

# EAGLE MOUNTAIN CITY

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Findings and Recommendations  
For the Period January 2010 through June 2013

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Report No. 13-EAGL-8La



OFFICE OF THE  
UTAH STATE AUDITOR



OFFICE OF THE  
**UTAH STATE AUDITOR**

February 24, 2014

Mayor Chris Pengra and Eagle Mountain City Council  
1650 E. Stagecoach Run  
Eagle Mountain, UT 84005

Dear Mayor and the City Council:

The Office of the Utah State Auditor has investigated multiple complaints regarding certain financial activities of Eagle Mountain City (City). We performed this investigation as a result of allegations received through our hotline. The results of our investigation are included in the attached findings and recommendations section of this report. We performed the following procedures:

1. We tested travel costs, including reviews of time sheets for the travel periods, related to the Professional Rodeo Cowboys Association (PRCA) National Convention and other rodeo or fair related conventions for the period of July 2010 through June 2013. The PRCA National Convention in winter 2013 was not tested because the City did not attend it.

See findings 1, 2 and 3.

2. We reviewed various activities of the City related to the construction of a pony express rider statue, including compliance with City ordinances and contracts for the period January 2010 through January 2011.

See findings 4 and 5.

3. We reviewed certain activities of Utah County (County) regarding its funding of the City's pony express rider statue for the period of January 2010 through January 2011.

This finding was issued in a separate letter to the Utah County Commission. (See report No. 13-EAGL-8Lb.)

4. We reviewed utility transfers for compliance with Utah Code 10-6-135 (3)(e) for fiscal year 2013.

No finding was issued. The City complied with applicable State laws.

5. We reviewed the City's December 2010 sale of a parcel of land designated as insignificant by the City.

See finding 6.

6. We reviewed the awarding of contracts for bleacher rentals in fiscal years 2013 and 2012 and the skate park in July 2008 for related party issues and proper bidding.

No finding was issued. The allegations were unsubstantiated.

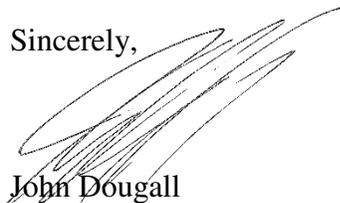
7. We inquired of the City's management about expenditures for employees' birthday lunches. The City's management admitted that prior to July 2012 they had a practice of taking out employees for lunch in their birthday month as a means of increasing employee morale. However, the practice stopped as of July 2012. Therefore, we did not investigate this practice further.

No finding was issued.

Our procedures were more limited than would be necessary to express an opinion on any of the items referred to above or to express an opinion on the effectiveness of the City's internal control or any part thereof. Accordingly, we do not express such opinions. Had we performed additional procedures or had we made an audit of the effectiveness of the City's internal control, other matters might have come to our attention that would have been reported to you.

By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the personnel of the City during the course of the investigation, and we look forward to a continuing professional relationship. If you have any questions, please contact Jenifer Vallejos, Special Projects Supervisor, at 801-450-4233 or [jvallejos@utah.gov](mailto:jvallejos@utah.gov).

Sincerely,



John Dougall  
Utah State Auditor

**EAGLE MOUNTAIN CITY**  
FOR THE PERIOD JANUARY 2010 THROUGH JUNE 2013

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# EAGLE MOUNTAIN CITY

## FINDINGS AND RECOMMENDATIONS FOR THE PERIOD JANUARY 2010 THROUGH JUNE 2013

### 1. QUESTIONABLE TRAVEL COSTS

For fiscal years 2011–2013, Eagle Mountain City (City) incurred travel costs related to special events, totaling \$6,049, which may have been improper or unnecessary. In determining whether these costs were proper and necessary, we considered whether a prudent person would consider them necessary and reasonable given the circumstances. We also considered whether the situation gave the appearance of a conflict or impropriety. The costs in question are detailed below:

- a. The City improperly paid \$379 for travel costs of the former mayor’s spouse, as follows:

2011 Professional Rodeo Cowboys Association (PRCA) National Finals Rodeo and charity event	\$169
2012 PRCA Convention registration and awards banquet	\$100
2013 PRCA Convention registration and awards banquet	\$110

The City represented that the payments were made because the spouse was a member of the City’s informal rodeo committee. However, not all members of the informal rodeo committee attended the convention. As such, we question the merit and appearance of this justification given the relationship to the former mayor. The City should only pay costs for people on official City business and not those of companions choosing to travel with them.

