."²⁵

II. Non-Prosecution Agreement

On April 14, 2017, UTA and the USAO entered into a Non-Prosecution Agreement ("NPA"),²⁶ under which UTA acknowledged the need for "improved institutional conformity [at UTA] with financial and ethical requirements." The NPA identified the Four Core issues identified by the USAO during its investigation:

- (1) Inadequate Controls Over Federal Funds and Drawdowns from Federal Grants;
- (2) Improper Handling and Disclosure of Property Acquisitions and Disposition;

²⁵ An in depth analysis of UTA's reforms is provided in the "UTA's Reforms" section.

²⁶ April 4, 2017, Non-Prosecution Agreement.

- (3) Non-Compliance with Ethical Standards Resulting in Benefits to UTA Employees and Board Members; and
- (4) Improper Approval of Executive Bonuses.

Under the NPA, the USAO agreed not to prosecute UTA for any conduct related to the investigation. Additionally, the United States Department of Transportation's Office of Inspector General ("OIG") agreed not to refer UTA to the Federal Transit Administration for civil disbarment or suspension action.

In return, UTA agreed to "put forth efforts to rectify the four core issues," including the 2016 Reforms it outlined in its October 2016 Letter. Further, UTA agreed to retain a monitor to ensure the continued implementation of institutional improvements outlined in UTA's October 2016 Letter.

THE INDEPENDENT MONITORSHIP

I. Overview of Monitorship

The NPA describes two primary responsibilities for the Monitor. UTA was to:

retain a monitor . . . to ensure the continued implementation of institutional improvement outlined in UTA's counsel's October 4, 2016, letter to [the USAO] focusing in particular on those reforms intended to address the four core issues, as well as recommendations by the monitor concerning additional reforms intended to address the four core issues.

Per the NPA, Rees Morgan, partner at the law firm of Coblenz, Patch, Duffy & Bass LLP, was retained as UTA's independent monitor on September 5, 2018. In December 2018, the Monitor submitted to the USAO and UTA the Final Work Plan for the monitorship and held an initial Kickoff Meeting with the USAO and UTA in Salt Lake City, Utah. The USAO and UTA agreed to the Final Work Plan in January 2019.²⁷ The Final Work Plan outlines the course of the monitorship, which is split into three phases:

- (1) Phase I of the Monitorship – the period from approval of the Final Work Plan through submission of the Monitor's Initial Review and Report;
- (2) Phase II of the Monitorship – the period from submission of the Monitor's Initial Review and Report to the Monitor's submission of four contemplated Interim Reports;
- (3) Phase III of the Monitorship – the period from submission of the Monitor's last Interim Report to submission of the Monitor's Final Report.

UTA and the USAO agreed that the monitorship will last for a three-year period, commencing on September 5, 2018 and finishing on September 5, 2021.

II. Phase I: The Monitor's Initial Report

The Monitor's Phase 1 analysis consists of the following:

- (1) Reviewing the 2016 Reforms implemented and any additional reforms instituted by UTA since then, including pursuant to the 2018 Transportation Governance Amendments passed by the Utah legislature;

²⁷ After UTA and the USAO agreed to the monitorship in the NPA, we understand that UTA conducted two separate requests for proposals ("RFP") to identify a monitor. The first RFP process did not identify an acceptable candidate. The second RFP process resulted in retention of the Monitor in September 2018. The Monitor's request for discovery from UTA and review of that initial discovery resulted in a Final Work Plan, presented to UTA and the USAO in late 2018 at the Kick-Off Meeting. Accordingly a significant time gap exists between the NPA and commencement of the monitorship, through no fault of either UTA or the USAO.

- (2) Assessing UTA's compliance with these various reforms and their effectiveness in addressing the Four Core Issues among other issues relevant to the monitorship;
- (3) Providing UTA with preliminary assessments and any recommendations relating to the objectives of the NPA;
- (4) Drafting this Initial Report regarding UTA's processes, procedures and organization – and the significant ways in which these have changed in connection with the 2016 Reforms and thereafter.

This Initial Report constitutes the completion of Phase I of the monitorship.

III. Phase II: The Monitor's Semi-Annual Reports

Following Phase 1, the Monitor will meet with the USAO and UTA regarding the appropriate next steps for monitorship activities in each roughly six-month period of Phase II, which is expected to last approximately twenty-four months. During Phase II, the Monitor will issue semi-annual interim reports.

In general, the Monitor's Phase II work is likely to include:

- (1) Attending regularly scheduled discussions with UTA key personnel regarding implementation of the 2016 Reforms and any other remedial measures, including those implemented in response to this Initial Report or any subsequent semi-annual Report.
- (2) Requesting access to additional relevant documents or UTA personnel as appropriate, as well as follow-up interviews with UTA personnel or others as necessary.
- (3) Approximately midway through each interim period, convening an onsite conference attended by key UTA personnel, the Monitor team, and transportation auditor consultants retained by Monitor, at which UTA will present its assessment of the implementation and effectiveness of the 2016 Reforms and other remedial recommendations.
- (4) Recommending, as necessary and appropriate, implementation of other potential measures to ensure ongoing compliance with the 2016 Reforms and other relevant controls and procedures.
- (5) Drafting Semi-Annual Interim Reports. The Monitor anticipates providing the USAO and UTA with Semi-Annual Interim Reports in December 2019, May 2020, November 2020, and May 2021.

IV. Phase III: The Monitor's Final Report

The Monitor's Final Report will present the Monitor's assessment of UTA's compliance with the terms of the NPA and whether the goals and objectives of the NPA have been met. In general, the Monitor's Phase III work is likely to include:

- (1) Performing a final assessment of UTA's implementation and compliance with the 2016 Reforms and any other remedial measures, including those recommended by the Monitor in any prior report. This will also include a final assessment of UTA's efforts to address the Four Core Issues, as well as any other issues that arise during the monitorship.
- (2) Requesting access to additional relevant documents or UTA personnel as appropriate, as well as follow-up interviews with UTA personnel or others as necessary.
- (3) Convening a conference approximately midway through Phase III to be attended by key UTA personnel, the USAO, and the Monitor team and the Monitor's transportation auditor consultants. During this conference, UTA will preview its final assessments as described above.
- (4) Drafting the Final Report, which the Monitor anticipates providing to UTA and the USAO by September 5, 2021.

METHODOLOGY FOR THIS INITIAL REPORT

The Monitor's Phase I work began in earnest following the agreement by UTA and the USAO to the Final Work Plan in January 2019. The Monitor's Phase I work has focused on the collection and review of relevant documentation and information from UTA; identifying and interviewing witnesses; interviewing individuals who approached the Monitor confidentially to raise concerns regarding UTA; reviewing the findings of NWC Consultants, the Monitor's transportation auditor consultants ("Transportation Auditors"); and drafting this Initial Report.

Much of the Monitor's Phase I work focused on the review of documents and interviews of witnesses in order to gain a baseline understanding of UTA's business, organizational structure, policies, and progress in implementing the 2016 Reforms.

I. Documents Collected

In preparing this report, the Monitor reviewed and relied on the NPA, UTA's October 2016 Letter to the USAO, and the 2010 and 2014 State of Utah Legislative Audits of UTA. Further, at the Monitor's request, UTA provided the following documents, which we have grouped below according to which of the NPA's Four Core Issues we considered each separate document category most relevant:²⁸

(1) Inadequate Controls Over Federal Funds and Drawdowns from Federal Grants

- UTA Budgets and Financial Reports, 2013 – present
- UTA Internal Audit Plans
- UTA Accounting Manuals
- Monthly Summaries of Federal Grant Tracking, 5/2016 – present
- Documents regarding Federal Grant compliance efforts, including agreements with independent contractors.
- Grants Management Internal Audit Reports and Grant Coordination Meeting Minutes, 2013-present
- Transit Award Management System ("TrAMS") data
- 2013 Procurement System Review Report and Response
- 2013 FTA Triennial Audit Report and Response
- 2015 Financial Management Oversight Review Report and Response
- 2016 FTA Triennial Report and Response
- UTA TOD Guidelines
- Documentation related to the creation of the Grant Management Group, including the internal audit that prompted UTA to create that Group.
- Documentation related to UTA's reorganization of the Accounting Department, including the August 2016 policy and procedure manual and its implementation of various controls regarding financial expenditures in particular.

²⁸ In addition to documents provided by UTA, the Monitor received relevant materials from the U.S. Department of Transportation and the Federal Bureau of Investigation.

- Documentation related to new policies adopted and implemented by UTA for Purchase Cards ("P-Cards") and associated recordkeeping, in particular Corporate Policy 1.2.3, the use of the Fiscal Technologies software, and the strengthening of recordkeeping regarding employee purchase records.
- Documentation related to UTA's selection and awarding of contracts for lobbyists, including contracts or other engagement paperwork and disclosure information.
- Documentation related to the Organizational Changes outlined at page 3 of the October 4, 2016 UTA Letter.
- UTA Personnel Travel Expense Reports
- UTA Corporate Documents (articles of incorporation, by-laws, etc.)
- UTA Board of Trustee Meeting Reports, 2013 – present
- UTA Executive Directories, 2013 – present
- Organizational Charts, 2013 – present

(2) *Improper Handling and Disclosure of Property Acquisitions and Disposition*

- UTA policies, both past and current, regarding asset disposal processes, real property acquisition and disposition, spending authority, accounting policy, etc.
- Procurement Audit Reports, 2013 – present
- UTA Property Inventories, 2014 – present
- UTA TOD Guidelines

(3) *Non-Compliance with Ethical Standards Resulting in Benefits to UTA Employees and Board Members*

- Documentation related to UTA's adoption and implementation of new policies designed to prevent conflicts of interest, including Board Process Policy 4.1.10 and Corporate Policy 1.1.11, as well as the Annual Certifications and disclosure documentation required thereunder since at least January 1, 2016.
- Documentation related to UTA's adoption and implementation of new policies regarding travel, including Board Policy 2.3.1 and Corporate Policy 1.1.8. The Monitor also reviewed documentation related to official UTA travel since implementation of these Reforms, including travel reimbursement forms and other substantiation documents required to be submitted under the policies mentioned above related to travel.
- Documentation related to UTA's adoption and implementation of new policies regarding Transit-Oriented Development ("TOD"). The Monitor also reviewed documents relating to Board Policy 2.2.4, as well the written guidelines contemplated by the TOD Department, procedures and processes utilized by Zion Public Finance, Inc., the outside consultant retained by UTA to perform external reviews of TOD proposals and operating agreements.
- To understand the impetus for the Reforms, the Monitor also reviewed documents involved in UTA's investigation and/or due diligence that led to UTA's letters regarding potentially improper activities of former executives and Board members, including the issues outlined in the August 2015 and August 2016

letters described at page 6 of the UTA Letter, as well as UTA's decision to pull back from certain TOD projects, as described on the same page.

(4) *Improper Approval of Executive Bonuses*

- Documentation relating to UTA's policy changes regarding executive compensation, including its methodology for benchmarking and limiting executive salaries, bonuses and any other executive compensation. This will include analyzing at least the following:
 - Employer's Counsel review of UTA's executive compensation
 - Documents related to the adoption and implementation of Board Policy 2.3.1 and Corporate Policy 6.7.5.1, as well as documentation regarding the elimination of employment agreements with top UTA executives.
 - Prior employment agreements of certain executives, including UTA's former President/CEO, General Counsel, Internal Auditor and certain other select executives in key positions.
 - Executive Compensation and Performance Bonus documents, including general policies and actions specific to particular executives
 - Trustee/Executive Financial Disclosure documents

II. Interviews Conducted

The Monitor conducted interviews of individuals from the following groups and organizations in the course of preparing this report, which the Monitor identified and requested as potentially relevant to the Four Core Issues. Specifically, the Monitor interviewed twenty-eight individuals in connection with Phase I. The Monitor concluded that the interviews would be most effective if the identity of those interviewed remained confidential, in order to encourage candid and honest assessments by those interviewed. Accordingly here we only summarize generally the categories of individuals interviewed for Phase I of the Monitor's work, and we make every effort to anonymize the interviewees who provided information that has been included in this report. Our interviewees included the following categories of personnel:

- UTA Internal Audit Personnel
- UTA Accounting and Grant Management Personnel
- UTA Capital Projects Personnel
- UTA Grant Administration Personnel
- UTA Finance Personnel
- UTA General Counsel's Office Personnel
- UTA Property Management Personnel
- UTA Real Estate and TOD Personnel
- UTA Human Resources Personnel
- Current and Past Members of UTA's Board of Trustees
- Members of UTA's Local Advisory Board (now Council)
- Utah Assistant Attorneys General (now serving as in-house counsel for UTA)
- US Attorney's Office Representatives
- US Department of Transportation Representatives

- Federal Bureau of Investigation Agents
- Utah Legislative Auditor's Office Representatives
- Zions Public Finance Representatives
- Employers Council Representatives
- Confidential sources from the Public

III. Transportation Consultants

Consistent with the monitorship proposal, the Monitor retained the Transportation Auditor to assist with the assessment of UTA and in preparing the sections of this report that relate to federal grants management. Grants management requires specialized knowledge of federal funding rules, and the experience and expertise of the Transportation Auditor is critical to the Monitor's work in this area.

