



January 24, 2014

**Utah State Legislature
Members of the Senate and House
Utah State Capital Complex
350 North State
Salt Lake City, Utah 84114**

Dear Members of the Legislature,

The Governing Authority (GA) of the Utah Science Technology and Research (USTAR) initiative is pleased to submit this response to the legislative audit of USTAR, dated October 15, 2013.

We believe it is extremely important to provide a full and detailed response to the audit results. The Legislature has invested significant tax dollars in the USTAR initiative and we acknowledge a significant obligation to the citizens of Utah and to the Legislature to make a full accounting of USTAR's performance. USTAR cannot be successful without full support and backing by the Legislature, the Governor, Utah's higher education system, business leaders, and the citizens of Utah. We recognize that the audit raised questions about USTAR's performance and management, and we desire to provide additional information.

To ensure a complete, accurate and independent evaluation of USTAR's performance against the commitments made at the inception of the initiative in 2005, the GA engaged, through a competitive RFP, Tanner LLC, a qualified third party and one of Utah's premier CPA/audit/consulting firms. Tanner's engagement was to verify USTAR's progress in relation to the projections and promises made when USTAR was legislatively created and to validate the GA's responses to the legislative audit. Tanner was provided information from USTAR detailing external funding and jobs to validate as documented in the attached Tanner LLC report.

The following is a summary of key performance measures (see attached Tanner report):

	Original Economic Impact Commitment Cumulative (2006-2013)	Revised Economic Impact Commitment Cumulative (2006-2013)	Actual Economic Impact Cumulative (2006-2013)
External funding	\$ 204,000,000	\$ 165,000,000	\$ 285,206,516
Engineering contracts	\$ -	\$ -	\$ 151,544,942
License revenue	\$ 2,996,000	\$ 2,355,000	\$ 95,433

	Original Economic Impact Commitment Fiscal Year 2013	Revised Economic Impact Commitment Fiscal Year 2013	Estimated Economic Impact Fiscal Year 2013
Total jobs	4,511	3,564	1,315

At year 7 of a 30-year program, we are pleased that USTAR is exceeding the promised levels of combined economic impact in the areas of external funding and engineering contracts and with progress in license revenue and is on schedule to produce significant economic benefit to the state. Job creation is somewhat behind projected levels for year 7 but significant economic estimates of employment earnings and State tax revenue are occurring as shown in the 2011 BEBR report. From the outset, everyone associated with USTAR, including the Legislature, understood it is an investment in the future, designed to create long-term economic value. It takes a number of years to recruit world-class scientists, construct research facilities, conduct basic research, and turn that research into viable commercial enterprises with the associated jobs and tax revenue. USTAR was impacted, like every other enterprise, by the deep global recession, but is moving forward to meet its goals.

A significant part of the legislative audit report was focused on a one-page promotional piece that USTAR’s staff provided to legislators in 2013. This promotional piece was not fully vetted with the GA and unintentionally mischaracterized USTAR’s Total Economic Impact as “Return on Investment (ROI).” Other aspects of the one-page promotional piece had not been carefully tested and had nothing to do with the promises and expectations set forth in the 2005 Prospectus. The legislative auditors were asked to verify information in the promotional piece and focused extensively on that one-page summary, especially taking issue with USTAR’s purported ROI. We agree the one-page summary should not have been presented as it was, and that USTAR’s staff should have reported only on the items projected in the 2005 Prospectus to be more clear as to the results to date. This, however, should not detract from USTAR’s accomplishments in meeting the performance measurements projected to-date in the 2005 Prospectus.

We submit this response to fully address the matters raised by the audit, resolve questions, and provide confidence to policymakers that the state’s investment in USTAR is producing significant positive economic impact and is well positioned to continue leveraging the invested tax dollars for Utah’s future. Although we may disagree with certain details of the audit findings, we are appreciative of the matters raised, and this report outlines our commitment and the steps taken to sharpen governance and administration to meet and go beyond the audit recommendations. After reviewing the Tanner LLC report, we are pleased that it validates USTAR’s performance and progress.

The audit findings and recommendations have been separated into two parts. The first part (Chapter 2 of the audit report) is the most important. It deals with USTAR’s economic performance regarding external funding awards, commercialization success, and job creation. It goes right to the heart of whether USTAR is fulfilling its mission of generating new businesses in large dollar markets, creating jobs and ultimately boosting tax revenue. We are confident that

USTAR is on track, and, in fact, ahead of projections in some cases, to fulfill the promises outlined in the original 2005 Prospectus.

The second part of the audit (Chapters 3-6) deals with administrative and governance matters. We take the audit findings very seriously and have taken steps to deal with each issue raised and each recommendation made. In some cases, the legislative audit staff did not receive requested documentation of USTAR activities and operations in a timely fashion. USTAR management and staff, with the assistance of Tanner LLC, have subsequently researched and gathered key information verifying USTAR's performance and administrative activities. We regret that the legislative auditors did not receive all of the needed data and information.

As to governance, we believe the GA has been actively involved and has provided close oversight, direction and approval of USTAR activities.

In the spirit of accepting criticism constructively, we have assessed and reviewed the legislative audit report's findings and recommendations. Although we may disagree as to the tone and severity of some of the legislative audit report's findings, we are pleased to implement the recommendations. We feel we have already met, or have taken significant steps to meet, each of the 15 recommendations.

GA Response to the Legislative Audit

- USTAR is on schedule and is fulfilling its promises.
- USTAR is well-governed.
- USTAR has taken necessary steps to improve management practices and reporting.
- New businesses with great potential are being created.
- The Legislature's USTAR investment is being highly leveraged and should continue. The result will be excellent private sector jobs and increased tax revenues.

The most effective and objective way to measure USTAR's performance is to compare the actual results to the 2005 USTAR Prospectus (the Prospectus), where the original performance measurements were established. Throughout USTAR's seven-year life, the GA has measured progress and objectives against the 2005 projections (Prospectus), *as adjusted to reflect actual legislative funding*. The original projections were based on \$25 million annual on-going state appropriations for research. Actual research funding has averaged roughly \$17.7 million per year, including \$33 million in one-time federal ARRA stimulus funds in 2010 and 2011. Total legislative funding for the entire USTAR program, including outreach, has averaged \$20.7 million annually. Thus, metrics like external funding, USTAR companies, jobs created, and employment earnings must reflect the reduced funding levels.

USTAR has recruited top scientists and their teams, who are conducting research in disciplines where multi-billion dollar markets exist. These research teams and other USTAR-promoted initiatives are using and benefiting from the world-class USTAR research facilities at the University of Utah and Utah State University. Some of these efforts are also creating new businesses with great potential. New research facilities and outreach teams are supporting and helping small businesses in rural areas. The Economic Development Corporation of Utah and Governor's Office of Economic Development both say that USTAR has become an important magnet for the many companies that are looking for innovation infrastructure as they consider relocating or expanding. We encourage the Legislature to build on this excellent foundation and continue to invest in Utah's economic future.

"As we seek to attract new businesses to Utah and help existing businesses expand, we find USTAR to be an important asset. With its spin-out and spin-in features, its regional outreach programs that provide a wide range of services, USTAR provides an innovation infrastructure that expanding and re-locating businesses are looking for."

--**Jeff Edwards**, President & CEO, Economic Development Corporation of Utah

In summary, we encourage the Legislature to:

- Measure USTAR's progress against the promises made in the 2005 Prospectus.
- Recognize that USTAR is just ending the germination phase of its existence, and that green shoots are now emerging with great promise to bear bountiful fruit.
- Continue to carefully monitor and audit USTAR's progress and performance. Everything about USTAR is open to scrutiny and inspection.
- Continue funding the USTAR initiative at current levels so that Utah will receive the promised new companies, excellent jobs and tax revenue.

We look forward to further discussion, and we are pleased to answer any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Bell". The signature is fluid and cursive, with the first name "Greg" and last name "Bell" clearly distinguishable.

Greg Bell
Chairman, on behalf of the USTAR Governing Authority Board

Introduction

The Utah Science Technology and Research (USTAR) initiative was created in the 2006 Utah legislative session with the passage of SB75. The new entity grew out of ideas developed by Utah State University President Kermit Hall and Dr. Lorris Betz, former University of Utah interim president and Health Sciences executive. USTAR was the culmination of nationwide research and investigation by Utah business and civic leaders into economic development best practices and opportunities.

Since the beginning, the vision and promise of USTAR has been to strengthen Utah's economy over a 30-year period by bringing world-class science and technology research teams to the state in targeted disciplines where multi-billion dollar global markets exist. In addition, the Legislature assigned USTAR the responsibility to provide support for businesses and entrepreneurs throughout the state via outreach efforts. The USTAR initiative, now seven years old, is designed to:

- Enable creation of new, high-tech companies
- Secure external funding through grants and investment
- Produce good jobs
- Produce increased tax revenue for state and local governments

Performance measurements, based on \$25 million on-going annual appropriations of state dollars, were established in the 2005 USTAR Prospectus to track and measure USTAR's performance. However, the Legislature has never funded USTAR at the \$25 million per year level with state dollars.

Through FY 2013, USTAR has received \$145 million in state appropriations, an average of \$20.7 million per year (research funding of \$17.7 million per year), including \$33 million of one-time federal ARRA stimulus funds in FY2010 and FY2011. The Legislature, in 2006, also appropriated \$161 million in one-time funds and bonding to build world-class research facilities at Utah State University and the University of Utah. Those buildings are now operational and are hosting world-leading research.

USTAR is exceeding the critical performance measurements of combined external funding awards and contracts, and is making great progress in license revenues, when measured against the 2005 Prospectus, as adjusted for actual funding levels. Job creation to date is lagging behind projections, but this is not unexpected in the early stages of the program. Certainly, the massive economic downturn that began in 2008 hurt job creation and business spinoff numbers, just as the downturn hurt businesses in every sector. Because the Legislature continued to fund USTAR through the downturn, USTAR is poised to create great economic value for Utah.

“Since the beginning, the vision and promise of USTAR has been to strengthen Utah's economy over a 30-year period by bringing world-class science and technology research teams to the state in targeted disciplines where multi-billion dollar global markets exist.”

“USTAR is exceeding the critical performance measurements of combined external funding awards and contracts, and is making great progress in license revenues, when measured against the 2005 Prospectus, as adjusted for actual funding levels. “

“Job creation to date is lagging behind projections, but this is not unexpected in the early stages of the program.”

The GA is committed to the wise use of precious state dollars and to meeting performance expectations as the initiative continues into the future. To ensure complete accountability, USTAR will engage an external accounting firm to conduct an annual audit to validate reported performance metrics. USTAR will also continue to report to the appropriate legislative committees, as required by statute, or more often according to the pleasure of the Legislature.