- b. The City did not comply with its Policies and Procedures and improperly paid for the following entertainment costs, totaling \$2,057, for the benefit of the former mayor, former special events director, and energy director (rodeo facilities manager):

2011 PRCA National Finals Rodeo	\$276
2012 PRCA National Finals Rodeo	\$596
2011 Charity event at the PRCA Convention	\$300
2012 Charity event at the International Association of Fairs and Expositions	\$300
2011, 2012, 2013 PRCA Convention awards banquets	\$585

The City’s Policies and Procedures, Section XIX, states that entertainment expenses not included in the cost of registration are not allowed. All these events were optional activities and were not included in the price of the conventions. The City did not document any justifications of an educational value in attending the rodeos. We believe the City could have obtained any related educational value by attending local rodeos. Therefore, these costs are considered entertainment costs. We also believe that any educational value would have been obtained in the first year. Thus, there is little to no benefit in attending additional rodeos. These costs might be considered taxable fringe benefits per IRS Publication 15-B if they were in excess of what was considered necessary and reasonable.

# EAGLE MOUNTAIN CITY

## FINDINGS AND RECOMMENDATIONS FOR THE PERIOD JANUARY 2010 THROUGH JUNE 2013

- c. The City incurred improper and unnecessary costs for lodging totaling \$1,864, per diem totaling \$1,597, and travel-related payroll because the length of stay was extended beyond the dates of the PRCA Convention in order for the travelers to attend the PRCA National Finals Rodeo which took place subsequent to the Convention. Based on the travel distance and the dates noted on the PRCA Convention schedule, we believe that 4 days of travel-related expenses were reasonable rather than the 6 days paid in fiscal year 2013 and the 8 days paid in fiscal years 2011 and 2012. We calculated the additional costs considering 3 nights' lodging and 4 days' per diem. This reasoning allowed for time to travel to the Convention site on the first day since only registration took place that day, and time to travel home on the fourth day since the convention ended at noon. Also, the per diem has been adjusted to reflect the increase in per diem that would have been allowed if costs related to attendance at the optional activities documented in b. above were also taken into consideration. Although we question the necessity of the additional travel-related costs beyond the four days, we recognize the City's right to exercise its discretion in determining the propriety of certain costs. While we believe there was time to network during the Convention since formal training sessions were only half days, the former mayor and former special events director represented that they used this time to not only attend the rodeo but also to network with possible sponsors, rodeo stock contractors, vendors, etc.; however, they were unable to provide documentation of the meetings.

To help prevent fraud, waste, and abuse and ensure the most effective use of taxpayer dollars, the City should conservatively evaluate the number of days necessary for travel and pay the related lodging, per diem, and wages based on that evaluation. Employees should be responsible for all extra costs associated with travel beyond actual convention dates unless otherwise justified and documented according to necessity or cost savings. If these costs are not considered necessary for conducting official city duty, they could be considered taxable fringe benefits per IRS Publication 15-B.

### Recommendation:

**We recommend that the City:**

- a. **Pay for only the costs of persons on official City duty and consider the need to report the costs incurred for the benefit of the former mayor's spouse as taxable fringe benefits. In addition, the City should avoid activity that gives the appearance of impropriety or abuse.**
- b. **Pay for only costs that are necessary, reasonable, and beneficial to the City and consider the need to report the costs of the former mayor, special events director, and energy director as taxable fringe benefits or determine whether the City should be reimbursed.**
- c. **Pay for lodging, per diem, and travel-related payroll costs as determined necessary and reasonable after considering all relevant information, such as travel distance, convention schedule, length of stay, meals included in registration, etc. and consider the need to report the costs of the former mayor, special events director, and energy director as taxable fringe benefits.**