To assess baseline conditions in the grants development and management processes, the Transportation Auditor reviewed audits and assessments completed between 2014 and 2018, and identified potential aspects of UTA's grants management functions that warrant additional scrutiny. The Transportation Auditor also reviewed the relevant UTA departments' Standard Operating Procedures to better understand the interplay between the grants process and UTA's operational and management structures. Much of the Transportation Auditor's analysis focused on sufficiency of controls, particularly relating to federal grants compliance issues.

UTA's grants management processes, controls, and management structure have changed considerably since the commencement of the USAO's investigation. These changes have impacted a number of departments. Because of this, the Transportation Auditors reviewed the grants management audits and manuals, as well as the procedures of other departments involved in the grants management process, to see how grant related issues are addressed throughout the life of a grant.

The following audits, reviews, and assessments, and their associated findings, were reviewed by the Transportation Auditor:

- The NPA
- 2014 State of Utah Legislative Audit
- Federal Financial Management Oversight Review (Final Report Aug 27, 2015)
- Grants Management Internal Audit (August 25, 2016)
- Federal Triennial Review (Oct. 6, 2016)
- Internal Audit Preliminary Assessment Of Grants Management (August 28, 2018)
- Federal TrAMs Data.

The Transportation Auditor also participated in the Monitor's Interviews with the following departments and organizations:

- UTA Internal Audit Personnel
- UTA Property Management Personnel
- UTA Accounting and Grant Management Personnel
- UTA Capital Projects Personnel

- UTA Grant Administration Personnel
- UTA Finance Personnel
- Current and Past Members of UTA's Board of Trustees
- Department of Transportation Representatives
- Utah Legislative Auditor's Office Representatives

The Transportation Auditors' findings and recommendations to the Monitor are incorporated in this report.

ASSESSMENT OF UTA'S IMPLEMENTATION OF 2016 REFORMS AND ADDITIONAL REFORMS OR CHANGES IMPLEMENTED SINCE 2016

The following is the Monitor's assessment of UTA's 2016 Reforms, identified by UTA in its October 2016 letter to the USA and incorporated into the NPA between UTA and the USAO. The 2016 Reforms and UTA's 2016 Letter appear to have been substantial factors in the USAO's decision to execute a NPA with UTA. Indeed, one of the primary purposes of the monitorship – if not the primary purpose – agreed upon by the USAO and UTA is the assessment of UTA's success in implementing the 2016 Reforms. It is therefore noteworthy, and to some extent troubling, that many of the 2016 Reforms – particularly the agency's leadership changes – are no longer in place, or have been overtaken by events. Because of the significant turnover in personnel and policies at UTA, the Monitor considered it critical to develop a high-level understanding of the most current organizational, personnel and policy developments at the agency in the areas relevant to the Four Core Issues, and this became the focus of our Phase 1 work. We could not, however, realistically test UTA's compliance with the 2016 Reforms themselves because so many of them had been changed, abandoned or replaced entirely.

Below, we describe the Monitor's initial impressions regarding UTA's reforms – both the 2016 Reforms and, of equal importance given the turnover, those that have superseded them. In Phase 2 of the monitorship, it will be critical for the Monitor to test these reforms – as they stand now – and observe their impact on UTA's operations and culture.

I. 2016 Reforms: New Leadership

A. Leadership Changes Cited By UTA As Part of 2016 Reforms

In its October 2016 Letter, UTA described significant leadership changes at the agency in the approximately two years that had then transpired since the 2014 Legislative Audit. Our review to date has convinced the Monitor that UTA was right to overhaul its leadership. But it is notable, and concerning, that so many of the new leaders identified by UTA in 2016 have already left the agency. UTA cited the hiring of these new leaders as "reforms," representing that their very presence would address the concerns raised by the USAO. Yet nearly all have left, often within just a year or more (or less) of the 2016 UTA letter highlighting their importance to UTA's reforms and ongoing compliance with the NPA.

We note, however, that we have been impressed generally with the UTA personnel with whom we have met thus far. While this is encouraging, in light of our mandate we intend to focus on turnover at the highest levels of UTA during the remaining phases of the monitorship.

(1) Board Composition

According to UTA's 2016 Letter, in September 2014, just after the release of the 2014 Legislative Audit, H. David Burton replaced Greg Hughes as the UTA Board Chair.²⁹ In the

²⁹ H. David Burton, or Bishop Burton, and Mr. Hughes are both prominent public figures in Utah. Bishop Burton served as the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints from 1995 to 2012. Mr. Hughes served as a Member of the Utah House of Representatives from 2003-2018, including a stint as Speaker of the House.

October 2016 Letter, UTA wrote that Chair Burton "ushered in a change in leadership dedicated to making institutional reforms a priority." Following Chair Burton's election, Board members Greg Hughes, Chris Bleak, and Sheldon Kilpatrick resigned from the Board. According to UTA, this "allow[ed] for the appointment of new Board members who were not involved in the type of actions identified in the [2014] Legislative Audit." Jeff Hawker and Sherrie Hall Everett were thereafter appointed as Vice Chairs of the Board.

Chair Burton then left UTA in September 2016.³⁰ As of UTA's October 2016 Letter to the USAO, Robert McKinley had been appointed as Mr. Burton's replacement.

(2) Career Senior Leadership

According to UTA's October 2016 Letter, General Counsel Bruce Jones, who had served as both the chief legal officer and the head of TOD projects – as well as head of Government Relations – retired from UTA in March 2015, and was replaced by Jayme Blakesley, who served solely as the company's chief lawyer without any operational responsibility for TOD projects or otherwise. In its October 2016 Letter, UTA described Mr. Blakesley's considerable, relevant experience:

Mr. Blakesley spent the bulk of his career working for the Federal Transit Administration ("FTA"), most recently as Acting Assistant Chief Counsel for General Law, which included responsibility for compliance issues, particularly those regarding the receipt and use of federal funds by transit agencies. During his time at FTA, Mr. Blakesley led several compliance investigations on behalf of the FTA Administrator[.]

According to UTA's letter, by October 2016 Mr. Blakesley had already "recommended to UTA a number of reforms going forward, including new controls on the grant application and administration functions, annual ethics disclosures by all senior employees, executives and board members, and the development of a new transit-oriented development policy." As discussed below, however, the Utah Legislature eliminated Mr. Blakesley's position – and therefore his employment – in early 2018.³¹

In addition to the reforms outlined for the General Counsel's Office, the agency hired a new Chief Internal Auditor, Isaac Clarke, in August 2015, according to UTA's October 2016 Letter. Mr. Clarke revised the job requirements for UTA's internal audit staff, resulting in the departure of two employees and the hiring of replacements with relevant internal audit experience.³² But he, too, left UTA, this time before the October 2016 Letter.

³⁰ Lee Davidson, *UTA Chairman Burton Steps Down, and Former Lt. Gov. Bell Joins Board*, The Salt Lake Tribune (September 29, 2016), <https://archive.sltrib.com/article.php?id=4409835&ittype=CMSID> (Last accessed May 27, 2019).

³¹ Utah Senate Bill 136, 2018 General Session, <https://le.utah.gov/~2018/bills/static/SB0136.html> (last accessed May 30, 2019).

³² During our Phase I interviews, UTA employees shared that they harbored concerns about the pre-2014 audit staff's basic qualifications. UTA employees also appeared not to understand what the audit department's purpose had been prior to Mr. Clarke's arrival.

UTA also informed the USAO that it had adopted a risk-based Internal Audit Plan for 2016 that called for the completion of thirteen audits for the year, and amended its policies and organizational controls relating to the audit function. Mr. Clarke, however, had resigned from UTA for personal reasons in August 2016, leaving the Chief Internal Auditor position open as of UTA's October 2016 Letter.

Finally, UTA also noted Jerry Benson taking over the President and CEO position from Mike Allegra as a reform. Mr. Allegra retired in August 2015. Jerry Benson had been a long-time employee of UTA, and served as Interim President and CEO until the Board appointed him President and CEO in August 2016.

B. Further Changes To Leadership Since UTA's 2016 Letter

Since UTA's letter to the USAO in 2016, the Authority has continued to experience significant turnover among its senior leadership.

(1) Changes in Board Structure and the New Local Advisory Council

Chair McKinley, who had replaced H. David Burton as of UTA's October 2016 Letter, left after about a year in the position, in December 2017, and was replaced by Greg Bell.

Then, in 2018, the Utah Legislature passed SB 136 (Transportation Governance Amendments), a transportation overhaul bill that restructured UTA, including its Board of Trustees.³³ Under SB 136, UTA's former part-time, 16-member board of trustees was replaced by a full-time, three-member board of trustees. In the months since SB 136's passing, UTA's new, full-time professional Board has been appointed:

- Carlton Christenson, the Board Chair, was appointed on November 1, 2018.³⁴ Prior to joining UTA, he served for five years as the director of regional transportation, housing and economic development for Salt Lake County. Prior to his work for Salt Lake County, he worked as a community development representative for Zions Bank. Trustee Christensen also has an extensive track record of public service, including 16 years spent on the Salt Lake City Council. He has also served as chair of the Salt Lake City Redevelopment Agency and Salt Lake City Council, as president of the Utah League of Cities & Towns, and as president of the associates board for the Museum of Natural History of Utah. He is an ex-officio member of the Salt Lake City Airport Board and was chair of the Wasatch Front Economic Development District.
- Beth Holbrook was appointed on November 1, 2018.³⁵ She began her career in the financial sector, established a real estate firm in 2002, and in 2010 went to work for Zion's Bank as the Director of the Business Resource Center in Salt

³³ Utah Senate Bill 136, 2018 General Session, <https://le.utah.gov/~2018/bills/static/SB0136.html> (last accessed May 30, 2019).

³⁴ Meet the Board, <https://www.rideuta.com/Board-of-Trustees/Meet-the-Board> (last visited June 28, 2019).

³⁵ *Id.*

Lake City. She also worked as the Public Sector Solutions Manager for Waste Management of Utah. Trustee Holbrook was first elected to the Bountiful City Council in 2007 and has served on several boards including the Bountiful Power Commission, Planning Commission and the Utility Facility Review Board. She is the outgoing President of the Utah League of Cities and Towns, having served there since 2011.

- Kent Millington was appointed on January 29, 2019.³⁶ Before his appointment to the Board, he was the Director of Technology Commercialization at Utah Valley University. He has worked in the development and deployment of intellectual property for most of the past 25 years. He is a former president and CEO of AccessData Corp., and was a member of the Board of that company for several years. He was Entrepreneur in Residence at Utah Valley State College in Orem, Utah from 2004-2007. He has over 35 years of experience in management and new ventures. From 1997-2004, Trustee Millington played a key role in the development of Verio, an internet hosting service. He previously worked for defense contractor EG&G as Director of Business Development. He served as a member of the Utah State Transportation Commission from 2005 to 2018 and was Chair of the Commission from 2015 to 2018.

In addition, under the new structure the three-member board of trustees is overseen by a nine-member Local Advisory Council ("LAC"). According to comments by Senator Wayne Harper in committee meetings, one purpose of SB 136 was to create an advisory board that provides recommendations akin to the advisory function a planning board provides to a city council. The legislation itself suggests that the LAC may have approval authority over some critical aspects of UTA's operations, such as TOD acquisitions and dispositions, contracts related to TODs, service plans, project development plans (including new capital development projects), and future TOD plans. In addition, SB 136 gives the LAC the authority to set the compensation of the members of UTA's Board of Trustees, within statutory limits. And it appears to require UTA's Board of Trustees to consult with the LAC on budgets, prioritization of internal audits and assessment of audit reports, capital investments, and general operational and management decisions.