“The GA is committed to the wise use of precious state dollars and to meeting performance expectations as the initiative continues into the future.”

“USTAR will also continue to report to the appropriate legislative committees, as required by statute, or more often according to the pleasure of the Legislature.”

“The one-page promotional piece did not contain the necessary detail and appropriate performance measures. This led to misunderstanding of the performance to date of USTAR.”

“In response to the findings in Chapter II of the legislative audit report, the GA engaged Tanner LLC, a qualified third party and one of Utah’s premier CPA/audit/consulting firms, to validate USTAR’s progress in relation to the projections made when USTAR was legislatively created.”

In organizing our response, we have followed the format and chapters of the audit report. The findings of each chapter are noted, followed by our response. No response was needed to Chapter I as it is introductory in nature, providing an overview of USTAR.

Chapter II: USTAR’s Reported Return on Investment is Inaccurate and Flawed

Chapter II of the legislative audit focuses on a one-page promotional piece that was provided to the Legislature during the 2013 legislative session. The one-page promotional piece did not contain the detail included in the USTAR annual report that was also provided in the 2012 legislative session.

The one-page promotional piece did not contain the necessary detail and appropriate performance measures. This led to misunderstanding of the performance to date of USTAR. The GA had no intent whatsoever to mislead the Legislature. In response to the findings in Chapter II of the legislative audit report, the GA engaged Tanner LLC, a qualified third party and one of Utah’s premier CPA/audit/consulting firms, to validate USTAR’s progress in relation to the projections made when USTAR was legislatively created. A copy of the Tanner LLC report is attached to this letter. The Tanner LLC report provides the most recent USTAR performance measurements available in order to provide the Legislature with most relevant data available to assess the progress of USTAR.

The Tanner LLC report demonstrates that USTAR has been very successful attracting significant outside research awards to Utah. These combined awards, including license revenues, leverage the state of Utah’s funding of USTAR and are a significant boost to Utah’s economy. While the great recession of 2008 has been a significant hurdle to USTAR’s results, the GA understands that USTAR is a 30-year investment that provides the greatest benefit in the later years of the program.

Chapter III: USTAR Should Improve Oversight of Research Team Funding

Audit Finding: *USTAR should clarify expectations for research team funding. USTAR has not clearly established how performance of research teams should be evaluated as either successful or unsuccessful. Additionally, USTAR has not established an adequate system to identify and report commercialization revenue.*

GA Response: The research teams are functioning very well and the GA and management have provided appropriate oversight of research teams and funding through both formal and informal means.

USTAR Management has used a standardized template for research team reporting key metrics and expenses for FY9 through FY13. USTAR has required each funded research team to prepare an annual report to the GA, using the template as a baseline. In FY12, USTAR updated its template to reflect a greater emphasis on commercialization outputs. A copy of the standardized template for key metrics and expenses of research teams is attached as *Appendix 1a* and the team review template is attached *Appendix 1b* to this response.

Beginning as early as September 2009, the USTAR board has collected annual metrics on each funded research team. Evidence of this is provided in the meeting minutes which are available for review. We track key metrics including disclosures submitted, provisional patents filed, patents filed and patents issued, active licenses, and companies started and brought to Utah. Research teams are currently under contract to provide measures as requested from the GA.

As noted by the audit report, it is difficult to benchmark “expectations for some metrics, such as research breakthroughs ...” (P26). However, because the GA, management and staff are in frequent direct communication with research teams, we know what progress they are making or not making, whether or not metrics can be quantified in written reports.

In addition to written reports and review of metrics and performance standards, the GA and USTAR management and staff interact on a regular basis via in-person meetings, phone calls and electronic means with Principal Investigators and relevant university personnel.

At the November 7, 2013, USTAR Board meeting, the board approved a motion to create a USTAR Project Subcommittee that will work closely with the University of Utah, Utah State University and private sector stakeholders to ensure a greater emphasis on USTAR projects which reflect the needs of industry, and to make ongoing recommendations for both project improvement and USTAR performance and reporting.

This subcommittee will include at least two GA members, representatives of the University of Utah and Utah State University, and members of the USTAR Advisory Council and their industry association stakeholders in the Utah Technology Council, the BioUtah LifeScience association and the Utah Manufacturing Association, among others. The subcommittee will review the current information that is reported by USTAR-funded research teams and determine an improved standardized template which will begin to be used in early 2014 and will be finalized by July 2014 (based on feedback in the January through June 2014 timeframe with the USTAR faculty presenters).

“The USTAR Board has collected annual metrics on each research team... including disclosures submitted, provisional patents filed, patents filed and patents issued, active licenses, and companies started and brought to Utah.”

“The board...will work closely with the University of Utah, Utah State University and private sector stakeholders to ensure a greater emphasis on USTAR projects which reflect the needs of industry, and to make ongoing recommendations for both project improvement and USTAR performance and reporting.”

“The GA acknowledges that commercialization revenue must be reported, tracked, and appropriately divided. However, it will be some time before USTAR receives significant commercialization revenue.”

The GA acknowledges that commercialization revenue must be reported, tracked, and appropriately paid out. However, it will be some time before USTAR receives significant commercialization revenue. The statute requires that the first \$10 million of commercialization revenue will be shared by the universities, with the next \$5 million allocated to GOED’s Technology Commercialization and Innovation Program. After the first \$15 million is allocated, then revenue above that amount will be divided 50/50 between the universities and USTAR.

USTAR currently has in place a commercialization revenue sharing and distribution policy in an administrative rule. The GA has collected annual reports on commercialization metrics dating back to September 2009, as annotated in the meeting minutes for the September 2, 2009, Board meeting. Gathering this information required a review of recordings of past meetings and the information was inadequately provided to the legislative auditor. During the October 22, 2013 USTAR Board meeting, the GA approved a motion to create a USTAR Audit Subcommittee to make recommendations to the GA on an improved format for annual reporting. At the November 7, 2013 GA meeting, this template was reviewed for feedback with the entire Board and it was approved at the December 5, 2013 GA meeting. A copy of the report definition is attached as *Appendix 2a* and the report template is attached as *Appendix 2b* an Exhibit to this response. The final metrics for the University of Utah and Utah State University were approved by the GA Audit Subcommittee at the December 5, 2013 meeting.

Audit Finding: *USTAR should ensure that budgetary practices provide adequate oversight of research funds. USTAR should also ensure that its budgetary practices provide adequate oversight of research team funds by following budget approval and funding allocation rules, clarifying its financial commitments to research teams, and ensuring that the uses of research team monies for purposes other than researcher activities are appropriate and receive prior approval.*

GA Response: The USTAR GA carefully follows proper state budgetary practices in approving and overseeing budgets and has appropriately approved required actions.

On a few occasions, the printed minutes have not reflected this GA oversight, but we have researched meeting recordings, which show that proper approvals and budgetary procedures were followed. Unfortunately, not all of this documentation had been made available to auditors on a timely basis, which resulted in the conclusions they reached.

USTAR’s enabling legislation allows significant board discretion in use of research money. A recent letter dated July 10th 2013 from the University of Utah’s President David Pershing discusses the issues of on-going salary support and salary commitments with the University of Utah, which have been resolved. In addition, it should be pointed out that some university faculty members who are not paid by USTAR are engaged in USTAR projects. They both benefit from and contribute to the USTAR program. Thus, USTAR’s impact is being leveraged, accruing benefits to the state, without additional USTAR dollars being spent.

“Issues of on-going salary support and salary commitments with the University of Utah have been resolved.”

At Utah State University, in one case personnel were hired using research funding to solicit contracts and investments, with approval of the GA. This expenditure was deemed appropriate, and the scientists obtained a \$130 million contract, directly benefiting USTAR’s research efforts.

USTAR has had contracts with the University of Utah and Utah State University dating back several years, but USTAR plans to update these contracts in FY15 to include Appendices that will specify the annual reporting requirements of the research teams as well as the detail report templates and definitions associated with commercialization metrics.

In the audit, the use of USTAR funding for four types of scenarios was discussed: equipment sharing projects, affiliate projects, time delayed projects and spin-in projects. The USTAR Commercialization Project definitions template now specifically addresses these four types of projects about which the audit team inquired.

Chapter IV: USTAR Management Has Not Sufficiently Overseen Research Buildings

Audit Finding - Building Leases: *USTAR did not implement lease agreements with university officials before research faculty took up occupancy. To date, lease agreements have still not been executed, even though USTAR’s USU and U of U facilities were put into service in September 2010 and April 2012, respectively.*

Response: **USTAR has prudently overseen its buildings; ownership of the buildings has been vested in USTAR.No violation of USTAR’s statutory authority occurred;**

USTAR has established formal agreements with the universities that clarify lease arrangements and operating and maintenance (“O&M”) responsibilities. While the agreement was executed subsequent to the legislative audit, the terms have been in drafting and discussion since the second half of 2012 – before the audit. See the following finding and response for additional insight.

It is important to note that the authorizing statute for USTAR puts forward only the broad strokes of the arrangement between the universities and USTAR. The GA has prudently implemented the spirit and intent of its founding legislation. There was never any question about the ownership/operation of the USTAR buildings. In all regards, USTAR operated within its authority.

“USTAR plans to update these (University) contracts in FY15 to include Appendices that detail the annual reporting requirements of the research teams and the detail report templates and definitions associated with commercialization metrics.”

“USTAR has established formal agreements with the universities that clarify lease arrangements and O&M responsibilities.”

Audit Finding – O&M Costs: *USTAR has not clarified responsibility for the operations and maintenance (O&M) costs of its facilities. This omission has resulted in the use of USTAR’s research team funds to cover the majority of O&M expenses. This also resulted in inconsistent contribution levels from the U of U and USU toward USTAR buildings’ O&M costs.*

GA Response: USTAR and the universities agreed on logical cost-sharing arrangements before the buildings were completed and have followed those agreements.

As noted above, USTAR executed agreements and implemented proper budgetary procedures for leases and O&M. While only recently memorialized, formal negotiations began in the first half of 2012.

USTAR and the universities mutually agreed that USTAR would be responsible for the O&M in the early days following construction until such time as the research funding from external sources generated enough overhead revenues for the universities to support the buildings directly. This pattern wasn’t an oversight, but was intended and is perfectly consistent with USTAR’s statutory authority.

Audit Finding – Sales Tax: *USTAR failed to budget for sales tax requirements associated with the construction costs of its research facilities. This planning error has delayed completion and operation of the nanofabrication laboratory at USTAR’s U of U facility.*

GA Response: USTAR confronted the tax issues early on and dealt with them. The sales tax issue was not a significant factor to the completion of the nanofabrication facility.

USTAR oversaw the construction of two major projects with a combined budget of \$225 million (according to the audit report) with only a \$3 million (or a little more than 1 percent of that budget) overrun. This overrun is incorrectly attributed to USTAR failing to budget for sales tax on construction materials. The GA believes that completing two large construction projects over five years on two separate campuses well within 2 percent of the budget is a success.