# EAGLE MOUNTAIN CITY

## FINDINGS AND RECOMMENDATIONS FOR THE PERIOD JANUARY 2010 THROUGH JUNE 2013

### 2. LACK OF SUPPORTING DOCUMENTATION FOR EVENT-RELATED TRAVEL PAYMENTS

The City had inadequate or no supporting documentation for 38 of the 59 payments we tested for event-related travel. For example, the City made several payments related to convention travel without the convention documentation, such as brochures, schedules, etc. Documentation of this type provides necessary information regarding dates, costs, locations, etc. upon which to base other related expenses such as lodging, per diem, mileage, etc. The City should not make payments without adequate supporting documentation. Adequate supporting documentation includes items such as detailed, itemized receipts or invoices; convention schedules, agendas, and/or brochures; forms documenting who, what, why; etc. Without adequate supporting documentation, payments cannot be properly reviewed and approved to determine accuracy, propriety, proper recording, etc. The lack of adequate supporting documentation could indicate an intentional attempt to hide improper payments, a misunderstanding or disregard of internal controls, or carelessness. As a result, misappropriations or fraud could occur without detection. Although adequate documentation was not readily available for our review, we were able to obtain the documentation or other relevant information in order to determine the reasonableness of the payments.

#### Recommendation:

**We recommend that the City pay for only those costs which have adequate supporting documentation.**

### 3. LACK OF TIME SHEET APPROVALS

As part of our review of travel-related costs, we also reviewed time sheets for the same periods. Of 13 time sheets reviewed, 3 were not signed by the employee and 4 were not approved by the supervisor in accordance with City ordinances. The City should only pay employees when time sheets have been certified by the employee and reviewed and approved by a supervisor. Timesheet approvals are essential as they evidence that the employee accurately accounted for the time worked in behalf of the City. The lack of approvals could indicate an intentional attempt to hide improper payments, a misunderstanding or disregard of internal controls, or carelessness. Without adequate reviews and approvals of time sheets, time abuse is more likely to go undetected.

#### Recommendation:

**We recommend that the City process payroll based on timesheets which have been signed by the employee and reviewed/approved by the supervisor.**

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## FINDINGS AND RECOMMENDATIONS FOR THE PERIOD JANUARY 2010 THROUGH JUNE 2013

### 4. POSSIBLE MISUSE OF COUNTY TRCC FUNDS

The City may have misused Tourism, Resort, Cultural, and Convention (TRCC) tax funds of \$25,000 received from Utah County by purchasing only a maquette (small preliminary model) instead of the intended life-size pony express rider statue as required by the contract with the County. Although the County's contract was inadequate (as reported separately to the County) and did not include a time limitation for completing the statue, the City may have violated the primary intent of the contract since it currently has no plans to complete the life-size statue.

#### Recommendation:

**We recommend that the City review the contract with legal counsel to determine whether the contract requirements have been met and consider the City's need to repay the County \$25,000.**

### 5. IMPROPER HANDLING OF STATUE PROJECT

We question the City Council's handling of the construction of the pony express rider statue. We believe that based on the circumstances, the City Council might not have protected the best interest of the City based on the following reasons:

- a. The City did not protect its investment in the statue because the contract with the artist appeared to favor the artist rather than the City. The contract allowed the artist to retain the copyright rather than assigning the copyright to the City. By not handling the contract as a "work for hire," the City allowed the artist to retain the control over the design and cost to reproduce the life-size statue should the City decide in the future to have the life-size statue sculpted. We believe the City might have benefited from a "work for hire" contract so that it could have obtained the copyright and actual possession of the design. Then the City would not be limited to the original artist if they decided to proceed with the project.
- b. The City should not have approved the project based on "phase funding" or the process of completing projects in phases based on available funding. We believe the City used "phase funding" because its ability to raise funds to construct the life-size statue is questionable given 1) the price of the life-size statue, which is estimated to cost \$111,000, and 2) the lack of public support. At least one council member expressed concern at committing to this project for these reasons and suggested waiting until funds had been raised prior to the City Council approving the project. This suggestion would have been the conservative and prudent choice.
- c. The City Council made the decision to pay for the maquette using County TRCC funding of \$25,000 before the funding had been officially approved by the County. Although the City had received a letter which appeared to be awarding them the funds, the funding was not officially approved by the County Commission until 10 months later. Thus, the City should not have proceeded with the project since circumstances could have changed during the 10

# **EAGLE MOUNTAIN CITY**

## **FINDINGS AND RECOMMENDATIONS FOR THE PERIOD JANUARY 2010 THROUGH JUNE 2013**

months which could have resulted in the City not receiving the funds. In addition, the letter from the County indicated that the County was providing the “last” funds needed by the City to complete the life-size statue. This wording should have caused the City concern given that the County funds were not the *last* funds but the *only* funds. The County Commissioners have represented to us that they never would have approved the funding had they known the situation.