The LAC is fairly new, however, so there is little history to look to in assessing its governance relationship to UTA and its Trustees. As discussed below, many UTA stakeholders exhibit confusion or outright conflicting views regarding the LAC's role and powers, which is cause for concern.

³⁶ "Kent Millington sworn in to represent Utah, Tooele counties on UTA Board of Trustees". Daily Herald (January 29, 2019) https://www.heraldextra.com/news/local/govt-and-politics/kent-millington-sworn-in-to-represent-utah-tooele-counties-on/article_ada74ece-0b6a-5a3e-9ca2-29f5df863e03.html (last accessed June 28, 2019).

(2) Chief Executive

Jerry Benson, who was appointed as President and CEO, left UTA in May 2018³⁷ and was replaced by Interim Executive Director Steve Meyers. Interim Director Meyers will be retiring soon and UTA has recently chosen Carolyn Gonot as his replacement.³⁸ She has worked for the Santa Clara Valley Transportation Authority in San Jose, California since 1996 in a variety of positions. Most recently, she oversaw planning and programming as well as engineering and construction.

(3) General Counsel

In March 2018, UTA's General Counsel Office was eliminated as part of SB 136. This essentially fired Mr. Blakesley from that position. Some of the current and former UTA personnel we interviewed believe that Mr. Blakesley himself was the target of the legislation, because of the nature of Mr. Blakesley's reform efforts. This perception concerns the Monitor, whether or not this was in fact the motivation behind the amendment that shuttered the General Counsel's office. The sponsors of SB 136 have said that the removal of UTA's General Counsel Office was a cost-cutting initiative.³⁹ The timing of this change is concerning, given the fact that the 2014 Legislative Audit, the USAO investigation, the Four Core Issues, and the 2016 Reforms identified by UTA all concern compliance issues. If ever there was a time when UTA needed its full cadre of experienced in-house attorneys, now would seemingly be it. Going forward, consistent with the practice at traditional Utah public agencies – which the Monitor does not necessarily equate to UTA – the Utah Attorney General's Office (the "A.G.") will serve as counsel for UTA.

Mr. Blakesley himself left shortly after SB 136's passage. The remaining team of five lawyers then at UTA – many of whom had lengthy tenures with UTA – were offered the opportunity to transition to the A.G.'s office, which would require accepting substantial reductions in their compensation compared to what UTA paid its lawyers under the old system. None of the five remaining lawyers elected to make this transition. All but one of them took jobs elsewhere. One UTA lawyer transitioned temporarily to a non-lawyer compliance job at the agency, but has also now left for another legal job elsewhere.

In the place of UTA's former six-member legal team, the A.G.'s office has allotted two full-time lawyers from the A.G.'s office who are dedicated to UTA and work onsite at the agency. A third lawyer serves as a supervisor of these two onsite lawyers, as part of this supervisory lawyer's

³⁷ "UTA board votes to terminate CEO Jerry Benson effective May 7". fox13now.com (April 19, 2018) <https://fox13now.com/2018/04/18/uta-board-votes-to-terminate-ceo-jerry-benson-effective-may-7/> (last accessed May 27, 2019).

³⁸ "UTA hires new executive director from Silicon Valley". Deseret News Utah (June 25, 2019) <https://www.deseretnews.com/article/900076913/new-uta-executive-director-hired.html> (last accessed July 1, 2019)

³⁹ One of SB 136's sponsors addressed speculation that the General Counsel position's elimination was intended to target Mr. Blakesley's by saying that he's not worried about this move appearing to be some sort of political payback. "UTA overhaul bill eliminates agency's legal team". UtahPolicy.com (March 7, 2018) <https://utahpolicy.com/index.php/features/today-at-utah-policy/16041-uta-overhaul-bill-eliminates-agency-s-legal-team> (last accessed June 28, 2019)

oversight of a portfolio consisting of various Utah public agencies, including utilities, public safety agencies, and Utah's Department of Transportation (UDOT). Our sense is that the onsite legal team could expand to a third full-time lawyer in the next year or so, but this is not certain.

UTA's legal team is a critical feature of the agency's compliance efforts – particularly in light of the nature of the activities that led to the 2014 Legislative Audit findings and the USAO investigation. We intend to look more directly into the nature of the changes to UTA's legal services resulting from SB 136, and the way in which the agency adapts to what amounts to a significant reduction of its full-time legal staff. One issue of note is that UTA's experienced full-time team has been replaced, necessarily, by attorneys who do not have experience working for UTA. The wholesale transition of the agency's legal function could be disruptive. And while the new legal team brings their own experience to bear, they will necessarily need time to get up to speed with UTA itself.

We were surprised to learn very late in Phase I that this process of getting up to speed had commenced prior to our Phase I review. Our initial report was scheduled to be completed in May 2019. During our Phase I work, we were consistently given the impression that UTA was working with a dwindling skeleton staff of lawyers who had worked in the prior General Counsel's office and who were transitioning to jobs outside the agency. The transition to using the A.G.'s office as counsel appeared not to have occurred yet. On the eve of issuing our Phase I report in May 2019, however, we learned that UTA started working with an embedded lawyer from the A.G.'s office in September 2018, that it had recently brought on a second full time lawyer, and that this legal staff was supervised by a senior attorney in the A.G.'s office. We were surprised by this news, and we delayed the release of our report in order to review and incorporate this new information, including by interviewing the A.G. office attorneys now working with UTA.

(4) Chief Internal Auditor

Riana de Villiers, who originally joined UTA as a Senior Internal Auditor in February 2016, has since taken over the position of Chief Internal Auditor. Prior to joining UTA, she was an audit manager for a global mining company where she managed internal fraud and whistleblower investigations. Prior to the arrival of Mr. Clarke (Ms. de Villiers's predecessor), UTA's Internal Audit team focused on capital projects. Under Ms. de Villiers, and beginning with Mr. Clarke before her, the Internal Audit team also focuses on ethics and risk management.

(5) Summarizing Recent Leadership Changes

The chart below summarizes the changes in UTA's executive leadership immediately before and since UTA's 2016 Letter:

UTA Executive Leadership Changes Since 2016			
Board Chair	Executive Director	Chief Internal Auditor	General Counsel
H. David Burton (Left September 2016)	Jerry Benson (Left May 2018)	Isaac Clarke (Left August 2016)	Jayne Blakesley (Left May 2018)

Robert McKinley (Left December 2017)	Steve Meyers (Current Interim Director; Retiring)	Riana de Villiers (Current Chief Internal Auditor)	Counsel provided by a team from the A.G.'s office.
Greg Bell (Left November 2018)	Carolyn Gonot (Incoming Executive Director)		
Carlton Christensen (Current Board Chair)			

C. Monitor's Phase I Findings And Recommendations Regarding The Effectiveness of UTA's Leadership Reforms

(1) Executive Leadership Turnover

Many of the new leaders identified by UTA in the 2016 Reforms have left the agency. There has been near-constant turnover in UTA's leadership following the 2014 Legislative Audit. Undoubtedly some turnover was necessary, but the lack of stability over such an extended (and critical) period of time is a concern. During the course of the Monitor's Phase 1 review, several interviewees attributed the repeated turnover among UTA's leadership to the legislative restructuring of UTA, and this does appear to have played a part in the departures of several of the people named in UTA's October 2016 Letter. But the agency saw significant changes in leadership from 2016-2018, prior to SB 136, during a time when UTA was attempting to put a reform-oriented executive team in place.

RECOMMENDATION 1: Over the next Phase of the monitorship, the Monitor will focus on stability and retention in UTA's executive leadership, because the continued turnover among UTA's executive leadership since 2014 represents a significant risk for the agency's efforts at effectively improving its compliance efforts in the wake of the USAO investigation. The current senior leadership within UTA itself appears highly qualified and dedicated to the mission of the agency. We look forward to getting to know them better, and working closely with them, during the remaining phases of the monitorship.

(2) Elimination of the General Counsel's Office

We are concerned that SB 136's elimination of UTA's General Counsel Office jeopardizes the agency's access to experienced, independent counsel. UTA's last General Counsel, Mr. Blakesley, received widespread praise for his reform efforts during our interviews with current and former UTA personnel. Mr. Blakesley, as described by UTA in its October 2016 Letter, brought particular expertise relating to the very issues implicated by the Four Core Issues of concern to the USAO, particularly with respect to federal grants management and compliance. And indeed, his time at the agency appears to have been productive, including his discovery of problematic bonuses, totaling nearly \$1 million, for two former UTA officials, which the agency successfully declined to pay during Mr. Blakesley's tenure. According to interviews, Mr. Blakesley also served as a driving force in UTA's internal review of potential conflicts of interest involving UTA's transportation development programs. In addition to a General Counsel, UTA also historically has been served by a team of full-time, experienced in-house lawyers. There

were five such lawyers in place as of Mr. Blakesley's departure in the wake of SB 136. As of today, all have left UTA.

UTA is in the early stages of working with its new legal team from the A.G.'s office. Because we were unaware that UTA had already begun to transition to this new legal team, we did not have the opportunity to ask about this transition during nearly all of our Phase I interviews. Several interviewees, however, expressed concern that the removal of UTA's General Counsel Office will lead to a loss of institutional knowledge and, consistent with this concern, none of UTA's prior counsel team elected to stay on and make the transition to the A.G.'s office. According to one witness who has worked as a lawyer for UTA, there is a steep learning curve regarding transit and transportation legal work, and it can take many years to gain a basic understanding, much less master, the complex applicable rules, regulations, and practices. Current UTA personnel expressed that losing the prior in-house counsel team would make it harder trace the history of the agency's legal decision-maker process and policy changes, and wondered whether the A.G.'s office would ever be able to replace this institutional knowledge, or the unique experience among UTA's former in-house legal team.

We are sympathetic to these concerns. At the same time, we will not prejudge the effectiveness of the transition to using the A.G.'s office as counsel, and we recognize that change causes disruption and complicated organization dynamics even under the best of circumstances. We will note, however, that our own experience with attorneys general offices in other states leaves us concerned that UTA may see greater turnover among the attorneys with whom it consults under the new structure, which can be problematic, given the specialized nature of some of UTA's legal issues. One witness expressed concern that turnover among UTA's counsel would be especially difficult to cope with, given the length of time it has taken many of UTA's projects to proceed from planning to complete – with some projects spanning more than a decade. One witness we spoke to felt that the in-house attorneys that have left UTA would likely be competitive in the private legal market. This raises the question of whether detailing attorneys to UTA from the A.G.'s office will create opportunities for turnover. We do not doubt the dedication and public service-oriented perspectives of the counsel in the Utah A.G.'s office, but we are also concerned that it might not be possible to truly replace the prior legal team with a smaller group of attorneys who are paid substantially less without risking turnover or understaffing.⁴⁰ For now we remain open-minded, and we look forward to working closely with the new team from the A.G.'s office.

Finally, we also note that the new structure appears to have raised questions regarding the independence of the advice UTA can expect in the future. One witness, for example, expressed concerns about maintaining confidentiality when working with the A.G.'s office. We understand that the A.G.'s office has deep experience representing various state agencies, and has an ethics wall system in place to deal with such issues. The clients at UTA, however, may still harbor concerns regarding highly sensitive matters, and it is important in our view that UTA personnel feel comfortable discussing these with their new counsel. It also is equally important that A.G.

⁴⁰ We understand, for instance, that the former members of the General Counsel's Office declined employment with the Utah Attorney General's Office because they received more lucrative offers from the private market. To some extent this suggests a market value for their skills, particularly to an agency like UTA engaged in complex land use and other transactions.

staff understand the seriousness of these ethical walls, which would otherwise result in a conflict of interest given the A.G.'s charge to enforce the law by, among other things, investigating crimes involving public malfeasance.