The shortfall for the U nanofabrication laboratory did not arise from the failure to anticipate sales taxes on construction materials. USTAR management was aware sales taxes needed to be paid. At the Utah State University facility, building costs were low enough to cover sales tax. At the University of Utah project, USTAR anticipated obtaining a sales tax waiver. However, the waiver was denied as shown as attached in *Appendix 3*. The building was re-engineered to reduce costs and the sales tax cost was absorbed.

The problems with the nanofabrication lab were caused by the architect and were not a result of failing to plan for sales tax. Scientists observed that the nanofabrication facility did not meet required standards. The state filed a lawsuit against the architectural firm that designed the facility, and settled for \$700,000. With additional contributions from USTAR and the University of Utah, the

“It was mutually understood between USTAR and the universities that USTAR would be responsible for the O&M... until such time as the research funding from external sources generated enough overhead revenues for the universities to support the buildings directly.”

“The shortfall for the U nanofabrication laboratory did not arise from the failure to anticipate sales taxes on construction materials. USTAR management was aware sales taxes needed to be paid.”

laboratory is now up and running, but will require an upgrade in order to reach ideal specifications. The associated costs were not a result of USTAR's budgetary controls or lack thereof.

Furthermore, it should be noted that The State Division of Construction & Facilities Management (DCFM) and the universities were primarily responsible for contracting and construction; USTAR is only a customer. DCFM has the staffing, skills and expertise to manage projects of this sort, upon which USTAR reasonably relied.

Both buildings at Utah and Utah State are operational and are hosting world-class research. They will be a great asset for many years to USTAR, the universities, and the State of Utah.

Chapter V: USTAR's Management of Outreach Can Improve

Audit Finding – One region lacks performance standards. *Some of the [outreach] contracts outline performance standards or expectations that outreach programs are expected to meet, but one region's contract does not.*

GA Response: All regions are held to consistently high standards.

Regardless of the absence of performance standards in one regional agreement, all regional outreach programs are now and have always been held to consistently high standards. Each of the regional managers reports periodically directly to the GA and is held strictly accountable not only for the use of funds but for the results associated with his/her program in his/her respective region.

Audit Finding – Bioinnovation Gateway contract expired. *We also found that one of the outreach initiatives, the Bioinnovation Gateway (BiG), does not have a current contract with USTAR even though USTAR is funding the initiative. USTAR has continued to fund this initiative without a current contract in place. The agreement between BiG and USTAR expired over two years ago on June 30, 2011.*

GA Response: The Bioinnovation Gateway contract was renewed in July 2012.

The BiG Memorandum of Understanding was signed in July 2012 for FY2013. It appears that this contract was not provided to the legislative auditors. The FY2014 contract was approved by the GA on November 22, 2013. A current contract is now in place and the 2011 lapse was remedied six months before the audit. The GA will ensure contracts are in place in the future.

“Both buildings at Utah and Utah State are operational and are hosting world-class research. They will be a great asset for many years to USTAR, the universities, and the State of Utah.”

“The BiG Memorandum of Understanding was signed in July 2012 for FY2013”

Audit Finding – Policies and procedures are needed. *These broad statutory directives [Utah Code 63M-2-202(2)] help to guide outreach program objectives, but additional clarity through administrative rules or policies and procedures is needed. As one outreach director stated, Utah Code provides objectives to follow, but USTAR administrators need to “determine how to measure outputs for these objectives, create a baseline, and create goals from the baseline created.”*

GA Response: Consistent patterns of reporting and feedback have served to establish well-understood practices.

The GA has provided consistent direction with respect to the goals and objectives for regional directors and disagrees with the suggestion that directors lacked adequate guidance, supervision, or feedback. While the GA acknowledges opportunities for improvement in standards and reporting, it does not agree with the implication that such standards were deficient.

The statutory language left broad leeway for USTAR to develop and operate the outreach program. USTAR established a disciplined and accountable outreach initiative that has been highly successful and applauded by regional college and university presidents and by legislators representing those areas. Funding from a variety of sources is being highly leveraged through the outreach programs.

Audit Finding – Outreach Directors Are Unclear About Reporting. *Outreach directors are unclear about how to track and report performance.*

GA Response: Regional directors are directly accountable to the GA for meeting performance measures, and they receive direction from the GA.

Differences in standards exist largely by the design of the GA in order to ensure that regionally specific goals and outcomes are sought and measured. The audit report itself acknowledges that the difference in responses “reflects regional differences and strengths.” The USTAR Executive Director, under the direction of the GA, has required reporting through a centralized database currently managed using Salesforce.com. As noted, each regional director is required to periodically report on his/her performance directly to the GA.

Audit Finding – The number of outreach programs may exceed statutory authority. *USTAR’s outreach program may be in violation of legislative intent because they exceed statutory limitations on locations.*

GA Response: The number of outreach programs has not exceeded statutory authority.

USTAR’s outreach program has always been consistent with legislative intent, which allowed five outreach offices. While one USTAR brochure lists six offices, two in Salt Lake County, in reality the BioInnovations Gateway in Salt Lake County and the USTAR center at Salt Lake Community College constitute one office with a satellite. Thus, five primary offices exist, consistent with legislative intent.

“USTAR established a disciplined and accountable outreach initiative that has been highly successful and applauded by regional college and university presidents and by legislators representing those areas.”

“USTAR’s Outreach program has always been consistent with legislative intent, which allowed five outreach offices.”

Audit Finding – USTAR funded extra-statutory programs with \$4.8 million. *USTAR Has Invested \$4.8 Million in Outreach-Related Programs and Initiatives That Are Not Governed by Statute. While these programs and initiatives may serve worthy purposes, it is unclear if they should be part of USTAR.*

GA Response: The programs identified in the audit were approved by the GA according to statute and provide significant benefits as anticipated by the statute.

A reading of the statutory charges to “broker,” “engage,” “screen,” “connect,” “assist” and “disseminate” the activities of entrepreneurs around the state has unequivocally been advanced as intended by the programs in question: BiG, the SBIR/STTR Assistance Center, the Technology Commercialization Grant program and other strategic initiatives. Each of these programs has been specifically approved by the GA.

- The BiG program was approved by the GA Board in 2009 and in each year since its approval, USTAR management has presented an annual update on BiG accomplishments. The GA has approved the operating budget for BiG annually.
- The SBIR/STTR Assistance Center (SSAC) was approved by the GA Board in 2009 and in each year since its approval, USTAR management has presented an annual update on SSAC accomplishments. The GA has approved the operating budget for SSAC annually. The SSAC Board (consisting of representatives from GOED, Utah SBDC, SLCC’s Miller Innovation Center, Wayne Brown Institute, Grow Utah Ventures and USTAR) meets quarterly to review progress and ensure that SSAC continues to operate within the guidance found in Utah Code 63M-2-202(2).
- The Technology Commercialization Grant program was approved by the GA Board in 2010 as part of the ARRA funding.
- Strategic initiatives are one-time funds that the GA Board approves annually with a stipulation that certain criteria should be met before spending the funds.

The Outreach effort has been very successful, enhancing technology entrepreneurship around the state and leveraging public funds.

USTAR has always tracked and will continue to track the activities and results of the Outreach teams. The tracking will be refined and enhanced to better enable the GA to continue to measure regionally specific performance measures and outcomes.

“BiG, the SBIR/STTR Assistance Center, The Technology Commercialization Grant program and other Strategic Initiatives...has been specifically approved by the GA.”

“USTAR has always tracked and will continue to track the activities and results of the outreach teams. The tracking will be refined and enhanced to better enable the GA to continue to measure regionally specific performance measures and outcomes.”

Chapter VI: USTAR Administration and Governance Needs to Improve

Audit Finding: *Management should develop policies and procedures for approval by the Governing Authority and should consider adopting a conflicts-of-interest policy.*

GA Response: Policies and procedures governing administration and operations have been in place since USTAR's beginning. USTAR has 64 pages of Internal Accounting Standard Operating Policies and Procedures (SOPs) that follow examples from other agencies.

"The USTAR team developed its first policies in early 2008 and has added to the SOPs on an annual basis."

The USTAR team developed its first policies in early 2008 and has added to the SOPs on an annual basis. A Table of Contents for his Policy and Procedures guide is attached as Appendix 4. USTAR's new Finance Manager who was hired in August 2013 is in the process of reviewing the 64 pages of USTAR SOPs to determine if any updates are needed.

"While no requirement exists for the GA to establish a conflicts-of-interest policy, one has been developed and implemented in concert with the Attorney General's office."

Given the complexity of the USTAR SOPs, USTAR management has developed a one-page summary to guide the annual calendar for GA Board Meetings is as attached as Appendix 5. This summary outlines an annual review and approval process for new SOPs in the October-December timeframe.

While no requirement exists for the GA to establish a conflicts-of-interest policy, one has been developed and implemented in concert with the Attorney General's office as attached as Appendix 6. The audit report did not find any conflicts-of-interest concerns with either USTAR staff or GA members.

Audit Finding: *Management should work to ensure compliance with appointment requirements of chair.*

GA Response: Compliance with appointment requirements for the board chair and other GA members has been implemented.

"For the record, no GA members had received re-appointment letters, not just the chair."

On November 6, 2013, Governor Herbert provided a letter to Board Chairman Dinesh Patel acknowledging his committed service and indicating his desire to transition former Lt. Governor Greg Bell into the Chairmanship on January 1, 2014. For the record, no GA members had received re-appointment letters, not just the chair.

USTAR has always published an annual list of its members at a USTAR Board Meeting and USTAR keeps its list of members updated on its website at <http://www.innovationutah.com/about/governing-authority/#4>. To ensure annual compliance with appointment requirements, USTAR Management added an annual review of Board Appointments to its SOPs with a target of 4th Quarter, Oct-Dec.

Audit Finding: *USTAR needs to ensure compliance with open meetings laws.*

GA Response: In general, USTAR has complied with open meetings laws. Over seven years and more than 50 meetings, USTAR has been out of compliance twice (and those two times were unintentionally), for minor reasons (one was the very first meeting). USTAR will comply with requirements regarding written minutes and recordings.

The Attorney General's office has been consulted and safeguards established to ensure full compliance. The AG's office has recommitted itself to attending USTAR's monthly meetings. In the absence of the AG, the USTAR Financial Manager maintains a copy of the Utah Open Meeting Laws and will ensure that USTAR follows due process. To ensure annual compliance with this requirement, USTAR management added an annual training on Utah's Open and Public Meeting Act to its SOPs with a target of 4th Quarter, Oct-Dec.