### **Recommendation:**

**We recommend that the City Council fulfill their fiduciary responsibilities by making prudent, conservative decisions that protect the best interests of the City. Specifically, the City Council should consider the following recommendations for similar projects:**

- a. Ensure that the City’s investment is protected by using so-called “work for hire” contracts that allow the City to retain the copyright for creative works paid for by the City.**
- b. Avoid “phase funding” for projects by completing all fundraising prior to committing funds.**
- c. Ensure that signed contracts are in place and valid prior to expending funds on projects, rather than relying on the possibility of future funding from the County.**

## **6. PROBLEMS WITH VALUATION OF “INSIGNIFICANT” PROPERTY**

City Ordinance No. O-03-2009 requires that the City Recorder determine the value of “insignificant” properties (as designated by the City) to be disposed of by the City by calculating the average per acre value using the values of the Utah County Recorder of unimproved agricultural land located within a five mile radius of the property. We noted that the valuation was applied consistently to all properties disposed of during the years 2009 through 2012. However, we found the following problems related to valuation of the properties:

- a. The valuation method the City is using may result in an undervaluation of some properties. We reviewed the sale of a piece of property in December 2010 which the City valued at \$2,159. However, the County Assessor valued the land for tax purposes at \$46,000 for two years and at \$10,000 for one other year. The City represented to us that the \$46,000 value is being disputed as too high. Regardless, even the \$10,000 valuation would indicate that the property was worth more than the price at which the City sold it. Considering the size of the property in question and the potential for it to increase the value of the purchaser’s adjacent property, it appears that the City could have valued this property at a higher amount. The City should use a valuation method which ensures it receives fair market value for properties sold.**

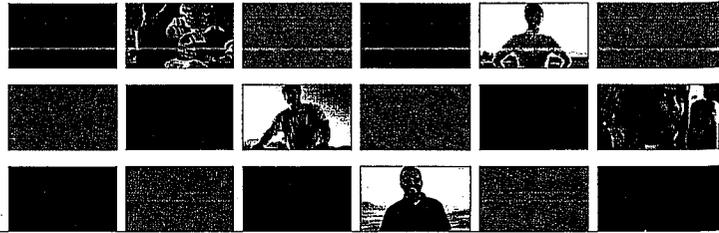
## **EAGLE MOUNTAIN CITY**

### **FINDINGS AND RECOMMENDATIONS FOR THE PERIOD JANUARY 2010 THROUGH JUNE 2013**

- b. The City Recorder did not maintain documentation to support calculations of market values for City properties disposed of during the period of 2009 to 2012. Because the supporting documentation was not maintained, we were unable to determine that fair values were determined for these properties in accordance with the City ordinance.

#### **Recommendation:**

**We recommend that the City evaluate its method for the valuation of “insignificant” properties to ensure it receives fair market value for properties sold. We also recommend that the City retain documentation in accordance with the City’s record retention requirements to support the calculations of the property valuations.**



February 20, 2014

Utah State Auditor John Dougall  
Utah State Capitol Complex, East Office Building, Suite E310  
P.O. Box 142310  
Salt Lake City, UT 84114-2310

Dear Mr. Dougall,

We have reviewed the draft of the management letter you sent us following the investigation of certain financial activities of Eagle Mountain City, due to allegations received through your hotline.

As requested, following is our response to the findings and recommendations, to be included in the final management letter.

Eagle Mountain City is very pleased to note that your investigation report confirms that our utility fund transfers comply with State law. As you are aware, the City received a large amount of public and media attention last year regarding allegations that the City was improperly managing our utility funds.

We are also pleased to note the allegations regarding the awarding of contracts for bleacher rentals and the skate park were unsubstantiated.