RECOMMENDATION 2: Over the next Phase of the monitorship, we will focus closely on the ways in which the A.G.'s legal team supplants the prior legal department. Among the questions we will explore are:

- (A) How many attorneys with the A.G.'s office are dedicated to UTA?
- (B) How will the new structure impact the way UTA seeks legal advice, and will it cause UTA personnel to be less likely to consult with a lawyer under some circumstances?
- (C) Will UTA personnel feel adequately counseled – including that they have sufficient access to experienced, knowledgeable counsel – under the new structure?
- (D) Will the attorneys from the A.G.'s office offer the same level or experience and expertise as UTA's in-house team?
- (E) Will the difference in compensation levels between UTA's former in-house team and the A.G.'s office lead to turnover that impacts UTA, or result in recruitment problems for qualified counsel?

II. 2016 Reforms: Organizational Changes

A. Organizational Changes Cited By UTA As Part of 2016 Reforms

In its October 2016 Letter, UTA highlighted a number of organizational changes as relevant to the agency's reform efforts.

(1) Audit Committee

In April 2015, the Board formed an Audit Committee tasked with reporting on external audits and long-term financial matters to the Board. According to UTA's Letter, the Audit Committee is "also authorized to request and direct the Authority's Internal Auditor to perform audits of UTA's business and to evaluate the organization's long-term financial decisions."

(2) TOD Oversight

UTA removed TOD oversight and government relations (i.e., lobbying oversight) from the General Counsel's portfolio, which the agency described as "eliminat[ing] potential conflicts of interest" created by the old structure. TOD oversight was moved to UTA's Capital Development Department. UTA transferred government relations oversight to the office of the President and CEO. UTA also hired Nichol Bourdeaux as the Manager of Local Government Relations and Programs, reporting to the President and CEO. Previously, Ms. Bourdeaux had served as the Deputy Chief of Staff for Salt Lake City.

B. Additional Organizational Changes Since UTA's 2016 Letter

Since UTA's October 2016 Letter, there have been extensive changes to UTA's structure resulting from SB 136. First, SB 136 changed UTA's board from a former part-time, sixteen-member board of trustees to a full time board of three trustees. Second, SB 136 created a nine-person LAC to work in conjunction with the Board of Trustees. Third, as referenced above, SB 136 eliminated UTA's General Counsel Office.⁴¹

C. Monitor's Phase I Findings And Recommendations Regarding Organizational Reforms

(1) Role of the Local Advisory Council

The division of power between the new full time three-member Board of Trustees and the new LAC is not well understood by UTA personnel or really anyone, including many of UTA's highest leadership, both on the Board and the Local Council. During the course of the Monitor's interviews we learned that people within UTA lack a clear and consistent understanding of the LAC's role. Some interviewees saw the LAC's function as almost purely advisory, while others believed the LAC had approval authority with respect to UTA's most critical operations and planning. The one thing all appeared to agree on is that the LAC sets Trustee compensation, although, as discussed below, we are concerned by the power dynamic created by this authority, because potentially it undermines the Board of Trustees' independence with respect to every aspect of the agency's operations.

Many witnesses expressed confusion about the powers and duties of the LAC and how it relates to the Board. These witnesses were not sure what the LAC's authority is, particularly the extent of its approval authority over any particular aspect of the agency's operations.

Other witnesses appeared to believe they understood the LAC's role, but provided conflicting descriptions of it. Some witnesses believed that the Board is not bound by the LAC's recommendations, except with respect to the station area plan for TOD projects. Another witness believed that the LAC has review and recommending approval for all TOD projects and major capital projects. Another described the LAC as entirely advisory. Some seemed to think that the LAC served as a backstop of the Board of Trustees akin to a governing board and a planning commission.

RECOMMENDATION 3: Over the next Phase of the monitorship, the Monitor will focus on how the LAC's role develops. While it is understandable that UTA personnel would still be on the learning curve in terms of understanding the LAC's role, it is critical that UTA and the LAC have a common understanding of the dynamics between the two entities. Ultimately, UTA will need internal policy guidance for all personnel regarding adherence to the LAC's oversight or

⁴¹ During our Phase I review, UTA was also in the process of a vertical reorganization, which creates an additional department. We will review this change more closely in the next Phase of the monitorship.

advisory requirements. Confusion in this area will inevitably lead to some form of dysfunction.⁴²

(2) Characteristics of the Local Advisory Council

We are also concerned that the LAC shares similar characteristics with UTA's former part-time, 16-member board of trustees, depending on the degree of authority ultimately exercised by it. The change from the old 16-member, part-time Board to the current three-person, full-time professional Board of Trustees is warranted in our view, and a step in the right direction for UTA's governance. The LAC, however, brings back an entity with many part-time appointees, whose selections are, at least in part, made through Utah's political system. Several current and former UTA employees reported concerns about the structure of the new LAC – concerns that are exacerbated, in our view, by the confusion over its role. Some witnesses also expressed concerns that the political appointment process creates the possibility that UTA's decision-making may be unduly influenced by particular interests. It is noteworthy that some members of the new LAC once served on the old 16-member board, which led to discomfort by some current UTA employees. Some witnesses we spoke to wondered whether strong personalities on the LAC could have a negative effect on the operations of the agency. One witness raised the concern that the new nine-member structure could make the LAC susceptible to being dominated by a single powerful member.

We recognize that this is a difficult issue. UTA's mission is to serve efficiently and effectively both the region and the localities in which it operates. It therefore must recognize and balance the needs of both its broader regional audience as well as those of its local constituencies. In this Initial Report, we do not mean to suggest that the LAC is a bad idea. Its purpose is to represent the interests of the localities that invest in and benefit from UTA, which is appropriate. Our concern is that the organization of the LAC is largely identical to the prior Board of Trustees, a structure that led to significant problems implicating the Four Core Issues and that another section of SB 136 – which created the full-time, three-person Board of Trustees – was intended to address.

These concerns are heightened because the legislature has given the LAC the clear authority to set Trustee compensation within statutory limits. This appears to be the one LAC power that everyone agreed exists. It undermines Trustee independence, in our view. Several UTA witnesses expressed that the LAC recently set the Board of Trustees' compensation too low, at \$129,000 (the statutory maximum is \$150,000). One witness suggested this was a lever to exercise control over the new Board of Trustees; others felt that the \$129,000 figure was the result of the particular dynamics of the decision, and not because of any desire to send a message to the Trustees.

⁴² It is also noteworthy that UTA's new counsel team from the A.G.'s office intends to assign one member each of the two full time attorneys to primary responsibility for advising the Board and the LAC, respectively, in part to prepare for the possibility that conflicts could develop between the two entities. This suggests a recognition that each entity has unique interests and a degree of legal separation. Yet the two entities would be served by counsel from essentially the same legal team, both of whom are supposed to be UTA's counsel. If the LAC is considered a part of UTA, it is hard to see why two separate counsels are needed, since there should be no conflicts. If they are separate entities, it is hard to see how they can effectively be served by the same team of UTA lawyers. As this issue arose on the eve of the issuance of this report, we could not fully review legal issues concerning the LAC.

At a minimum, giving the LAC control over Trustee compensation creates uncertainty for the Trustees. The current three Trustees were all appointed before they found out what compensation level the LAC would set. Future Trustees would be justified in wondering if they are subject to being given a salary lower than what was in place when they accept a position. One witness we spoke to suggested that more people may have applied to sit on the Board of Trustees if the LAC were not responsible for setting compensation. While we cannot say whether this is so, it makes sense that, going forward, this dynamic could impact recruitment and retention.

RECOMMENDATION 4: Over the next Phase of the monitorship, the Monitor will assess whether features of the LAC's structure have a negative impact on UTA's governance.

(3) UTA's Internal Audit Function and the Audit Committee

UTA seemingly has improved its Internal Audit function since the 2014 Legislative Audit. In 2016, the prior Chief of Internal Audit, Mr. Clarke, apparently essentially had to start from scratch in developing an audit plan, regular internal audit activities, and a qualified audit staff. There was limited documentation at UTA to indicate that there had been any recent internal audit activity prior to his arrival. Basic functions, like the tracking of capital assets, had not been properly scrutinized in years.

Ms. de Villiers appears to have continued building out the Internal Audit foundation, continuing where Mr. Clarke left off, and UTA's audit documentation shows it. From 2016-2018, the Internal Audit group completed 31 audit reports reviewing 26 separate functions at UTA, resulting in reports detailing 284 findings, and a commensurate number of recommendations for improvements.

UTA Internal Audit Reports Since 2016⁴³		
Number	Report	Date
R-16-1	FMLA Management Internal Audit Report	March 28, 2016
R-16-2	Business Continuity/Disaster Recovery Internal Audit Report	May 13, 2016
R-16-3	Data Centers Assessment Internal Audit Report	May 13, 2016
R-16-4	Sales Tax Collections and Reporting Internal Audit Report	May 25, 2016
R-16-5	Davis-Bacon Compliance Internal Audit Report	July 8, 2016
R-16-6	Grants Management Internal Audit Report	August 25, 2016
R-16-7	Procurement Internal Audit Report	November 3, 2016
R-16-8	Transit Oriented Development Internal Audit Report	November 17, 2016
R-16-9	Information Technology General Controls Internal Audit Report	December 20, 2016
R-16-10	Passenger Fares and Collection Internal Audit Report	March 27, 2017
R-16-11	Purchase Card Compliance Internal Audit Report	February 15, 2017

⁴³ UTA Reports & Documents (available at <http://www.rideuta.com/About-UTA/UTA-Reports-and-Documents>)

R-17-1	Davis-Bacon Compliance Follow-Up Internal Audit Report	February 15, 2017
R-17-2	FMLA Management Follow-Up Internal Audit Report	March 21, 2017
R-17-3	Grants Management Follow-Up Internal Audit Report	March 21, 2017
R-17-5	Business Continuity/Disaster Recovery Follow-Up Internal Audit Report	June 1, 2017
R-17-6	Data Centers Assessment Follow-Up Internal Audit Report	June 12, 2017
R-17-7	Vanpool Operations Internal Audit Report	September 19, 2017
R-17-8	Treasury Internal Audit Report	September 27, 2017
R-17-9	Operating and Ridership Reporting Internal Audit Report	October 11, 2017
R-17-10	Information Technology General Controls Internal Audit Report	October 9, 2017
R-17-11	Procurement Management Internal Audit Report	October 9, 2017
R-17-12	Purchase Card Compliance Internal Audit Report	October 12, 2017
R-17-13	Preliminary Assessment of Inventory Management Internal Audit	March 15, 2018
R-17-14	Transit Oriented Development Management Internal Audit Report	November 22, 2017
R-18-01	Preliminary Assessment of Payroll Management Internal Audit	May 30, 2018
R-18-03	Preliminary Assessment of the Cash Office Operations	August 27, 2018
R-18-04	Operating and Ridership Reporting Internal Audit Report	September 10, 2018
R-18-05	Treasury Management Internal Audit Report	September 11, 2018
R-18-07	Inventory Management Internal Audit Report	December 13, 2018
R-18-09	National Transit Database Internal Audit Report	December 19, 2018
R-18-08	Vanpool Operations Internal Audit Report	January 8, 2019

A robust internal audit function is critical, even for high-functioning organizations. It is impossible even for successful organizations to self-monitor without such an independent function. UTA's Internal Audit group provides critical oversight and analysis that will help UTA catch problems before they develop, properly document departmental procedures and policies, keep up with changing standards and technologies, and address systemic and personnel problems before they become widespread or deeply ingrained. We view the Internal Audit group as important partners during the monitorship.

One area of concern we identified is the way in which risk management is folded into UTA's Internal Audit function. Certainly, risk management is an important part of any audit group. UTA may want to consider a stand-alone risk management function, however, in order to create another layer of checks and balances, and to allow risk management to be done on a proactive,

multi-year plan basis, as opposed to annually as part of the yearly audit plan, as currently appears to be the case. Moreover, a stand-alone risk management leader or group would allow for more robust analysis and greater visibility into agency-wide priorities and resource balancing. It is hard for an internal auditor to both assess individual programs on an audit-by-audit basis and track the organization's long term operational priorities and plans. That may be too much to ask of the Internal Audit group.⁴⁴

During this Phase, we also gathered information about UTA's hotline system, which we consider a potentially promising feature to bolster its compliance efforts. We learned during our interviews that UTA's attempt to create an internal hotline has met with mixed results. In particular, we understand that the hotline and its corresponding reporting mechanism on UTA's intranet were not truly anonymous as to certain internal stakeholders. To resolve these concerns, UTA is now using an externally hosted hotline.