USTAR has obtained training for two of its employees on recording of minutes. These two employees will have principal responsibility for recording minutes on a monthly basis. The minutes will be verified by the USTAR Financial Manager. The USTAR Executive Director will share the draft minutes with the Board within two working days of the meeting, the minutes of which are designed to document. Meeting minutes will be stored electronically in the USTAR GA Meeting folder and a paper copy will be posted to the USTAR minutes notebook.

"The AG's office has recommitted itself to attending USTAR's monthly meetings."

"To ensure annual compliance with this requirement, USTAR management added an annual training on Utah's Open and Public Meeting Act."

The USTAR Impact

In the past several years, we have seen the fruits of the Legislature's investment in research and development infrastructure accelerating in a host of exciting projects. We have been a catalyst for unprecedented collaboration between the University of Utah and Utah State University that resulted in our iUtah \$20 Million NSF grant award, focused on Utah's water sustainability. We have worked together to achieve significant milestones with commercialization projects such as WAVE, STORM, Clean Coke, Spider Silk, Vaporsens and others, and our current active commercialization project pipeline has numerous other projects with great promise.

Examples of Value in the USTAR Project Portfolio

Clean Coke Project in Price shows the value of a spin-in idea that leverages the resources of Utah State University to span the capital gap.

SpiderSilk: a Utah State University development project that has the potential to be the next innovative advanced material, see <http://sbc.usu.edu/htm/silk>

STORM: developed at Utah State University, the Sounding Tracking Observatory for Regional Meteorology, or STORM, is a weather sensor that will help meteorologists to better predict severe weather and atmospheric instability in a faster, more detailed way

Vaporsens: a University of Utah spinout for explosives and narcotics detection, see <http://www.vaporsens.com>

Veristride: a University of Utah spinout that is incubating at BiG is seeking to help lower-limb amputees reduce how much they limp and to help older adults to evaluate and track improvements in mobility and stability, see <http://veristride.com/>

WAVE: a spinout from Utah State University whose tagline is "We solve the battery problem", see <http://www.waveipt.com/>

WaxyCrude: a project focused on enabling the Uintah Basin to double oil production every ten years for the next 30 years

We have also celebrated numerous successes and have continued to expand the service depth and quality of the USTAR Technology Outreach program in partnership with the regional universities, with Utah State University regional development and extension and with local community leaders. The USTAR team can collectively take pride in having actively participated in and acted as a catalyst for the implementation of the following programs and infrastructure assets which are increasing the success rate of technology innovation and entrepreneurship for Utah's citizens in every region of the State:

Direct USTAR Programs

- University of Utah's James L. Sorenson Molecular Biotechnology Building. The 208,000 square-foot building, dedicated in April 19, 2012, was funded through a \$100-million commitment from the State of Utah through the Utah Science and Research Technology (USTAR) Initiative, with \$30 million in non-state and private funds, including the cornerstone gift of \$15 million from the Sorenson Legacy Foundation, \$1.25 million from the Micron Technology Foundation, and private gifts from Dinesh and Kalpana Patel and Jon Huntsman, among others.

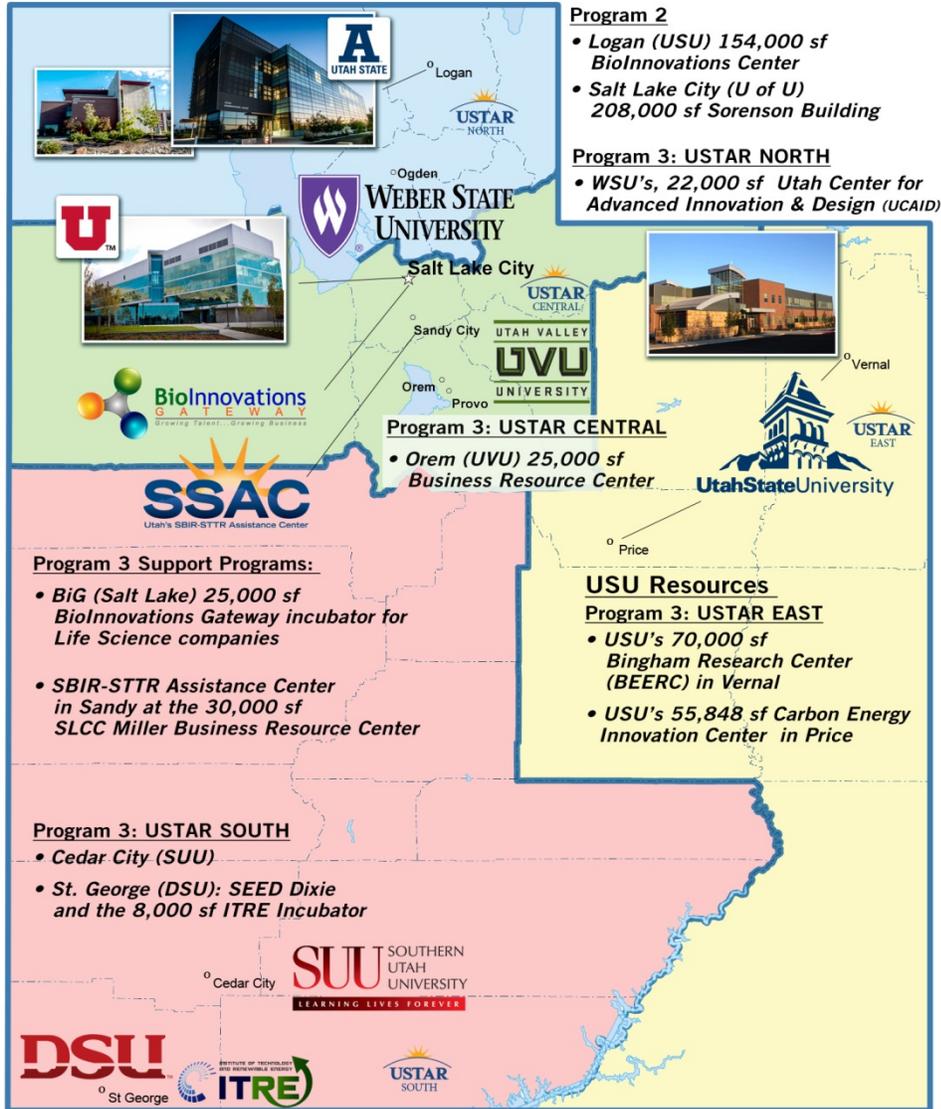
- Utah State University BioInnovations Center. The 118,000 square-foot building, dedicated in October 2010, houses highly advanced life-sciences laboratories and provides researchers the resources to seek cures for a range of human and animal diseases.
- The growth to capacity of the BioInnovations Gateway and its 25,000sf of incubation space and shared facilities for the enablement of Utah's life-science based entrepreneurs and inventors.
- The expansion of the SBIR/STTR center at SLCC's Miller Innovation Center to enable technology-oriented entrepreneurs from across Utah to increase their win rate and access to federal research, development and commercialization funding grants. The rebranding and improvement of USTAR's technology grant program enabling a structured process for entrepreneurs to prove the relevance and go-to-market feasibility of new ideas.

Key Partner Success with support from USTAR

- The enhancement of Utah State University's 70,000sf Bingham Entrepreneurship and Energy Research Center in Vernal to increase services enabling the needs of entrepreneurs and the growing conventional and unconventional energy development community of the Uintah Basin.
- The enhancement of Utah State University's 55,000sf Carbon Energy Innovation Center, enabling the development of new technology for Utah's communities that have historically been built around the coal and mining industry.
- Weber State University's 22,000sf Utah Center for Advanced Innovation and Design (UCAID) focused on the needs of innovators and entrepreneurs in the strategic clusters of aerospace and outdoor products.
- Weber State University's launch of Startup Ogden, in a renovated historic three-story facility on the main street of Ogden to host programs and services for entrepreneurs including Utah's implementation of national programs such as StartupWeekend and StartupNext, and continuing education for information technology professionals and entrepreneurs looking to build skills in IT-related fields.
- Utah Valley University's 26,000sf Business Resource Center, featuring 18,000sf of incubation space for information technology innovators and rapid development prototyping center equipment and services for entrepreneurs with ideas for products that can be manufactured.
- Dixie State University's Business Resource Center featuring the Information Technology and Renewable Energy (ITRE) incubator, Outlier Labs, the leadership for SEED Dixie and Dixie Techs and access to resources for entrepreneurs across Utah's vast southern region.

Before the Executive branch and Legislative branch got together with industry to envision USTAR and the Fund of Funds, Utah entrepreneurs developing innovative technologies faced greater challenges to take their ideas through the proof of concept stage to a prototype that could be manufactured and then to revenue-generating companies. Today, USTAR has Outreach Centers in all four regions of the State of Utah that service entrepreneurs, industry and the other stakeholders bringing new innovations along the value chain of idea to revenue.

In 2012, USTAR worked on over 200 projects in 21 of 29 counties.



November 19, 2013

Mr. A. Scott Anderson
President and CEO
Zions First National Bank
Board Member, USTAR Governing Authority
One South Main Street, 7th Floor
Salt Lake City, UT 84133-1109

Dear Scott:

Since the inception of the USTAR program, the University of Utah has focused on fulfilling the program's statutory mission by attracting and retaining field-leading researchers in areas with future economic and commercial potential. In the past six years, the U has recruited and hired 34 new faculty (from leading institutions such as Berkeley, UCLA, North Carolina, and Harvard) and established research teams in key areas including nanotechnology, digital media, energy technologies, and biomedical device and imaging technologies. Without USTAR funding, this would not have been possible.

USTAR-supported faculty members are amongst the U's most productive and are efficiently leveraging taxpayer dollars. University of Utah USTAR hiring is unusually productive because it is strategic, with research and commercial potential in mind. USTAR faculty members are entrepreneurial and work across disciplines; they interact with other entrepreneurial faculty, students and community partners rather than only within their academic areas. Although the earliest-hired USTAR faculty arrived on campus in 2007 and most have been here only a few years, inventions are moving steadily from their laboratories down the long and risk-filled path to commercialization.

Our Technology & Venture Commercialization (TVC) group assists all of our faculty and students, including those working in USTAR-supported research groups, in protecting their inventions and commercializing them whenever possible. The TVC has identified six USTAR-derived technologies with good potential for successful commercialization, including a pressure-sensing cardiac stent, an energy-harvesting insole for footwear, a rapid diagnostic test for tuberculosis, and an automated method for analysis of bone-marrow cell types. I am pleased to provide below brief descriptions of two opportunities that involve innovations in nanoscience, an important research frontier in which USTAR hires have helped create a critical mass of faculty at the U

Vaporsens Inc., whose scientific founder Ling Zang, Ph.D. is USTAR Associate Professor of Materials Science & Engineering, is developing a nanowire-based, vapor-sensing technology with the potential to solve a major security problem in the multibillion-dollar market for explosives detection.