#### **Response to item #1 – Questionable travel costs**

We recognize the appearance of impropriety regarding the payments made for travel costs of the former mayor's spouse to the PRCA rodeo convention and banquets. We also agree that the city should only pay the costs of people on official city business. It was represented by the former mayor to staff that her spouse was on official city business, as a member of the rodeo committee. While there were many staff members who disagreed regarding the necessity of her spouse's attendance or the value of his involvement in the convention, it is our assertion that city staff did follow all municipal and statutory budgeting policies and procedures for this expense. The former mayor presented this expense through the budget process and did not expend above the travel and training budget that was allocated in the budget approval process. There is currently no city policy that restricts a spouse of an employee or city official from serving on a city committee or the city paying the costs for that spouse to conduct city business. We will make amendments to our policies and procedures to prevent situations like these in the future.

We understand that the city should not pay for entertainment expenses for individuals on city business attending a conference or convention. The position was held by the former special events director that this event was not meant for entertainment, but for networking, sponsorship opportunities and to form relationships with individuals that could bring notoriety to the newly created rodeo. We recognize that any such expenses have the appearance of conflict or impropriety and would be viewed as unnecessary and unreasonable to a prudent person. No City representatives attended the 2013 PRCA convention, and the City administration intends to divest itself from the PRCA Rodeo immediately. We will not be attending any future PRCA conventions or events.

These expenses were budgeted through the proper approval process as it existed at the time, and city staff followed all policies relating to these types of expenses. However, we do recognize that the expenses may be deemed unnecessary and unreasonable by a prudent person. We agree that we need to require and retain better documentation to accurately assess the need for the expenses submitted. We will review our process and policy for per diem and travel related payroll to prevent such conflicts from arising in the future.

**Response to Recommendations:**

We will take the following actions:

- a. Avoid any activity that gives the appearance of impropriety or abuse.
- b. Pay for only costs that are necessary, reasonable and beneficial to the city.
- c. Seek counsel in how to proceed with either reporting costs as taxable fringe benefits or seeking reimbursement.

**Response to item #2 – Lack of supporting documentation for event related travel payments**

While Eagle Mountain City has internal forms to track and determine the necessity of convention attendance, we recently amended policies to require more stringent documentation for receipts. We recognize that additional controls, such as requiring convention literature, would help to alleviate potential issues in the future. We will work with staff to write and implement new policies to this end.

**Response to Recommendations:**

We will take the following actions:

- a. Only pay for costs that have adequate supporting documentation.

**Response to item #3 – Lack of time sheet approvals**

The City acknowledges your recommendation that we should only pay employees when time sheets have been certified by the employee. This recommendation is consistent with our existing internal policy. Upon closer inspection of your recommendation and our written policy, it has come to our attention that under the Fair Labor Standards Act (FLSA), employers are required to pay employees for all hours worked on regularly scheduled paydays. Failure to turn in a timesheet does not warrant an

exception to these laws. FLSA clearly states that it is the employer's responsibility to track employees work hours, regardless if a timesheet is provided or not. We do not believe that any instance of failing to provide certification of a timecard would suggest intentional attempt to hide improper payments, a misunderstanding or disregard of internal controls, or carelessness. In order to comply with federal law, we cannot adopt your recommendation as stated; however, we believe that we understand the spirit of your recommendation. If we are correct, the spirit is to prevent time abuse, misunderstanding, and disregard of internal controls or carelessness.

You have recognized 7 instances of failure to either sign or approve time cards. The events department director was reporting directly to the former mayor at the time these deficiencies occurred. As of January 6<sup>th</sup>, the mayor does not have any responsibilities for management of employees as direct reports.

The City has been more diligent in timekeeping procedures since the occurrence that is recorded in your findings and we are actively pursuing the purchase of an electronic timekeeping system.

**Response to Recommendations:**

We will take the following actions:

- a. We will be amending our policies and procedures concerning the certification of timesheets to reflect our compliance with FLSA regulations. We will also continue to pursue an electronic employee time management solution.
- b. We will continue to include supervisory approval of time cards as an internal control. We recognize the value of this practice.

**Response to item #4 – Possible Misuse of County TRCC Funds**

The City has reviewed the Agreement for Co-Sponsorship of the Pony Express Rider Statue (the "Agreement"), and the City does not believe that it is in material breach of the terms and conditions of the Agreement as written.

**Response to Recommendations:**

We will take the following actions:

- a. As suggested, we will review the contract with legal counsel to determine whether the contract requirements have been met and consider the need to repay the County.