Lastly, we spoke with several witnesses about the creation of UTA's new Audit Committee during this Phase. We were unable to assess the committee, however, because UTA was still in the process of appointing a new Audit Chair and Committee during our most recent site visit. The function of the new Audit Committee will be an area of interest for us in the next Phase.

RECOMMENDATION 5: UTA's Internal Audit function is of particular interest to the Monitor because it is the best way of developing detailed reviews of various aspects of UTA's operations. We expect to continue our dialogue with the Internal Audit group during the next Phase of the monitorship, and would like to embed in at least one internal audit, to observe the audit process from commencement to report.

RECOMMENDATION 6: During the next Phase, the Monitor intends to assess UTA's risk management processes, including whether the agency would benefit from a stand-alone, proactive, multi-year cycle, risk management function.

RECOMMENDATION 7: We are interested in learning more about UTA's hotline system, and whether it warrants additional resources, or a new approach, to be optimized as an effective compliance tool.

RECOMMENDATION 8: As the new Audit Committee comes online and matures during the next Phase, the Monitor intends to assess its processes and procedures, and conduct interviews with its members.

III. 2016 Reforms: Executive Compensation

A. Executive Compensation Changes Cited By UTA As Part of 2016 Reforms

In its October 2016 Letter, UTA described the significant changes it had already put in place to address executive compensation abuses. UTA altered its methods for benchmarking salaries

⁴⁴ We refer here only to risk management as it pertains to non-safety-related operational compliance issues that are of the kind that led to the USAO's investigation. We understand that UTA has a proactive risk assessment program in place for safety issues, which is not within the scope of this monitorship.

across the organization, including executive pay.⁴⁵ According to UTA's Letter, while "[p]revious salary comparisons relied on surveys from both the public and private sectors," UTA by 2016 "began limiting its salary comparisons to other governmental agencies, transit agencies, and nonprofit organizations to ensure its salary structure was in line with these comparable organizations."

UTA also retained Employer's Council, "a Salt Lake City-based based nonprofit employers' association, to review UTA's total compensation and benefits program for its administrative employees."⁴⁶ The Employer's Council's initial review "began in August 2014 and took eight months to complete," according to UTA's Letter, and "compared UTA's base pay, bonus pay, and employee benefit programs to the labor market" in "four separate employee groups," which included "executives, general counsel, and the president and CEO." After this review was completed, UTA's Board adopted new policies regarding compensation and benefits.⁴⁷ According to UTA's Letter, these policies set salaries for new executives "at 10% below the market median, with a permissible 15% variation above and below that standard." UTA's compensation policy also now requires Board approval for bonuses over \$8,000, and limits performance awards to the lower of \$7,500 or 4% of an employee's annual salary.⁴⁸ And UTA closed its "Asset Management Plan," a 401(a) plan for executives, to any newly hired executives.

Finally, UTA stopped entering into employment agreements with employees appointed by the Board, and it voided employment agreements with the former President/CEO, Mike Allegra, and with the former General Counsel, Mr. Jones.

B. Additional Changes To Executive Compensation Since UTA's 2016 Letter

Based on our interviews, it appears that UTA has since 2016 been returning to routine in its compensation structures. Several witnesses we spoke with emphasized that executive compensation packages in place as of the 2014 Legislative Audit were highly unusual. In reviewing that audit report, UTA's 2016 Letter, and speaking with current and former UTA personnel, we were left with the impression that, prior to the audit, a small group of senior officials at UTA who were theoretically supposed to act as checks on one another instead allowed each other to secure lucrative compensation packages with the agency that were not tied to any objective measure of merit, fairness, or public interest.

The agency no longer permits such arrangements, as discussed above, and has spent the last several years establishing compensation packages based on objective metrics and a systematic

⁴⁵ These are described in Utah Transit Authority Executive Limitations Policy No. 2.3.1, revised June 25, 2014.

⁴⁶ This is described in Compensation Report for Utah Transit Authority, Employer's Council, October 2015; Compensation Report for Utah Transit Authority, Employer's Council, October 2016; Compensation Report for Utah Transit Authority, October 2017.

⁴⁷ Utah Transit Authority Executive Limitations Policy No. 2.3.1, revised June 25, 2014; Utah Transit Authority, Corporate Policy 6.7.5.1, Compensation.

⁴⁸ We understand that no executive bonuses have been paid since 2015.

process of review, with the assistance of the Employer's Council. UTA's executive compensation is now benchmarked to the public sector.⁴⁹

C. Monitor's Phase I Findings And Recommendations Regarding Executive Compensation Reforms

(1) Executive Compensation

UTA appears to have moved in the right direction on executive compensation. As with any new system, adjustment can be difficult, and we will be interested to see whether UTA's compensation structure requires further fine-tuning as it adapts. One concern we heard articulated is that the new system may not give UTA's professional human resources staff sufficient flexibility to calibrate salaries, particularly in the recruitment context. For example, looking to a national pool of public sector agencies might not necessarily reflect the appropriate compensation levels to be competitive in Salt Lake City – it could be too high or too low. UTA's compensation policy does permit some flexibility, where reliable public sector and non-profit data are unavailable, but only time will tell whether UTA's new formula is the right one.

From our perspective, it makes sense to allow UTA's professional staff some flexibility in reaching the right policy, provided that policy is properly vetted, benchmarked meaningfully, and documented in a transparent manner. It is noteworthy that the trouble with UTA's former executive compensation structure was less the executive salary range, and more the significantly above-market bonus options and retirement programs, which, according to UTA witnesses, were initially created to incentivize employees to stay at UTA through and after the 2002 Olympics. Preventing these less visible compensation methods should go a long way toward ensuring ethical compensation structures going forward.

RECOMMENDATION 9: During the next Phase of the monitorship, we intend to assess whether UTA's current benchmarking policies are delivering fair compensation for employees, and allowing UTA to recruit and retain talented and dedicated employees, consistent with the public interest. We intend to gather additional information from UTA's human resources teams to determine whether additional flexibility in the compensation policy is warranted, and, if so, how it can be implemented in a way that mitigates the risk that outsized compensation packages may be awarded and escape public scrutiny.

IV. 2016 Reforms: Conflict of Interest

A. Conflict of Interest Reforms Cited By UTA As Part of 2016 Reforms

According to UTA's October 2016 Letter, the agency took steps to "strengthen its ability to identify potential conflicts of interest for members of its Board of Trustees as well as employees in upper management positions." In response to these conflict of interest concerns raised by the Legislative Audits, UTA adopted, in November 2015, Board Process Policy No. 4.1.10, which requires Board Members to certify that they have read and understand: (1) "Federal Transit Administration requirements for dealing with real or apparent conflicts of interest"; (2) "Utah's

⁴⁹ Utah Transit Authority, Corporate Policy 6.7.5.1, Compensation.

Public Transit District Act's prohibition on Board members having any interests in UTA transactions, including [TOD]"; (3) Utah's Public Officers and Employees Ethics Act; and (4) "UTA's Board Process Policy that identifies Board members' fiduciary duties and legal responsibilities."⁵⁰ "Board Members must agree on an annual basis that they will abide by and conduct themselves in accordance with these standards," according to UTA's letter.

UTA's conflict of interest policy requires Board members to complete a Financial Disclosure Report "that includes the disclosure of assets, income, liabilities, outside positions, continuing or future agreements or arrangements, and gift and travel reimbursements for the Board member, spouse, and any dependent children," according to UTA's letter. These disclosures are then reviewed by UTA's Internal Audit staff and were intended to be reviewed by UTA's General Counsel, which no longer exists, as discussed above.⁵¹

UTA also revised its Ethics Policy applicable to employees in "upper management positions" through its Corporate Policy 1.1.11.⁵² According to UTA, the new policy "requires upper level administrative employees to disclose conflicts of interests and complete financial disclosures similar to the disclosures required of Board members." These financial disclosures were likewise intended to be reviewed by the Internal Audit team and the General Counsel's Office.

B. Additional Changes Concerning Conflict Of Interest Issues Since 2016

Since UTA's 2016 Letter, the agency has further revised and renamed its Corporate Policy 1.1.11. This policy covers UTA's conflict of interest policy and sets forth processes for the disclosure and review of potential ethical concerns. It also establishes a mechanism for reporting ethical concerns and protecting employees who report such concerns. Further, UTA requires its newly structured Board of Trustees to complete the conflict of interest and financial disclosure forms described above.

C. Monitor's Phase I Findings And Recommendations Regarding Conflict of Interest Reforms

(1) Financial Disclosures

The financial disclosure process is still fairly new at UTA, as it is on an annual cycle. This novelty is compounded by the fact that UTA has experienced significant turnover among its leadership, including its new Board structure under SB 136 and, importantly, the elimination of the General Counsel, who was documented as a significant check in this process. We are interested to see how the financial disclosure process matures given this evolution.

The process may benefit from a corporate policy or standard operating procedure, neither of which we understand to be in place with respect to either the practice of completing the forms, or of reviewing them. A policy or procedure is particularly important given the sensitive nature of the information divulged in the disclosures. For example, during a 2017 audit, UTA's Internal

⁵⁰ Utah Transit Authority, Board Process Policy No. 4.1.10, revised November 18, 2015.

⁵¹ *Id.* Presumably, the legal team from the A.G.'s office has taken over this role, but we have not confirmed that.

⁵² Utah Transit Authority, Corporate Policy 1.1.11, Ethics and Ethics Reporting, revised December 5, 2017.

Audit group recommended that UTA's conflict of interest processes and requirements be more formalized because "[p]roviding clear guidance for TOD staff regarding requirements, adequacy, and completeness of [conflict of interest] declarations would reduce a key risk."⁵³

With respect to the completing of the forms, training may suffice – and perhaps is more practical. We understand from our Phase I interviews that Board members are not specifically trained on this topic. We also understand that UTA does not currently provide consistent training to Trustees regarding the financial disclosure process. Not only might training help ensure the accuracy of the information provided, it may be an opportunity to give Trustees privacy assurances that would benefit the disclosure process.

A policy or procedure may also assist UTA in adhering to a standard approach to reviewing and adjudicating Board members' financial disclosures. This is sensitive work, and it amounts to a review of the interests of the highest level leaders of the agency. That is a lot to place on the shoulders of UTA's staff – whether that is the Internal Audit team, the legal team, or both. We are confident that the professional staff at UTA can handle this responsibility, but standardization would both ensure consistency in their approach and give them some protection in the event that the review process reveals a conflict, especially one that requires remediation. Our interviews suggest that standardization would be a welcome development.

Finally, a standard policy or procedure may be necessary to systemize the walling off of Trustees and other management or employees with potential conflicts of interest from topics that relate to their particular conflict. Personnel may not always be aware of the possibility of being involved in a matter with respect to which they have a conflict. For example, we understand from our interviews that for certain public presentations or committee meetings, Board members are asked if they have a conflict of interest before business is called. While this is a good practice, it is not sufficient to leave it to individual Trustees to identify their own conflicts, though we have no reason to be concerned that the current Board would act in bad faith with respect to these issues.

RECOMMENDATION 10: We will work closely with UTA's legal team, audit staff, and senior leadership to determine whether UTA should develop a corporate policy or standard operating procedure regarding the completion, review, and reporting of conflict of interest and financial disclosures, including protections to ensure that any conflicts result in the appropriate walling off of conflicted individuals.

RECOMMENDATION 11: We will similarly work with UTA's legal team, audit staff, and senior leadership to determine whether it would be more practical, and more useful, for UTA to offer training on the completion of disclosure forms, either in lieu of, or in addition to a policy or procedure.

(2) Procurement Gift Policies

Although not at issue in UTA's 2016 Letter, the agency's gift policies were a topic of discussion during our Phase I interviews. In particular, we were interested in learning how UTA handles gifts and other outside benefits for its procurement employees. We understand from our Phase I

⁵³ UTA Internal Audit Report, Transit Oriented Development Management, R-17-14, November 22, 2017.

interviews that UTA may not have a formal policy concerning gifts that clearly defines who is a procurement professional. This may be a source of confusion for UTA employees, who need guidance regarding their ability to accept meals, training, and other items of value, from outside parties. We understand that UTA's Corporate Policy 1.1.7 - Procurement and Contracting Code of Conduct currently governs the acceptance of gifts by its procurement professionals.⁵⁴ It may, therefore, be sufficient to explore ways to clearly define to whom the policy applies – which, in some cases, could include administrative employees who are unaware that they are considered "procurement professionals."