Vaporsens is developing the first device that can chemically but non-invasively detect explosive threats of all types on every person and object (luggage, cargo, etc) that passes through security checkpoints at airports, seaports, and other secured facilities. This technology has already received over \$1 million in research funding from the U.S. Department of Homeland Security and has seven pieces of intellectual property underlying its development. The university believes that if the company manages its market opportunity effectively, Vaporsens could capture a significant share of the worldwide market (currently \$6.5 billion and growing at 7 percent per year) for explosives detection. With the company's current business model of manufacturing devices and disposable sensor chips and selling them to the major security screening companies, there could be significant investment and employment in Utah, along with good returns to the University and local investors. We are excited about the potential of this nanotechnology to provide a major improvement in homeland security and create another successful University of Utah spin-off company.

Dr. Rajesh Menon, USTAR Associate Professor of Electrical & Computer Engineering, was recruited to the U in 2009 from MIT. He and his colleagues are developing a highly innovative solution to the challenge of making high-quality photographs in low light conditions using the digital cameras with very small apertures installed in smartphones, on which most amateur photographs are now taken. In current smartphone cameras, most of the available light is wasted due to the way in which different color spectra (typically red, green and blue) are filtered. Dr. Menon's group is developing a hyperspectral diffractive optical system that separates and redirects different colors to specific areas of the photosensor, preventing the waste of light and significantly improving image quality, particularly in the low light conditions in which most cell-phone pictures are taken. While this technology is at an earlier stage of development than the explosive-sensing device described above, it is a beautiful example of how basic research (in this case, at the intersection of optics and nanotechnology) can generate a completely new approach (rather than an incremental improvement to an existing technology) to solving a commercially important problem. Smartphone cameras are currently a \$15 billion market with a 6 percent annual growth rate and there is an additional \$5 billion spent annually on other optical technologies (machine vision, unmanned aerial vehicles, endoscopy, etc.) where Dr. Menon's technology could make major improvements in image resolution. If this technology can be commercialized successfully, there is great potential for a substantial share of a \$20 billion market and an opportunity to add to the small but growing high-tech optical device industry in Utah.

The USTAR program has helped recruit almost three dozen outstanding faculty members to the University of Utah and we are most certainly a stronger institution as a result. These energetic scholars and teachers are creating new knowledge and transferring it to the private sector through many channels. These include:

- 1) Movement of highly-skilled students into employment
- 2) Publication of research results in the open research literature that is read by workers in all sectors
- 3) Personal interaction between the creators and users of new knowledge (for example, through professional meetings, seminars, industrial liaison programs, etc.)

Mr. A. Scott Anderson
November 19, 2013
Page Three

- 4) Corporate-sponsored research agreements with faculty members
- 5) Multi-firm arrangements such as university-industry cooperative research centers (such as our Energy & Geophysics Institute)
- 6) Personal individual faculty and student consulting arrangements with private firms
- 7) Licensing of intellectual property to established firms or new start-up companies (the focus of the USTAR program).

The University is grateful to the visionary business and government leaders who created the USTAR program and have maintained support for it through difficult economic conditions. We have used our best efforts to achieve the original goals of the program and are proud of what has been achieved here. We look forward to continuing our participation in this innovative vehicle for enhancing economic development through strengthening the state's research universities.

Sincerely,



David W. Pershing



Tom Parks
Vice President for Research

DWP/lm

cc: Patti Ross, Chief Strategy Officer and Secretary to the University



November 19, 2013

Mr. A. Scott Anderson
President and CEO
Zions First National Bank
Board Member, USTAR Governing Authority
One South Main Street 7th Floor
Salt Lake City, UT 84133-1109

Dear Scott,

Over the last seven years, USU's USTAR program has been able to grow a robust and progressive research to commercialization portfolio. The current portfolio has thirty active projects, including advanced materials like "spider silk," environmentally friendly carbon products, in-motion wireless power transfer for electric vehicles and severe weather sensors.

Spider silk continues to make significant progress, as the research has moved from the laboratory to first-stage commercial scale up. Early research on the production of spider silk proteins to produce advanced materials began with plants, migrated to milk production in goats, and is now ready to be grown in 500L bioreactors. This is a significant milestone as USU will be able to produce enough spider silk protein to create an actual product: a glove, a sock or a shirt. USU is engaged with several industry partners that will help define market needs and product parameters to ensure that what we produce is relevant to potential customers. These industry partners, while providing market insights, are also providing sponsored research to the spider silk team.

USU's USTAR efforts also extend into rural Utah via USU's regional campus system. At USU Eastern in Price, USU partnered with a private company to finalize the research, development and commercialization of a clean coke briquetting technology. This technology is in its final proof-of-concept stage, and a licensing agreement with a newly formed Utah company is ready for signature in short order. The commercialization of this technology will help invigorate eastern Utah's coal enterprise and the regional economy through the construction of a clean coke production facility in Carbon County sometime in the near future.

USU continues to innovate in the area of wireless power transfer for electric vehicles. USU has already developed the stationary charging system for mass transit and commercialized that technology through a spin-out known as WAVE. WAVE will put its first commercial bus into service before the end of 2013 on the University of Utah

Mr. A. Scott Anderson
November 19, 2013
Page 2

Campus. USU is now entering into the next phase of development as its USTAR power engineering team turns its attention to in-motion wireless charging systems for passenger vehicles.

Finally, USU, with the support of USTAR, has leveraged USU's engineering and scientific capability to prepare a severe weather sensor for deployment. The STORM sensor, which is a hyper-spectral geo-sounder, will deliver weather data not currently available to weather forecasters. The data that STORM generates will provide advanced warning for tornados--up to eight hours--and provide better landfall accuracy when predicting hurricanes. These capabilities will save lives, property and emergency resource management dollars. USU is working closely with a telecommunication satellite company to launch the sensor and with a private company to sell and distribute the data on a global scale. If successful, the State of Utah will benefit in two significant ways. USU will manufacture up to six sensors and a local Utah company will be the global reseller of weather data products. Both efforts will produce high-paying jobs and contribute significantly to local, regional and state economies.

USTAR is a critical component of USU's research and commercialization mission. USTAR professors and their USU affiliate research teams continue to make valuable contributions to science, technology and local economies. Our graduate and undergraduate students who work on USTAR projects get to experience cutting-edge research that will prepare them for greater personal, professional and social achievements in the future.

USU is grateful for the efforts of business leaders and legislators for their support of the research institutions and their research to commercialization activities. It is our belief that we are all better positioned for the future because of USTAR, and we would like to continue to leverage our USTAR opportunities to benefit the citizens of Utah.

Sincerely,



Stan L. Albrecht
President

nh

Appendix 1a. Research Performance Measures

USTAR University of Utah Research Teams Performance Measures - FY2007 to FY2013 - Final

Program Description	Cumulative USTAR Operating Expenses FY07-FY13	Grants Awarded through Jun13(Note2) FY07-FY13	Current Proposals Pending Last 6 Mos	Disclosures Submitted FY07-FY13	Provisional Patents Filed FY07-FY13	Patents Filed FY07-FY13	Patents Issued FY07-FY13	Active Licenses	Companies Started / Brought to Utah FY07-FY13
Energy Technology	USTAR	Grants	Proposals						
Fossil Energy	4,163,778	24,449,280	5,663,987	15	6	3	1	2	1
Alternate Energy Center	1,025,895	1,028,549	3,796,855	1	1	-	-	-	-
Digital Media									
Digital Media	1,059,984	-	-	-	1	-	-	-	-
Medical Imaging Technology and Brain Medicine									
Diagnostic Imaging	4,674,993	20,433,384	7,020,436	25	6	7	1	-	-
Circuits of the Brain	4,079,392	4,863,929	60,000	5	3	1	-	-	-
Imaging Technology	4,866,803	9,094,648	2,129,249	13	9	10	3	1	1
Nanoscale & Biomedical Photonic	4,029,413	4,897,698	4,458,875	2	1	-	-	-	-
3Tesla	3,053,814	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
BioDevice and BioPharma									
Biomedical Device Innovation	4,853,438	9,391,337	6,692,832	14	5	8	-	-	1
Personalized Medicine	23,897	-	-	-	-	-	-	-	-
Cell Therapy	7,043	-	-	-	-	-	-	-	-
Bio Lab (Accelerator)	500,000	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
NanoTechnology									
Wireless Nanosystems	5,107,863	10,029,297	5,076,537	41	20	11	-	1	-
Nanotechnology Biosensors	5,167,579	13,521,313	2,900,251	32	22	15	1	10	1
Micro & Nano System Integration	4,764,675	2,628,232	4,833,413	20	14	7	-	2	-
Other Costs									
Equipment/Other commitment (Note 1)	7,193,103								
Rent	10,570,977	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Bldg Start up	3,827,541								
Utah Collaborative Arrhythmia Project	1,400,000								
Student Initiative - Bench to Bedside	119,618								
MRSEC Match	3,833,510								
Total	74,323,315	100,337,667	42,632,435	154	88	62	6	16	4

Note 1 Equipment expenses that were originally charged to cluster

Note 2 Grants Awarded: This is the funded portion of the grants, and also anticipated 'out' years.

Utah Science, Technology and Research Initiative




Research Team Overview for USTAR Governing Authority

Team:
Presented by:

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USTAR

X Team (CAN example)

Director	Assoc. Director	Research Faculty		CAN Associate Faculty
				<i>Biology:</i> D. DeWald <i>Nutrition/Food Science</i> K. Hintz S. Martini R. Munger I. Nemere R. Ward H. Wengreen <i>Psychology</i> A. Odum E. Reither K. Schroder T. Shahan J. Tschanz <i>Natural Resources</i> F. Provenza J. Villalba
David York 0.75 FTE	Tim Gilbertson 0.08 FTE	MieJung Park 0.75 FTE		
USTAR FACULTY		USTAR FTE		
		Stephane Boghossian 1.0 FTE		
Mike Lefevre 0.50 FTE	David Ward 0.08 FTE		USTAR FTE Faculty: 1.41 Res. Faculty: 1.75 Res. Staff: 3.20 Admin. Staff: 1.00 Grad.Students:2.00 Students: 2.34 TOTAL: 11.70	
			Non-USTAR FTE: 5.30	
		USTAR budgeted FTE		

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Innovation Area Overview



- High-level description of the science
 - 1
 - 2
 - 3

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Innovation Area Overview



- Research objectives
 - 1
 - 2
 - 3

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Strategic Objectives of Team

- Deepen understanding of xx
- Test hypothesis re: yy
- Commercialize zz

CAN Examples

- Develop an internationally recognized center of excellence in nutritional research at USU.
- Identify predictors of individual responses to dietary interventions.
- Identify biomarkers for the progression of Alzheimer's disease.
- Develop a research program on diet and Alzheimer's disease prevention.
- Develop approaches for the control of fat appetite.
- Identify novel health-promoting bioactives from plant sources.