**Response to item #5 – Improper Handling of Statue Project**

City staff negotiated with the artist to obtain the best possible terms for the transaction based on the funds available. Although the City acknowledges that it may have benefitted by negotiating with the artist to obtain the copyright and design rights if the City had ended up constructing a larger version of the project, the copyright and design rights appear to have been critical to the artist, and it is unlikely that the artist would have agreed to convey those rights to the City without either an increase in the

price, or some other consideration by the City. Thus, although the City is constantly evaluating and revising its agreements in order to increase the benefit and limit the risk to the City, it appears that the City made a good decision not to pay additional money or give other consideration in order to acquire the copyright or exclusive design rights for this project. The City's decision to complete phases of the project also appears to have been reasonable at the time, as the phasing had the potential to increase the probability of the City being able to raise additional funds for a larger version of the project. The City is disappointed that we were not able to raise additional funds, and with the benefit of hindsight, may have handled the project differently. We appreciate your recommendations for alternatives for contracting any future projects.

**Response to Recommendations:**

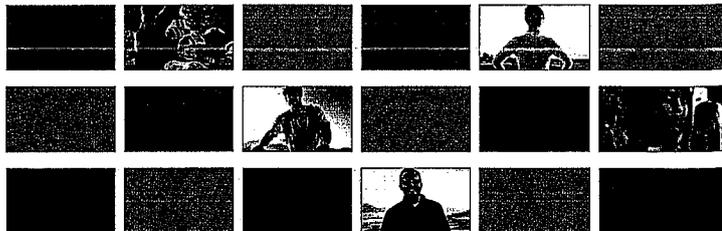
We will take the following actions:

- a. If we pursue any future contracts of a similar nature, we will give due consideration to using a "Work for hire" contract.
- b. We will avoid phase funding for projects of this nature.
- c. We will avoid expending funds prior to signed contract being in place.

**Response to item #6 – Problems with Valuation of "Insignificant Property"**

The City discontinued the disposal of insignificant property in 2012. However, in accordance with City Ordinance No. O-3-2009, the City used fair market value, obtained through Utah County, to determine the cost per acre foot on properties that were disposed of between 2009 and 2012. While the City does not have the specific properties that were used to calculate the cost per acre foot, the information is on record with Utah County and supports the approximate values the City used for the disposals. During the approval of the Land Disposal Ordinance, the City Council indicated that they did not want the City to profit from the disposal of public property; Council requested that staff use the average per acre value, within a five mile radius, once the administrative costs for processing the applications were covered. These properties were viewed as a liability, as they were not improved and the City did not have the funds to improve or maintain them. Formal recommendations regarding the proposed valuation of properties that were disposed, including acknowledgements from the former mayor, are on file with the City Recorder's Office. Any additional costs for a formal evaluation would have defeated the purpose of an affordable disposal of land to the residents, and would have been contrary to the City Council's intentions.

The parcel that the City disposed of in 2010, and was later valued by Utah County at \$46,000, was incorrectly coded as a buildable lot by the County. Additionally, the current value of \$10,000 is likely to be reduced, if protested by the owner in the future. Other properties that were disposed of by the City, and coded accurately by the County, were valued at a much lower rate. Parcel Serial No. 49:647:0186, which is 0.099 acres, was disposed of by the City in December 2010, is valued by the County at .14 cents/sq. ft. (see attached). Further research shows that property values were not impacted by the additional acreage that was added to private properties through the land disposal process.



The circumstances surrounding the property that was valued at \$46,000, in our opinion, is an anomaly and it could be argued that if it had been coded properly when it was recorded at Utah County, it would have been valued at the same rate as other disposals during that time period. Although the property in question is larger, there are no provisions in the code to suggest that larger properties should be disposed of at a higher value per acre foot.

**Response to Recommendations:**

We will take the following actions:

- a. Should the city decide to restart the disposal of insignificant properties, we will evaluate the best method for valuation and continue to apply consistent calculations for all properties.

We appreciate you pointing out that, "By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments." Eagle Mountain City is very committed to being open and transparent with our finances and budget processes. Improvements to our procedures have already occurred under our current City Administration and Finance Director, and we look forward to implementing additional controls as noted in our responses. We take our stewardship of taxpayer dollars seriously.

Sincerely,

Mayor Christopher Pengra