RECOMMENDATION 12: In the next phase, we intend to work with UTA leadership in procurement to ensure that gift policies are applied to all personnel with potential procurement responsibilities, and that UTA's policies put each such employee on appropriate notice that they are considered part of the procurement staff.

(3) Internal Investigations

Similarly, during our Phase I review UTA's process for managing internal investigations became a discussion point – which we consider relevant to the agency's ability to address any conflict of interest or ethical issues that warrant additional review under UTA's new policies. We understand that UTA has an established practice for conducting internal investigations, but we are interested in learning more about (1) what policies and procedures are in place to tell future UTA personnel how to adhere to established practices, and (2) what systems are in place to ensure the security of internal investigations that are conducted by UTA personnel in the Internal Audit and legal functions. We are also interested in seeing how UTA's new legal team from the A.G. fits into its internal investigation workflow.

During our Phase I interviews, the concern was raised that UTA's existing internal investigations may not do enough to ensure the confidentiality and security of such investigations, including the availability of consistent audit trails to track changes to investigative materials – authorized or otherwise. To the extent that these concerns are justified, a technological fix may be sufficient. We understand that UTA currently uses a spreadsheet to track internal ethics investigations, which could implicate these concerns.

The related issue of how to coordinate internal investigations also came up during our Phase I review. We understand that internal investigations can be conducted by any of UTA's Internal Audit, Human Resources, Civil Rights, law, and leadership teams. This raises the question of how responsibility is coordinated among these groups. It also implicates some of the security and confidentiality issues we described above. How can UTA divide investigatory responsibility among so many groups without risking either a lack of coordination (resulting in overlap and potentially inconsistent results) or confidentiality (which could be undermined by the need to coordinate so many groups)? This is a challenge worth exploring, in our view.

RECOMMENDATION 13: In the next phase we will review with UTA whether it needs to develop a secure system for management of internal ethics and conflict of interest investigations.

⁵⁴ Utah Transit Authority, Corporate Policy 1.1.7, Procurement and Contracting Code of Conduct, revised January 9, 2007.

RECOMMENDATION 14: We will also work with UTA to determine whether changes are needed to its internal investigation process to ensure that investigations are efficiently coordinated among departments and groups without undermining confidentiality and security.

V. 2016 Reforms: Travel

A. Travel Policy Changes Cited By UTA As Part of 2016 Reforms

In its October 2016 Letter, UTA noted several reforms to address the travel issues identified in the 2014 Legislative Audit. First, UTA implemented Board Policy 2.3.1, which requires all international travel to be approved by the Board in a public meeting – a significant deterrent against abuse, in our view.⁵⁵ UTA noted in its Letter that, at that time, since the implementation of this policy, "only one international trip – to Canada – ha[d] been authorized by the Board," and that travel was "made by a single UTA employee at the request of TransLink, the City of Vancouver's transit agency, to participate in a peer review regarding bus safety," and was furthermore "paid for by TransLink." UTA's 2016 Letter also noted that "Board members who made a non-UTA approved trip to Switzerland in 2015 that was funded by companies that built rail projects for UTA are no longer associated with the Authority."

In addition, UTA cited its adoption of Corporate Policy 1.1.8, which outlines the approvals required for travel by UTA employees outside of Utah and establishes the per diem allowance for travel based on location.⁵⁶ According to the Letter, "[p]ursuant to the policy, within ten days of completing travel, employees are required to submit a report of the total costs of the trip as well as a request for reimbursement." "The Authority's Comptroller" then "certifies that each report is compliant with the corporate policy."

B. Additional Changes To Travel Practices Since UTA's 2016 Letter

During our Phase I review, the witnesses we spoke to indicated that UTA's prior travel improprieties, as reflected in the 2014 Legislative Audit, were broadly recognized as inappropriate at the time. This appears not to have been a case of misunderstanding the appropriate ethical considerations relating to travel. It appears instead to have been a personnel and cultural failing. As discussed above, UTA has made significant changes in personnel and culture since 2016. These are positives for the agency, and it is encouraging to see that UTA has also memorialized these changes with a policy and procedures that are intended to prevent abuses in the future, after the current personnel at the agency have turned over.

UTA has also revised its Corporate Policy 1.1.8 since 2016.⁵⁷ It revised the policy on June 13, 2017 to eliminate the use of personal credit cards for travel for employees who have been issued a UTA P-Card. Such employees must use their P-Card. Further, UTA eliminated reimbursements for itemized meals and incidental expenses. Employees are now required to submit the daily per diem on their travel expense forms.

⁵⁵ Utah Transit Authority, Executive Limitations Policy No. 2.3.1, revised June 25, 2014.

⁵⁶ Utah Transit Authority, Corporate Policy No. 1.1.8, revised September 25, 2015.

⁵⁷ Utah Transit Authority, Corporate Policy No. 1.1.8, revised June 13, 2017.

C. Monitor's Phase I Findings And Recommendations Regarding Travel Reforms

UTA's Board Policy 2.3.1 and Corporate Policy 1.1.8 appear to be steps in the right direction on the issue of travel abuse. Board Policy 2.3.1 requires the General Manager to report any UTA-sponsored international travel by UTA employees to the Board for preapproval in a public meeting, which we consider a very smart and effective deterrent strategy.⁵⁸

Since the implementation of these policies, it appears that UTA's Board has only approved international travel in two instances. In October 2016, the Board authorized UTA employee travel to Winnipeg, Canada in February 2017 for inspections required by the Federal Transit Administration on two New Flyer pilot buses.⁵⁹ In March 2018, the Board authorized travel for two employees to attend the American Public Transportation Association Sustainability & Multimodal Workshop in Vancouver, Canada from July 29 to August 1, 2018.⁶⁰ These are short trips by international standards, and they appear at first blush to be related to legitimate purposes, with a close nexus to UTA's mission. This is the kind of international travel we would expect to see from UTA employees.

UTA's historical travel issues likely were a manifestation, rather than a cause, of the agency's broader cultural problems prior to the USAO investigation. UTA's new travel policies are an important step in establishing checks and balances with respect to international travel. But equally important in the long run will be ensuring the continued health of UTA's culture. No travel policy can prevent abuse if the culture of the organization does not value compliance.

Lastly, as a result of our Phase I work, the Transportation Auditors have informed us that UTA's travel authorization forms in the agency's Accounting Manual are helpful in ensuring that appropriate approval has been obtained for travel, with an assessment of the costs and rationale. The Transportation Auditors are concerned, however, that the forms do not provide sufficient information concerning grant compliance and grant use. For example, the forms do not require an indication that grant funded travel complies with "Fly America" requirements.

RECOMMENDATION 15: We understand from our Phase I work that UTA's external auditors sample the agency's travel data to ensure compliance with UTA's travel policies. During Phase II, we are interested in learning more about this sampling, and in potentially reviewing the underlying data for verification.

RECOMMENDATION 16: During Phase II, we expect to commence a dialogue between our Transportation Auditors and appropriate UTA personnel on the question of whether changes should be made to the agency's travel authorization forms in the Accounting Manual. We also intend to assess whether Corporate Policy 1.1.8 should be revised to require that travel and reimbursements comply with federal regulations in the event that federal funds are ever implicated by UTA travel.

⁵⁸ Utah Transit Authority, Executive Limitations Policy No. 2.3.1, revised June 25, 2014.

⁵⁹ Report of the Meeting of the Board of Trustees of the Utah Transit Authority, October 26, 2016.

⁶⁰ Report of the Meeting of the Board of Trustees of the Utah Transit Authority, March 28, 2018.

VI. 2016 Reforms: Transit Oriented Development

A. TOD Changes Cited By UTA As Part of 2016 Reforms

In its October 2016 Letter, UTA assured the USAO that it had been "extremely aggressive in addressing past shortcomings in its TOD program." By the time of its letter, UTA had moved TOD oversight from UTA's Office of General Counsel to its Capital Development Department.⁶¹ UTA also hired a new manager, Paul Drake, to oversee TOD projects.

In addition, according to UTA's Letter, in June 2014, UTA's Board adopted Policy 2.2.4 – Transit Oriented Development, to establish a four-part framework for the review and approval of TOD projects.⁶² UTA described that framework as follows:

First, pursuant to the policy, all projects are required to be presented by the Board's Planning and Development Committee for approval. Second, the policy established an internal, multidisciplinary team to review TOD development and operating agreements. This team includes staff from Property Management, Service Planning, Rail and Bus Operations, Planning, Safety, and Capital Development. As part of the internal review process, UTA now requires the disclosure of all investors on TOD projects so that any conflicts of interest can be identified and addressed. . . . Third, the policy established an independent external review of TOD proposals and operating agreements. To meet this requirement, UTA issued a Request for Proposal and selected Zions Public Finance, Inc. to provide the external reviews. Fourth, the policy requires all operating agreements to be submitted to UTA's Internal Auditor for assessment. As previously noted, new Internal Audit staff were hired to ensure a robust review of TOD projects.

This new TOD policy applied to all phases of all projects following its adoption in June 2014. According to UTA's Letter, by October 2016, this new due diligence process had "already yielded results as it identified two former Board members who were planning to invest in a TOD project they had approved during their tenure on the Board."

According to UTA, by the time of its Letter, it had stepped up efforts to ensure that former Board members were not involved in TOD projects they had approved during their time on the Board, and that such former members are not in a position to "exert influence on decisions regarding current TOD projects."⁶³

⁶¹ Utah Transit Authority, 2016 Grants Management Internal Audit Report, R-16-6, August 25, 2016.

⁶² Utah Transit Authority, Executive Limitations Policy No. 2.2.4, Transit Oriented Development, adopted June 25, 2014.

⁶³ UTA specifically touted that it had "sent Terry Diehl," a Utah developer and former UTA Board member, "a cease and desist letter instructing him to stop all contact with UTA officials regarding [UTA's] projects."

UTA had by October 2016 essentially attempted to reset its TOD program by "pulling back TOD projects that lacked executed contracts and cancelling the procurement of the developer on those projects." It had also notified one developer with an operating agreement that UTA wanted to terminate the agreement "based on the lack of progress on the project." UTA also withdrew from two projects for which developers had entered into exclusivity agreements that had expired.

Finally, by October 2016, UTA was also "in the process of developing written guidelines to govern the involvement of regional and local government and other stakeholders on each project to optimize the use of UTA property before a developer is procured with a particular focus on the promotion of low-income housing."

B. Additional TOD Changes Since UTA's 2016 Letter

Not long after UTA's October 2016 Letter, the agency's Internal Audit team conducted an audit of TOD management, which it completed on November 22, 2017.⁶⁴ The resulting audit report noted that UTA had by then created a draft TOD Policy and SOP, which included roles and responsibilities, best practices, and step-by-step documentation of the critical steps in the TOD process.⁶⁵ The Internal Audit group also recommended formalizing an annual risk assessment process as well as establishing and documenting key performance indicators for TOD personnel.⁶⁶

Additionally, since its October 2016 letter, UTA has moved its TOD function from the Capital Development Department to the Finance Department.⁶⁷ During our Phase I review, UTA was still in the process of developing a standard operating procedure on TOD.⁶⁸

C. Monitor's Phase I Findings And Recommendations Regarding TOD Reforms

(1) TOD Generally

UTA has made great strides in addressing systemic issues that led to the problematic TOD conduct at issue in the Legislative Audits and the USAO investigation. UTA appears to be at a crossroads in TOD. Following the reset of the program described above, the agency must now (1) implement and allow to mature its new policies and procedures concerning TOD, (2) determine where TOD fits into the Trustee/LAC relationship and the specific role the LAC plays with respect to TOD-related agency actions, (3) reprioritize the projects in its TOD portfolio and determine if new projects should be added to it, and (4) get back to making consistent and appropriate progress on TOD projects, consistent with UTA's commitments to doing so ethically and transparently. The current leadership and TOD personnel appear committed to achieving

⁶⁴ UTA Internal Audit Report, Transit Oriented Development Management, R-17-14, November 22, 2017.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ UTA Organization Chart, September 13, 2018.