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Progress to Date

- Hiring completed
- Hiring pending

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Progress to Date

- Published in Journal aa
- Won \$M grant from bb to pursue cc
- Disclosures or patents filings ??
- Licensed technology to Company???
- Forming new company???

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Key Innovation Highlights

- Most important aspects of the team's performance to date:
 - Discovery xx could lead to new markets
 - 1
 - 2
 - Team's research is unique in the following ways:
 - 1
 - 2

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Issues and Challenges (1)



- Team strengths
 - 1
 - 2
 - 3
 - 4

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Issues and Challenges (2)



- Weaknesses and Barriers to Success.
 - 1
 - 2
 - 3
 - 4

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Issues and Challenges (3)



- Team opportunities
 - 1
 - 2
- Team threats to success
 - 1
 - 2

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Deliverables: Next Six Months



- Milestones
 - 1
 - 2
 - 3
- Grants
 - 1
 - 2
- Disclosures
- Patent applications
- Commercialization activities
 - Licensing
 - New company formation / growth goals

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Business Opportunities (1)

Market 1

- Market Size: \$200M
- Market Need: aa bbb
cccc dddd eeeee ffff
gggg
- Commercialization:
 - Joint venture
 - License
 - Start-ip

Market 2

- Market Size: \$300M
- Market Need: aa bbb
cccc dddd eeeee ffff
gggg
- Commercialization:
 - Joint venture
 - License
 - Start-ip



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Business Opportunities (1)

Market 3

- Market Size: \$200M
- Market Need: aa bbb
cccc dddd eeeee ffff
gggg
- Commercialization:
 - Joint venture
 - License
 - Start-ip

Market 4

- Market Size: \$300M
- Market Need: aa bbb
cccc dddd eeeee ffff
gggg
- Commercialization:
 - Joint venture
 - License
 - Start-ip



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USTAR Budget



<u>Budget</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Income	0	0	0
Expenditure			
Personnel	0	0	0
Research Costs	0	0	0
Travel	0	0	0
Office expenses	0	0	0
Equipment	0	0	0
TOTAL	0	0	0
carry over	x	(x)	(x)

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Combined Budget



<u>Budget</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
USTAR	0	0	0
Federal grants	0	0	0
Industry sponsored	0	0	0
Expenses	0	0	0
TOTAL	0	0	0
carry over	x	(x)	(x)

Appendix 2a. Commercialization Report Metric Definitions

USTAR Commercialization Project Metrics

GA Adopted 11/22/13

Linking USTAR Commercialization Projects at U of U and USU w USTAR Research Team Performance

Metric Name	Metric Definition	Valid Input	Why this information matters?
Project Name	The unique name that a project is referred to from inception at the research institution	Name	Tracks the project name from the institution or PI
U Number (UofU Specific)	Identification number used by the U of U Inteum DB for tracking	Number or blank if none exists	Tracks project by university
Project PI	The name of the principal investigator on the project. At USU, this may include the Commercialization Enterprises (CE) representative for a Spin-In opportunity.	Name	Tracks PI responsible for the project.
Company Name of Commercialization Partner and/or Licensee	The rebranding of a project for better association of a company, partner or licensee/the registered name of the resulting company	Company name, commercialization partner or licensee name. Projects can be marked inactive* if previously associated with a name or left blank if none exists. *Inactive means this project received USTAR funding in the past, and if a particular milestone is reached to re-initiate the project, USTAR will participate in the upside	Tracks the project name once rebranded as a Company
Company, Partner or Licensee Utah-based	Is the company, partner or licensee based in Utah	Yes / No/NA* *NA: Not applicable if project is inactive or none exists	Shows the creation or expansion of a business to increase growth in Utah
CE Contact (USU)/Licensing Manager (UofU)	Commercialization project contact person at research institution	Last name of contact	Point of reference
Project/Technology Description	Short description to provide ease of reference	Up to twenty words that describe a project	Orientation to project
Engine Stage (UofU specific)	Defines the amount of resources committed to a project for commercialization success	2-Stroke: Assigned at least one member of commercialization staff to define positioning and potential market value 4-Stroke: Deemed as a unique high value item, the project will start to become pitched to businesses or venture capital groups for commercialization V-6: Patent protection activity occurs with higher push for business or venture capital participation V-8: Highest level of resources and visibility	Project stage, funding or services provided for project commercialization will have a formulated level of return to USTAR

Appendix 2a. Commercialization Report Metric Definitions

Project Type (USU specific)	What is the source of project. The project type is dependent on who created the invention/IP, source of funding and what USTAR equipment or resources were used	<p>USTAR PI: A project that is based on research performed by an approved USTAR PI.</p> <p>Affiliate: A project that is based on research by an approved USTAR affiliate AND the project has at least one of the following characteristics:</p> <ul style="list-style-type: none"> • worked with a USTAR PI • depended on USTAR match • required use of USTAR facilities • designated as a part of a USTAR institute • received approved USTAR one-year project funds. <p>USU and USTAR will define shared revenue in a forthcoming administrative rule or USTAR SOP</p> <p>Primary: A project that was not sourced from a USTAR PI or USTAR Affiliate, but USTAR funding was provided to accelerate the project technology. USU will share revenue to be defined in a forthcoming administrative rule or USTAR SOP.</p> <p>TCG: A project that received USTAR Technology Commercialization Grant funding (from ARRA). USU will share revenue to be defined in a forthcoming administrative rule or USTAR SOP</p> <p>Secondary: A project that received significant assistance from a USU Commercial Enterprises resource that was funded by USTAR. USU will discuss on USTAR sharing for these projects.</p> <p>Landlord: A project that uses USTAR facility but does not have USTAR funding.</p>	Source of funding or services provided for project commercialization will have a formulated level of return to USTAR
USTAR Research Team Source	What USTAR team provided the majority of disclosures or patents to the project	Name of source team	Provide information as to which teams are producing projects that are becoming commercialized
Number of Disclosures Associated with Project	Disclosures produced from the institution that are used in this project	Number of disclosures	Measures the performance of disclosures to a project or company and recognizes that Projects may have a disclosure bundle
Number of Pending Patents Associated with Project	First-filed patent applications that are pending for this project	Number of first-filed patent applications that are pending for this project	Measures the performance of pending patents to a project or company
Number of Issued Patents Associated with Project	Patents produced from the Institution that are used in this project	Number of patents: Patent information is for US provisional and non-provisional filings and Patent Cooperation Treaty filings	Measures the performance of patents to a project or company
Project Start (State FY)	When the project first becomes tracked by an institution	State fiscal Year i.e. "FY13"	Tracks the appearance of commercialization projects

Appendix 2a. Commercialization Report Metric Definitions

USTAR, University and Private Funding

Metric Name	Metric Definition	Valid Input	Why this information matters?
USTAR Commercialization Funding Expense	The amount of funding that USTAR has provided in addition to funding research teams and overhead. At USU, this is defined as one-year projects for the SBI, technology development funds for the project and funds for TCGs.	Funding amount	Funding provided for commercialization, in addition to the type of project, can increase the contribution of commercialization returns to the USTAR program.
University Investment Expense	The amount of funding that University has provided in addition to funding research teams and overhead. At U of U, this includes funding from Engine grants. At USU, this includes monies spent by the USU Research Foundation, special funds for commercialization projects and President's Innovation Initiative grants.	Funding amount	Funding provided for commercialization, in addition to the type of project, can increase the contribution of commercialization returns to the University.
Private Investment	Amount of funding that Private Investment has contributed for commercialization. USU defines this as cash invested into a company and does not include sweat equity or in kind contributions.	Funding amount	Funding provided for commercialization, from a Private investor, shows that the Project has reached an acceptance milestone by private sector.

Appendix 2a. Commercialization Report Metric Definitions

Contract Funding

Metric Name	Metric Definition	Valid Input	Why this information matters?
Amount of Private Contracts Signed and In-Performance	Total funding amount of contracts that are associated with and are currently in-performance from project or company. This is reported only for contracts in excess of \$100,000.	Funding amount	The total, but not yet realized, amount on contract shows the potential upside on a project, new company or license
Amount of Private Contract Funding Received From Performance	Amount of funding from performance received by project or company. This is reported only for contracts in excess of \$100,000.	Funding amount	Total received funding shows actual realization of a contract
Amount of Private Contract Expenditure NOT in Utah	Amount of funding to support a contract spent outside of Utah. This is only reported if greater than 10 percent of the contract amount will be spent outside of the State.	Funding amount	Funding from private contacts that is excluded from economic impact to Utah
State HQ Location of Contract Origin	Location, by State, of the company supplying the contract	Name of State	Location of company that may experience potential growth from contracted services provided from USTAR

Appendix 2a. Commercialization Report Metric Definitions

Performance Through Job Creation

Metric Name	Metric Definition	Valid Input	Why this information matters?
Utah Jobs Resulting from USTAR (FTE)	A new job created from the start of the project, company or license that can be attributed to USTAR using a full time equivalent calculation. <i>(Is this defined as paid employees rather than employees who may be an owner in the company, but are not currently drawing a salary?)</i>	FTE Amount	Calculate the number of new jobs to the State as a result from USTAR
Number of High Quality Utah Jobs (FTE)	A new job created from the start of the project, company or license that can be attributed to USTAR that receives more than 100% of the average county wage in rural counties and more than 125% of the county wage in urban counties using a full time equivalent calculation. See GOED Defn at http://www.business.utah.gov/relocate/incentives/edtif/	FTE Amount	Calculate the number of high quality jobs to the State as a result from USTAR

Appendix 2a. Commercialization Report Metric Definitions

USTAR Program Reinvestment

Metric Name	Metric Definition	Valid Input	Why this information matters?
Date of Last Valuation	The last date a valuation was made by a third party via an equity financing round	Date	A date of last valuation shows that a company has received a valuation from private capital and is in an advanced state of commercialization
Post-Money Valuation	What was the valuation as of the date of last valuation	Amount in dollars	Amount that the company has been valued at by private investors
University Percent Equity Ownership	What percent of equity ownership does the University have in the company?	Percentage	Equity shows that there will be a payout after realization to the University
USTAR Percent Equity Ownership	Does USTAR have a claim on equity earnings from the University ownership percentage in this company?	Yes or No	Equity shows that there will be a payout after realization to USTAR based on statute or administrative rule
Number of Active Licenses	The University license agreement with the Company is valid	"1" or "0"	This metric was in the Original Economic Prospectus and should be validated annually by the University
Royalty	Some license agreements have a royalty agreement and some have an equity arrangement and some have both. This will identify if the University has a Royalty arrangement associated with the license agreement	"Yes" or "No"	Tracks the invention disclosures that have been licensed to a 3d Party
Commercialization Revenue Total	"Dividends, realized capital gains, license fees, royalty fees, and other revenues received by a university as a result of commercial applications developed from the project", as defined in Utah Code Annotated 63M-2-102-1	Amount in dollars	Total amount of revenue that is brought in from a project, company or license
Less Portion Paid from University Internal Commitments	"The portion of these revenues allocated to the investor; and expenditures incurred by the university to legally protect the intellectual property." As defined in Utah Code Annotated 63M-2-102-1a&b	Amount in dollars	Tracks the amount of funding that the Universities need for obligations
Total Reinvestment to USTAR Program	Commercialization revenue minus the inventor and legal protection portion	Amount in dollars	The return to USTAR. Once totaling more than \$10,000,000 for all projects, 63M-2-204 is followed for proper allocation by statute including \$5,000,000 to GOED's Technology Commercialization and Innovation program. Then all subsequent money received beyond \$15,000,000, 50% goes back the university and 50% to the Governing Authority for redistribution