⁶⁸ UTA Transit Oriented Development Standard Operating Procedure, Draft 5.0.

these goals. The key will be ensuring that they pave the way for future UTA leaders to continue this work without conflict of interest and mismanagement issues reemerging.

UTA's current corporate structure builds in checks and balances by separating TOD decision-making functions from other aspects of the TOD process – such as legal approval. It is unclear to us whether UTA has established a corporate policy to ensure that this segregation of duties continues beyond UTA's current personnel, however, and UTA was still in the process of developing a corporate policy for TODs during our Phase I review. During our interviews, we heard the proposed policy for TOD decision-making and development described as criteria-based, rather than a policy based on Board member-selection. We understand that the proposed policy emphasizes finding market-ready sites where the local municipality has prepared for development.

During our Phase I review, we were provided an overview of the life of a TOD project, which appears to include:

- Prioritization of sites based on objective criteria.
- Station Area Plans, where UTA works with local municipalities and neighborhood groups to develop a plan.
- Site selection.
- An RFP process, and a selection committee involving local stakeholders and UTA employees (but not Board members).
- An exclusive negotiation agreement to allow for developer diligence.
- A Master Plan for how the site will work within the local area (e.g., streets, capacity, accessibility, infrastructure).
- Site designs or site plans developed by the Design Review Committee at UTA. These may include operating agreements or ground leases.
- Financial analysis of the terms of the operating agreement or ground lease to be reviewed by an external auditor (Zions), Internal Audit, the UTA TOD group, and the executive team and approved by the Board of Trustees.
- Construction and property management.

As this process matures within UTA's new structures and policies, it will be important for UTA to stay vigilant regarding potential weaknesses.

RECOMMENDATION 17: During the next Phase of the monitorship, we intend to review TOD policies and procedures as they are finalized and implemented, with an eye toward ensuring that these materials guard against the types of TOD issues identified in the Legislative Audits, and by UTA during the course of the USAO investigation.

RECOMMENDATION 18: The Monitor would like to observe UTA's TOD function in as many aspects of the TOD "lifecycle" as can practically be achieved, given the significant time it typically takes for a TOD project to be completed.

RECOMMENDATION 19: We intend to check in with UTA's heads of TOD and Internal Audit to determine whether the 2017 audit findings have been adequately addressed.

(2) The LAC's Oversight Role With Respect to TOD

As discussed above in our discussion of Organizational Changes, UTA stakeholders lack a shared understanding of the LAC's role. One important aspect of this misunderstanding concerns the LAC's oversight of TOD. Some interviewees we spoke with during Phase I reported that the LAC's function is purely advisory with respect to TOD, while others felt that the LAC has approval authority over certain critical aspects of the TOD lifecycle. It is not our place to opine on what the intent of SB 136 is in this regard, but we think a fair reading of the statute suggests some formal role for the LAC overseeing TOD. It is understandable that the LAC would be consulted on significant TOD, to ensure a voice for local stakeholders. As we described above, however, we are concerned that the LAC shares some of the features that created weaknesses in UTA's old Board structure. If the LAC has direct approval or oversight authority over critical TOD steps, this may create some of the same risks that had manifested during the Legislative Audits and the USAO investigation. It could also undermine the independence and efficiency of UTA's TOD-related operations generally.

RECOMMENDATION 20: We intend to focus on the dynamics inherent in the LAC's TOD role during Phase II.

VII. 2016 Reforms: Lobbying

A. Lobbying Changes Cited By UTA As Part of 2016 Reforms

After the 2014 Legislative Audit, and during the USAO investigation, UTA determined that it had engaged in problematic practices in its retention of lobbyists. In its October 2016 Letter, UTA wrote: "In spring of 2015, the Authority's new leadership learned that many of lobbyists acting on UTA's behalf did not have contracts and the contracts that did exist were quite old. A review of invoices established that many lobbyists performing work for UTA did not provide sufficient documentation for the payments requested."

As with TOD, UTA addressed these issues with a hard reset of its practices. According to UTA's 2016 Letter, after discovering these issues, "UTA terminated all contracts for state lobbyist services, both written and oral," after which the agency "has not used the services of any state lobbyists," and engage[d two] federal lobbying firms on a month-to-month basis in order to maintain a presence in Washington D.C. with federal agencies and Utah's congressional delegation."

As part of its reset strategy, UTA then "issued a Request for Proposal for state and federal lobbying services," which resulted in the awarding of new contracts after its October 2016 Letter.

B. Additional Changes To Lobbying Practices Since UTA's 2016 Letter

During our Phase I interviews, UTA's practice of engaging lobbyists without a contract was referred to as reflecting the existence of "handshake" deals, which make tracking, compliance, and results assessments difficult. Since its October 2016 Letter, UTA has entered into two

agreements with lobbyists for federal government relations.⁶⁹ UTA has also entered into agreements with two state lobbyists.⁷⁰ These agreements are to last for periods of between one and four years.

C. Monitor's Phase I Findings And Recommendations Regarding Lobbying Reforms

UTA took quick action to proactively address its lack of lobbyist documentation following its discovery of this issue in 2015. It is unclear, however, that UTA has put in place sufficient policies and procedures to ensure the integrity of its lobbying practices in the long run. One witness we spoke with during our Phase I review indicated that, while there are certain requirements related to contracts over \$200,000, and for change orders, there is no corporate policy regarding the retention of lobbyists or lobbyist contracts. Another witness echoed these concerns, noting that historically, it was not unusual for UTA to have unwritten or “handshake” deals with lobbyists. This suggests that there is good reason to put protections in place to ensure that this practice does not return.

Some of the witnesses we spoke with indicated that, while there is a process for paying lobbying invoices, the invoices themselves tend to be fairly vague, and there are no requirements concerning the documentation that lobbyists must provide in connection with their invoices. One witness we spoke with expressed concern that UTA’s culture provided contractors and lobbyists with too much latitude as to how to conduct their work. The practice of requiring written contracts is a good start, but is of limited utility if lobbyists are not required to provide adequate information concerning the work for which they are paid.

RECOMMENDATION 21: During the next Phase of the monitorship, we intend to look more closely at UTA's lobbying retention and payment practices, and to work with UTA personnel on the question of whether the agency should develop policies and procedures to standardize retention and work documentation practices.

VIII. 2016 Reforms: Accounting

A. Accounting Changes Cited By UTA As Part of 2016 Reforms

A strong accounting department is critical to a large organization's effective internal controls. UTA made revamping the department a priority in the wake of the 2014 Legislative Audit. In its October 2016 Letter, UTA wrote that it had "redesigned its Accounting Department to ensure adequate internal controls are in place for financial transactions."

UTA wrote that it had hired a new Comptroller, Danyce Steck, in May 2013, who was at that time "accredited by the Government Finance Officers Association as a Certified Public Finance Officer and has over fifteen years of accounting and management experience in both municipal and county governments." This was followed by a substantial shake up of UTA's Accounting Department:

⁶⁹ Independent Contractor Agreements, both dated November 1, 2016.

⁷⁰ Independent Contractor Agreements, dated November 1, 2016, December 2016 and December 20, 2017.

Prior to November 2013, the Accounting Department had nineteen full-time employees. Ms. Steck initiated a reorganization of the Department. In connection with this reorganization, she revised the job description for accountants, and staff were required to demonstrate mastery of required skills. Subsequent to the reorganization, twelve employees were laid-off or terminated for non-performance or failure to meet minimum requirements and three employees retired.⁷¹

This is consistent with sentiments expressed to us in our Phase I interviews. Several witnesses indicated that some members of the pre-2013 staff were unqualified for their positions at UTA. As of UTA's October 2016 Letter, "[t]he Accounting Department [was] fully staffed with thirteen full-time employees," whom UTA described as having "much stronger skill set" that "meets the increased demands of the organization."

UTA then described the creation of an agency Accounting Manual:

In August 2016, the Department finalized a policy and procedure manual. This 290-page living document, composed of fourteen sections, establishes processes for internal controls, signature authority, etc. These standards serve as effective resources to ensure uniformity among processes.⁷²

UTA also described how it had further segregated duties for grants management to reduce the Accounting Department's role and create additional checks and balances in the overall process.⁷³ Historically, UTA's Assistant Comptroller had been tasked with identifying grant eligible expenses, preparing drawdown requests, and completing the drawdown process. As part of its reforms, UTA limited the Accounting Department's grant-related transaction responsibilities to the actual drawdown procedure, payables, and asset recognition – traditional accounting tasks. Members of UTA's Grants Management group took over responsibility for the identification of eligible expenses and the preparation of the draw down request.

B. Additional Accounting Changes Since UTA's 2016 Letter

In July 2017, Troy Bingham became UTA's Comptroller after Danyce Steck moved on from the agency. Our sense from interviews during Phase I is that Ms. Steck succeeded in an initial overhaul of the Accounting Department, including removing and replacing unqualified personnel, and that Mr. Bingham has continued the project, focusing on improving the department's documentation and processes. We understand from interviews that the Accounting Department required fundamental changes when Ms. Steck joined: significant liabilities were unrecorded (including to a developer central to the TOD issues), federal drawdowns lacked documentation, FTA funding had been reversed because of compliance issues, and some

⁷¹ UTA Accounting Department Reorganization Memo from Danyce Steck to File, October 24, 2013.

⁷² UTA Accounting Policy and Procedure Manual, revised August 30, 2016.

⁷³ UTA Policy ACC-008-101, Accounts Payable Segregation of Duties, revised December 15, 2017.

department personnel were underqualified. Ms. Steck's overhaul apparently focused on these acute issues. Ms. Steck also changed UTA's accounting systems. That has allowed the new accounting leadership, including Mr. Bingham, to focus on proactive endeavors. On the corporate policy front, the Board recently revised its policy regarding Accounts Payable to clarify the accounting department's segregation of duties.⁷⁴

Since 2016, the Audit Department has also made progress in modernizing UTA's asset management processes and information, which are critical to its grants compliance requirements for federal subsidized assets.

C. Monitor's Phase I Findings And Recommendations Regarding Accounting Reforms

UTA's Accounting Department appears to have made real progress in the last several years, but several witnesses acknowledged that the agency still has work to do on documenting controls and processes. During interviews, we heard, for example, that some stakeholders lack a sufficient understanding of FTA accounting requirements. Another confirmed that, while the accounting team had made significant progress in identifying accounting functions and responsibilities, and in creating an accounting policy manual, there is still work to do in improving documentation. One witness noted that many of the current controls and processes in the accounting department are undocumented – which seems to work with the current strong and cohesive team, but may be problematic in the future.

UTA's asset management and tracking also have been a significant area of focus for the agency. During our Phase I review, we learned that historically the agency had not adequately tracked its inventory of federally subsidized assets, which is a significant compliance concern. In particular, UTA's inventorying practices were neglected for years. The Accounting Department recently did a full asset review and inventory, and enlisted an outside auditor to assist with inventory improvements.

RECOMMENDATION 22: During the next Phase of the monitorship, we would like to learn more about what UTA can improve in its accounting documentation and governance, and where the agency stands on accounting for assets relevant to federal funding programs, including potentially meeting with UTA's outside auditor for inventory tracking.

IX. 2016 Reforms: P-Cards and Recordkeeping

A. P-Cards And Recordkeeping Changes Cited By UTA As Part of 2016 Reforms

Separate from its general reforms in the Accounting Department, UTA highlighted in its October 2016 Letter that it had "implemented new measures to ensure employees use P-Cards properly and provide supporting documentation for transactions in which P-Cards are used." This included revised Corporate Policy 1.2.3 – Purchase Card Policy, implemented on June 3, 2015, which imposes penalties, including deactivation, for cards that are not properly reconciled. More

⁷⁴ *Id.*

fundamentally, under the new policy, P-Card receipts could no longer be used as a basis for drawing down grant funds.⁷⁵ UTA has also moved to a paperless receipt storage system, to enhance consistency of reimbursement documentation. The agency also changed fiscal technology solutions to one that analyzes P-Card use for purchases that (1) exceed authorized spending limits; (2) are made from unauthorized vendors; (3) should have been made under contract; or (4) have duplicate invoice billings.⁷⁶ In discussing P-Card issues, UTA also explained in its 2016 Letter that it had hired a new records manager, and had planned at that time to overhaul its document management practices.