FINAL PRIVATE LETTER RULING

REQUEST LETTER

09-012

May 12, 2009

Pam Hendrickson
Chair, Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84134

Dear Ms. Hendrickson:

Utah Code Ann. 63M-2-101 is the chapter known as the Utah Science Technology and Research Governing Authority Act (USTAR). This act allows the legislature to fund science technology research buildings on various campuses in the State of Utah as well as funding technology outreach programs to assist higher education in the State of Utah in commercializing research projects for economic development. It also allows the funding of research teams at the various universities. Perhaps you may have read about the funding at the University of Utah this week for a \$130,000,000.00 research building and for a similar endeavor at Utah State University.

It is our understanding that both the Utah State University and University of Utah receive exemption from the payment of sales tax on construction projects and we would like to request that USTAR be given the same exemption on its construction projects because they serve the same purpose. If the Tax Commission grants such it would greatly assist USTAR as they have begun the construction process and are presently being invoiced. If, on the other hand, the Tax Commission feels it cannot allow USTAR to receive the same exemption as the universities then we will go through the formal process of seeking at 501C3 exemption, but would respectfully request that USTAR be exempted from paying the sales tax on its construction pending the approval of the 501C3 classification.

We very much appreciate your consideration on this matter and if you have any questions you can certainly call Ms. Randa Bezzant at USTAR, 801-538-8629 or William Loos, at 801-366-0569 at the Attorney General's office.

Sincerely yours,

William C. Loos
Assistant Attorney General

WCL/slc

cc: Ted McAleer
Executive Director
USTAR

RESPONSE LETTER

March 2, 2010

Mr. William C. Loos
Assistant Attorney General
State of Utah, Office of the Attorney General
160 East 300 South, Fifth Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857

RE: Private Letter Ruling Request—The Sales and Use Tax Treatment of Construction Materials for USTAR’s Research Buildings

Dear Mr. Loos:

You have requested a ruling on whether the construction materials for certain research buildings are exempt from sales and use tax.

Facts

In your letter, you discussed Utah Code, Title 63M, Chapter 2, which is titled “Utah Science Technology and Research Governing Authority Act.” This act authorizes the Legislature to fund certain research buildings on the campuses of the Utah State University (“USU”) and the University of Utah (“U of U”). Utah Code Ann. § 63M-2-201. The Utah Science Technology and Research Governing Authority (“governing authority” or “USTAR”)¹ is required to “plan, design, and construct the buildings.” § 63M-2-201(2). USU and the U of U are required to provide the land for the research buildings. § 63M-2-201(3). The governing authority is required to “hold title to the research buildings.” § 63M-2-201(4). Also, “[t]he governing authority may: (a) lease the buildings to [USU] and the [U of U].”

You explained that the Legislature has now funded the construction of the research buildings on the USU and U of U campuses. We assume that the governing authority is constructing these research buildings through contracts with third party, building contractors.

You have requested that the Commission allow the governing authority to receive the same exemption from sales tax on construction projects that USU and the U of U receive. You provide that the U of U and USU are charitable entities under I.R.C. § 501(c)(3). You assert that the governing authority serves the same purpose as the universities. You explained that if the

¹ We observe that the only statutory reference to “USTAR” is under Utah Code Ann. § 53A-17a-159, which identifies USTAR as the “Utah Science Technology and Research Initiative.” Accordingly, we rely on our understanding of your representations regarding the term “USTAR” and the “Utah Science Technology and Research Governing Authority Act.” That understanding is that USTAR as used in this ruling means the “Utah Science Technology and Research Governing Authority.”

Appendix 3. USTAR Building Material Sales Tax Denial

Tax Commission does not grant this request, USTAR would formally seek the 501(c)(3) designation from the IRS. You have also requested that if the 501(c)(3) designation is required, the Commission rule that USTAR is exempted from paying sales tax on its construction pending the approval of its 501(c)(3) designation.

Through conversations with Commissioners, you clarified certain issues that you want covered in this letter. They are as follows:

1. *Can USTAR avail itself of the U of U's or USU's tax-exempt status, because it is closely related to those organizations and the expenditures in question will be for the benefit of those organizations?*
2. *If not, is there an alternative basis on which the sales tax exemption can be granted?*
3. *If the only route for state sales tax exemption is filing the IRS Form 1023 application for tax-exempt status, is there any way the Tax Commission could grant the exemption retroactively to an earlier date than the filing date of the IRS Form 1023?*
4. *Can the Tax Commission allow USTAR to forego paying sales tax while the application is pending, with the understanding and guarantee that USTAR will pay all applicable sales and use taxes if the exemption is not ultimately granted by the IRS?*

Based on the analysis that follows, the Commission has determined that USTAR has not been shown to be a charitable organization, and cannot avail itself of the U of U's and USU's tax-exempt status. Furthermore, based on your representations, we do not find an alternative basis to grant a sales tax exemption. There is, however, as you indicate, a basis on which an exemption can be granted. USTAR may request a 501(c)(3) certification from the IRS. Once the application has been made, USTAR and/or its contractors may file claims for refunds on its purchases. Our Taxpayer Services Division ("Division") will hold the refund requests until USTAR provides evidence of the 501(c)(3) status. If and when that status is confirmed, the Division will process the refund claims in accordance with statute. The statute of limitations will be applied retroactively from the time the refund claim is filed with the Division. The claims must be supported by appropriate documentation. USTAR and/or its contractors may also purchase construction materials and other tangible personal property tax exempt upon receiving 501(c)(3) status. If the IRS does not grant the 501(c)(3) status, of course the claims would be denied, absent any other evidence to support an exemption. Finally, the Commission will not grant an exemption number nor allow USTAR to forego payment on sales tax while waiting for the IRS to approve the application.

Relevant Authority

Utah Code Ann. § 59-12-103(1) imposes tax on "(a) retail sales of tangible personal property within the state."

Appendix 3. USTAR Building Material Sales Tax Denial

Utah Code Ann. § 59-12-102(26) defines construction materials as “. . . any tangible personal property that will be converted into real property.”

Utah Code Ann. § 59-12-104(2)-(2)(ii) provides an exemption for certain purchases by state government entities, stating in part:

The following sales and uses are exempt from the taxes imposed by this chapter:

. . . .

(2) sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of:

(a) construction materials except:

- (i) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and
- (ii) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions;

. . . .

Utah Constitution Article X, Section 2 defines the public education system, stating:

The public education system shall include all public elementary and secondary schools and such other schools and programs as the Legislature may designate. The higher education system shall include all public universities and colleges and such other institutions and programs as the Legislature may designate. . . .

Utah Code Ann. § 59-12-104(8) provides an exemption for “sales made to . . . charitable institutions in the conduct of their regular . . . charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled . . .” Utah Code Ann. § 59-12-104.1 explains how the exemption is administered.

Utah Admin. Code R865-19S-43 (“Rule 43”) provides additional clarification as to the criteria on which an entity is considered to be a charitable institution:

- A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

Utah Admin. Code R865-19S-58 (“Rule 58”) guidance on how some construction materials may be purchased as tax-exempt, stating in part:

Appendix 3. USTAR Building Material Sales Tax Denial

- (1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.
....
- (2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. . . .
....
 - (b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.
 - (c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.
 - (d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:
 - (i) the religious or charitable institution makes payment for the materials directly to the vendor; or
 - (ii) (A) the materials are purchased on behalf of the religious or charitable institution.
(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.
 - (e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.
....

Utah Code Ann. § 59-1- 1401 provides for a party to make a claim for refund, as follows:

- (8) (a) Except as provided in Subsection (8)(b) or Section 19-2-124, 59-7-522, 59-10-529, or 59-12-110, the commission may not make a credit or refund unless a person files a claim with the commission within the later of:
 - (i) three years from the due date of the return, including the period of any extension of time provided in statute for filing the return; or
 - (ii) two years from the date the tax was paid.
- (b) The commission shall extend the time period for a person to file a claim under Subsection (8)(a) if:
 - (i) the time period described in Subsection (8)(a) has not expired; and
 - (ii) the commission and the person sign a written agreement:
 - (A) authorizing the extension; and
 - (B) providing for the length of the extension.

Analysis and Ruling

Before beginning our analysis, we note that you specifically referenced construction projects. Our analysis applies not only to construction materials used in real property construction, but also to tangible personal property, such as furniture, fixtures, and equipment (“FF&E”), which will remain personal property. You have identified four specific issues to which the Commission will respond.

1. *Can USTAR avail itself of the U of U's or USU's tax-exempt status, because it is closely related to those organizations and the expenditures in question will be for the benefit of those organizations?*

USTAR may not avail itself of the U of U's or USU's tax-exempt status. You provided that the U of U and USU are charitable entities under I.R.C. § 501(c)(3), and accordingly, qualify for the exemption found in § 59-12-104(8) for sales to such entities. You base your position on the fact that USTAR's construction projects “serve the same purpose” as those of the two universities. However, there is no provision in statute or rule allowing a charitable exemption to be granted to an unqualified entity simply because that entity has a purpose similar or identical to the purpose of a qualified entity.

USTAR is not a 501(c)(3) organization, nor have you provided any statutory or legal basis for USTAR being considered a charitable organization. Thus, sales of materials for USTAR's construction projects are not exempt under R865-19S-58(2)(d)(i) because USTAR is currently not recognized as a charitable institution under I.R.C. § 501(c)(3).

Additionally, the sales of construction materials are not exempt under the provisions of R865-19S-58(2)(d)(ii), either. If those provisions were met, USTAR could purchase the materials tax-free *on behalf of* the U of U and USU. However, under the fact situation you have presented, USTAR cannot convert the materials into real property *owned by* the U of U or USU because § 63M-2-201(4) requires USTAR, not the U of U or USU, to hold title to the research buildings (the real property). Therefore, USTAR cannot avail itself of the U of U's and USU's tax-exempt status.