B. Additional P-Card and Recordkeeping Changes Since UTA's 2016 Letter

Since 2016, UTA has continued to move toward improving its P-Card practices. UTA's Internal Audit team audited P-Card compliance in February 15, 2017.⁷⁷ The audit gave the policy a yellow rating and concluded that "the [P-Card] Policy and some of the business practices are in conflict, which necessitates that management should review both the policy and business practices to ensure they are aligned." One of the major recommendations from the audit was that P-Card holders should receive further training on what would constitute unacceptable purchases.⁷⁸ The audit also found that:

- P-Cards were inappropriately used to pay suppliers with whom UTA had a contract or line of credit.
- Transactions were split to avoid the dollar limit on a single transaction, which practice had not been investigated in a timely manner.
- There was no monitoring of monthly cardholder account reconciliation or supervisor approval.
- P-card holders could use their cards for cash advances.
- Monthly audits on P-Card expenditures were not being done.
- Transactions over the policy limit of \$3,000 were permitted.⁷⁹

Shortly after the audit, UTA adopted a further revised Corporate Policy 1.2.3 – Purchase Card Policy, on June 27, 2017.⁸⁰ In addition, UTA now provides its P-Cards users with a "P-Card Basic Training Course."⁸¹

⁷⁵ UTA Corporate Policy 1.2.3, Purchase Card, revised June 37, 2015.

⁷⁶ Sales Agreement between UTA and Fiscal Technologies, Contract 15-1596TP, dated January 21, 2016.

⁷⁷ UTA Internal Audit Report, Purchase Card Compliance, R-16-11, dated February 15, 2017.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ UTA Corporate Policy 1.2.3, Purchase Card, revised June 27, 2017.

⁸¹ UTA P-Card Online Training Module.

C. Monitor's Phase I Findings And Recommendations Regarding P-Cards and Recordkeeping Reforms

The changes to UTA's P-Card practices need time to mature before they can be fully evaluated. In addition to time, some witnesses flagged that UTA is in the process of creating an enterprise-wide records retention policy, which would be relevant to P-Card practices.

FINDING: During the next Phase of the monitorship, we will continue assessing UTA's progress in implementing P-Card practice improvements and a corporate retention policy.

X. 2016 Reforms: Grants Management And Oversight

A. Grants Management And Oversight Changes Cited By UTA As Part of 2016 Reforms

In its October 2016 Letter, UTA described that it had conducted an internal audit of its grant management and oversight function, and, based on those findings, "established a Grant Management group, which incorporates all parts of the organization that works with grants, including representatives from Accounting, Grants and Contracts Administration, Civil Rights, Project Controls, and Environmental."⁸² The Grants Management group "holds monthly meetings with all participants to discuss the status of each of the Authority's grants and to evaluate draw downs." The Grants Management group, which was to meet monthly, was to be led by Senior Project Manager, Mary DeLoretto, who was to establish "written procedures for the grant management processes from identification of a grant opportunity through grant closeout."⁸³ These processes were to be "submitted to FTA for review." As of October 2016, Ms. DeLoretto was also "in the process of developing a corporate grants management policy[.]" UTA also noted that in 2016 "General Counsel, Jayme Blakesley, [brought] significant experience in grants management and compliance to UTA and serves as an additional resource to the Grants Management group."

B. Additional Grants Management And Oversight Changes Since UTA's 2016 Letter

UTA adopted its grants management policy, Corporate Policy 3.1.7 – Grants Management, on December 13, 2016.⁸⁴ The policy "establishes the process for complying with federal regulations and administrative requirements governing grants administration and management."⁸⁵ UTA's internal audit of Grants Management in August 2016 found that while the organizational structure for Grants Management had changed, and new controls had been introduced, "the scope, role, and authority of the Grants Management function have not yet been clearly defined or formally documented."⁸⁶ The audit further noted that there "has been no end-

⁸² UTA Grants Development and Management, UTA's Grants-Related Positions, their Interactions, and Processes, Standard Operating Procedures, revised September 2016.

⁸³ *Id.*

⁸⁴ UTA Corporate Policy 3.1.7 – Grants Management, adopted December 13, 2016.

⁸⁵ *Id.*

⁸⁶ UTA 2016 Grants Management Internal Audit Report, R-16-6, August 25, 2016.

to-end monitoring or management of grant related activities across departments over the life of each grant to assure compliance with UTA policies and FTA requirements."⁸⁷ Further, the audit recommended that:

- Management clearly define the role and responsibilities of Grants Management.
- Management establish a policy and update the standard operating procedures to oversee and facilitate the entire life-cycle of all grants received by UTA.
- Changes to the control environment were needed to ensure that grants management was performed consistently.⁸⁸

UTA's Internal Audit team completed a follow up report on March 21, 2017.⁸⁹ Grants Management was given a green rating. The audit found that "the scope, role, and authority of the grants management process had been assigned and documented in a corporate policy."⁹⁰ Further, the audit found that UTA had adequately outlined the roles and responsibilities of the Grants Management group and had implemented a set of procedures.⁹¹

C. Monitor's Phase I Findings And Recommendations Regarding Grants Management And Oversight Reforms

(1) Grants Management Compliance

Grants management is an area where we relied substantially on the Transportation Auditors during our Phase I review, given the specialization involved in federal grants. The Transportation Auditors highlighted two areas of concern: (1) Potential weakness in grant management procedures, including grant pursuit, federal compliance, grant reporting, and grant close out; and (2) potential weakness in oversight of federal funds (including accounting, review of relevant documents, general grant and asset oversight). The potential weaknesses included the following:

- Grant Management's grant status report does not have a column for "Date of Last Reporting."
- The procurement department did not indicate in their records if goods and services being procured were funded through federal grant sources.
- For grant compliance, both the 2016 and the 2018 versions of the Grants standard operating procedure fail to indicate the cycle in which these federal compliance activities must be undertaken.
- It is unclear how the Grants management personnel coordinate compliance activities.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ UTA 2017 Grants Management Internal Audit Report, R-17-3, March 21, 2017.

⁹⁰ *Id.*

⁹¹ *Id.*

RECOMMENDATION 23: During the next Phase of the monitorship, we will work with UTA Grant Management personnel and our Transportation Auditors to learn more about several areas of UTA's grants management practices:

- UTA's tracking of the cycle in which these federal compliance activities must be undertaken. For example, most Civil Rights activities happen every three years. However, unless one knows when the last update occurred, one cannot track the cycle.
- UTA tracking of timelines for grant management elements that may not be on a strict schedule (e.g., updating the CAFR to Dun and Bradstreet).
- How UTA's Grants Management personnel coordinate compliance activities.
- Whether UTA is adequately documenting certain processes – such as the Single Audit Findings reporting process – timelines for federal drawdowns, date of last reporting in grant status tracking, procurement tracking of federally funded goods and services, and the process for submitting data to TrAMS.
- Whether UTA should update its Accounting Manual to reflect its revised Grants standard operating procedure.

XI. 2016 Reforms: Transparency

A. Transparency Changes Cited By UTA As Part of 2016 Reforms

The final topic addressed by UTA in its October 2016 Letter was transparency. UTA acknowledged "the importance of conducting its business in public" as a protection against the excesses and self-dealing at the heart of the Legislative Audits and the USAO investigation. According to UTA's Letter, by October 2016 it had "implemented a mechanism to take public comments prior to all Board actions," which improved upon its prior practice of allowing only meeting attendees to make comments at the beginning of each Board meeting. UTA also adopted a practice of permitting members of the public to "provide comments prior to each action item considered by the Board," which it described as allowing "more public input on decisions that affect public transportation." UTA had by 2016 also begun the process of determining how to stream Board meetings on the internet.

In its Letter, UTA also highlighted its commitment to compliance with "Open Meeting Law requirements," including opening "all board meetings to the public where a quorum of members is present except where state statutes permit closed session discussions." UTA also indicated that it was looking for structural changes that would ensure Open Meeting Law compliance without impacting the effectiveness of the Board's decision-making processes – though this referred to the Board's prior structure, which included a much larger 16-member Board consisting of part-time trustees.⁹²

Finally, UTA highlighted two transparency changes concerning its public website. First, the agency began "placing documents requested by members of the public and the media on its website so that the general public has access to requested information."⁹³ Second, UTA also

⁹² We discuss Open Meeting Law issues with respect to the new Board structure below.

⁹³ UTA Public Records, <http://utapublicrecords.com/sirepub/home.aspx> (last accessed May 30, 2019).

began posting "performance metrics on ridership and reliability on its website, along with detailed transit information in a dashboard format for Davis, Weber, and Tooele Counties that provides residents from those counties with information on services directly funded by Proposition One dollars."⁹⁴

B. Additional Transparency Changes Since UTA's 2016 Letter

During our Phase I review, we learned that, on May 15, 2018, Utah Attorney General Sean D. Reyes sent UTA a letter regarding possible violations of the Open Public Meetings Act concerning meetings held on February 22, 2017 and April 18, 2018.⁹⁵ The letter alleges that UTA considered in a closed session business that was required to be considered in open session.

We also learned that UTA has successfully started a YouTube Channel to stream its Board meetings.⁹⁶ We also confirmed that UTA posts public notices of its Board meetings.⁹⁷

C. Monitor's Phase I Findings And Recommendations Regarding Transparency Reforms

(1) Utah Open Meetings Laws

The Utah Attorney General's May 2018 notice of potential violations appears to have had a significant impact at UTA. Several interviewees described to us that UTA's three Trustees are exceedingly careful to avoid substantive policy discussions with one another that could run afoul of the Open Meeting requirements. In addition, we learned that the three Trustees have divided operational oversight responsibility among them, and in essence leave all collaborative discussions regarding their respective areas of oversight to open Board meetings.

The upshot is that the Trustees hold open meetings whenever information needs to be provided to or discussed among more than one Trustee – even with respect to basic operating information that the Trustees need to be familiar with in order to effectively oversee the agency. We witnessed one such meeting during a site visit. While we generally applaud UTA's current commitment to public transparency, we are mildly concerned that open session working meetings between the Board and its various executive teams could chill dialogue, or prevent discussions of sensitive matters that do not qualify for closed session treatment.

RECOMMENDATION 24: During the next Phase of the monitorship, we intend to work with UTA's trustees and senior leadership to assess whether the agency has over-corrected in response to external criticisms regarding Open Meeting issues, and whether a recalibration is appropriate. To be clear, we do not mean to prejudge this issue, nor do we intend to criticize the agency's

⁹⁴ UTA characterized Proposition One as allowing "residents to increase sale tax in their respective counties for the purpose of increasing funding for transportation."

⁹⁵ Letter from Attorney General Sean D. Reyes to UTA, dated May 15, 2018.

⁹⁶ UTA You Tube Channel for Board Meetings, <https://www.youtube.com/user/UTArise/videos>.

⁹⁷ UTA Public Notices, <https://www.utah.gov/pmn/index.html>, Under Government Tab, Select "Special Districts" (Under Entity Tab, Select "Utah Transit Authority"; Under Body(s) Tab, Select "Board of Trustees").

move toward transparency. But we think it is prudent to test whether the current approach makes sense operationally.

(2) Transparency More Generally

UTA's website could use an update. For example, when last we looked the website included a link to Standard Operating Procedures and Manuals, but the content at the available link is an inconsistent compendium of agency documents. Similarly, corporate policies and the results of important third party reviews, such as the triennial Title VI Program Update, do not appear to be available.

RECOMMENDATION 25: During the next phase of the monitorship, we intend to delve more deeply into UTA's efforts to optimize its website for the availability of important agency information to the public.

CONCLUSION

With this Initial Report, the first phase of this independent monitorship of UTA is complete. The monitorship will now transition into the second phase, as described above, which will feature four semi-annual reports. We expect to issue our first such report in December 2019. We expect each semi-annual report to focus on specific aspects of UTA's reform efforts, as opposed to the agency, or its reforms, as a whole. The areas of focus will be drawn from among those described above in the Monitor's recommendations, as well as any relevant issues that arise during the course of the Monitor's continued work. Our work on the second phase will commence immediately.