2. *If not, is there an alternative basis on which the sales tax exemption can be granted?*

We do not find an alternative basis on which a sales tax exemption can be granted. Section 59-12-104(2) does provide a sales tax exemption for sales to the state and its institutions. However, this exemption allows for only two circumstances in which construction materials are exempt. The first requires that, among other things, “construction materials [be] purchased by or on behalf of institutions of the public education system as defined in Utah Constitution Article X, Section 2.” Utah Constitution Article X, Section 2 defines the institutions of “the public education system” to “include public elementary and secondary schools” but to exclude “all public universities and colleges.” Therefore, in this situation, the exemption of § 59-12-104(2)(a)(i) cannot apply because the public education system not involved; USTAR is not part of the public education system.

Appendix 3. USTAR Building Material Sales Tax Denial

The second circumstance requires that, among other things, “construction materials . . . [be] installed or converted to real property by employees of the state, its institutions, or its political subdivisions.” § 59-12-104(2)(a)(ii). In this situation, we assume that USTAR is constructing the research buildings through contracts with third party building contractors. Third party contractors are not employees of the state, etc. Therefore, the exemption of § 59-12-104(2)(a)(ii) does not apply.

We note as well that in general any tangible personal property, such as FF&E, is also exempt under § 59-12-104(2) for sales to institutions of the state. However, you have not provided any indication that USTAR is such an institution. Accordingly we find that § 59-12-104(2) does not apply.

3. *If the only route for state sales tax exemption is filing the IRS Form 1023 application for tax-exempt status, is there any way the Tax Commission could grant the exemption retroactively to an earlier date than the filing date of the IRS Form 1023?*

If the IRS recognizes USTAR as a § 501(c)(3) exempt charitable organization, the Commission will allow the charitable status to be applied retroactively to the time of application. The normal practice of the Taxpayer Services Division is to process refund claims only when an organization has been recognized by the IRS as a tax-exempt charitable organization. In the case of USTAR, however, we find two unique circumstances that distinguish it from other organizations. First, USTAR was established, as you stated, under Utah statute. Second, USTAR’s construction projects are closely associated with the two universities, both of which are recognized by the IRS as 501(c)(3) organizations. Accordingly, USTAR may file a claim for refund as provided under § 59-1-1401(8)(a) as soon as it applies for the exempt status with the IRS. Once certification is granted, we will grant qualifying refund claims within the statute of limitations provided under § 59-1-1401(8)(a)(i) & (ii). The statute of limitations will commence as of the date of application for the IRS 501(c)(3) recognition. In short, once USTAR files an application for the certification, it may file a claim for refund on 1) any return due within three years prior to the date of filing the application or 2) any tax paid within two years prior to the date of application.

At this point we need to clarify the specific requirements for purchases of construction materials. Rule 58 provides that sales made to a charitable institution of construction materials are exempt if the materials are sold as tangible personal property. Similarly, the Rule provides under subparagraphs (2)(b) and (2)(d) that a contractor is not the consumer of the construction materials if the sales of the materials are made to a charitable institution. Rule 58 further specifies two instances for the sales of materials to be considered *made to* a charitable institution. First, the charitable institution may pay the vendor directly for the materials. Second, another entity, most likely a contractor, may purchase the materials *on behalf of* the charitable institution, with the materials being “clearly identified and segregated and installed or converted to real property owned by the . . . charitable institution.”

In this case we assume most, if not all, of USTAR’s purchases of construction materials will be made by third party contractors. This distinction from direct purchases is important. Refund claims for direct purchase are fairly simple; all you need to do is maintain copies of

Appendix 3. USTAR Building Material Sales Tax Denial

invoices and returns. In contrast, when the contractor pays sales taxes to its vendors for materials used in the construction of USTAR's projects, several steps are required to claim refunds. First, the contractor must clearly identify and segregate its purchases for USTAR's projects from all other purchases it makes. Second, either USTAR or its contractors may file a refund claim. If USTAR requests the refund, it must obtain the original purchase invoices from its contractors. Alternatively, USTAR can arrange for its contractors individually to submit refund claims, and then remit the refunds granted back to USTAR. Under either procedure, USTAR's claims of refunds must still meet the provisions for all claims of refunds, found in § 59-1-1410(8)(a) and Rule 58(2)(d)(ii)(B).

You may contact Julie Halvorson of the Taxpayer Services Division at 801-297-6330 for information on how to file refund claims once an application is made and how to obtain a sales tax exemption number if and when 501(c)(3) status is granted.

4. *Can the Tax Commission allow USTAR to forego paying sales tax while the application is pending, with the understanding and guarantee that USTAR will pay all applicable sales and use taxes if the exemption is not ultimately granted by the IRS?*

The Commission will not allow USTAR to obtain a sales tax exemption number while its application before the IRS is pending. The appropriate procedure, as we stated above, would be for USTAR or its contractors to pay the tax at the time of purchase. Then, when an application for 501(c)(3) recognition is made, USTAR can apply for the appropriate refunds. We do not see any way for USTAR to obtain an exemption certificate before it is actually approved by the IRS as an exempt charitable organization. Our position is as much for the benefit of USTAR as it is for the Tax Commission's administrative purposes. If the IRS does not grant the 501(c)(3) status, USTAR would be liable for all unpaid taxes.

Conclusion

In summary, based on our assumptions and your representations, the Commission finds that USTAR does not qualify for a sales exemption. However, given the unique circumstances that apply to USTAR's situation, USTAR may file refund requests with the Tax Commission as soon as it shows that it has applied to the IRS for recognition as a 501(c)(3) tax-exempt organization. The Taxpayer Services Division will hold the refund requests until USTAR is approved for the IRS exemption. Upon receiving evidence that the IRS recognizes USTAR as a 501(c)(3) organization, the Division will begin processing the refund requests and will issue an exemption number.

We have attached, for your reference, copies of Form TC-160, Application for Sales Tax Exemption Number For Religious or Charitable Institutions, and Form TC-721, Exemption Certificate. Also enclosed are relevant portions of Publications 25, Sales and Use Tax General Information, and Publication 42, Sales Tax Information. These documents can also be found respectively on our website at the following URL addresses:

- <http://tax.utah.gov/forms/current/tc-160.pdf>

Appendix 3. USTAR Building Material Sales Tax Denial

- <http://tax.utah.gov/forms/current/tc-721.pdf>
- <http://tax.utah.gov/forms/pubs/pub-25.pdf>
- <http://tax.utah.gov/forms/pubs/pub-42.pdf>

Our conclusions are based on the facts as described and the Utah law currently in effect. Should the facts be different from those represented or if the law were to change, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, if you have additional facts that may be relevant, or if you have any other questions, please contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/aln
09-012

Enc.

Cc (w/o enc.): Ted McAleer
Executive Director
USTAR

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Appendix 5. GA Yearly Timeline

USTAR Yearly Timeline for GA Board Agenda and Subcmte Responsibilities

GA Approved 11/20/2013

Yearly Timeline	← January-March	April - June	July-September	October - December →
GA Board Agenda: Policy and Housekeeping	Identify if Legislative Policy Impacts GA Positions	Review new legislation & appropriations report to determine impacts on USTAR	Discuss Governor's Budget & Legislative Building Block Request*	Yearly Review of Open Meetings Act and Conflict of Interest
GA Finance Subcmte	Review Admin, TOIP and Research Expenditure Report Details Monthly and Report to GA Board Quarterly	Review Admin, TOIP and Research Expenditure Report Details Monthly and Report to GA Board Quarterly	Review Admin, TOIP and Research Expenditure Report Details Monthly and Report to GA Board Quarterly	Review Admin, TOIP and Research Expenditure Report Details Monthly and Report to GA Board Quarterly
		Review Preliminary Finance Mgr Closeout Report Present Budget for Adoption by Board*	Review Final Finance Mgr Closeout Report	
GA Audit SubCmte	Review UofU and USU Dec 30th Commercialization Report		Review UofU and USU June 30th Commercialization Report	
	Review TOIP Quarterly Performance Report	Review TOIP Quarterly Performance Report	Review TOIP Quarterly Performance Report	Review TOIP Quarterly Performance Report
		Meet w 3d Party Reviewer to set expectations	Review Draft Annual Report*	Submit Annual Report to Legislature and Governor*
GA TOIP Subcmte	Meet with TOIP Regional Stakeholders to review bi-annual results	Recommend programs that warrant TOIP support for new budget year	Meet with TOIP Regional Stakeholders to review bi-annual results	
GA Project SubCmte	Review 25% of Research Team Presentations by Innovation Area theme	Review 25% of Research Team Presentations by Innovation Area theme	Review 25% of Research Team Presentations by Innovation Area theme	Review 25% of Research Team Presentations by Innovation Area theme
	Hear UofU and USU Proposals for new USTAR Project Teams	Renewal of Memorandum of Understandings (MOU) or Contracts After Budget Adoption for Next Fiscal Year		

*Key Dates

Budget Adoption - Due June 30th to allow continual operation of the USTAR program

Governor's Budget & Legislative Building Block Request - Due 1st Week of September to Governor's Budget Office & Legislative Fiscal Analyst Office

Draft Annual Report - After year end audit period completion, staff will present performance metrics required in Statue and Legislative Intent to GA

Submit Annual Report to Legislature and Governor - Due the third week in October for presentation to EAC and Appropriation Subcommittee

Appendix 6. Conflict of Interest Form

DISCLOSURE STATEMENT

Pursuant to the Utah Public Officers' and Employees' Ethics Act
Utah Code Ann. §§ 67-16-1, et seq.

I _____, being first sworn, do hereby state as follows:

1. I reside at _____

2. I was appointed as a public officer and a member of the governing authority of USTAR
on _____

3. I am not an officer, director, employee, or owner of a substantial interest in any business
entities which are involved with and do business with USTAR.

I am an officer, director, employee or owner of a substantial interest in the following
business entities which are involved with and do business with USTAR.

Name of entity: _____

Position Held: _____

Nature and value of interest held: _____

This section does not apply to instances where the total value of interest does not exceed \$2,000.

It does not apply to the ownership by a public officer of USTAR or spouse or minor children who
own at least 10% interest in a business entity.

4. I agree not to solicit, receive or agree to receive for myself or another, compensation,
loans or gifts, directly or indirectly from persons or business entities who in the past, now
or in the future may be involved with or deal with USTAR.

Appendix 6. Conflict of Interest Form

I will not, nor have I, accepted employment that will impair my independence of judgment regarding USTAR.

DATED this _____ day of _____, 20__.

Signature

SUBSCRIBED and SWORN to before me this _____ day of _____, 20__.

Notary Public

Residing at: _____

My Commission Expires:
