CONFIDENTIAL REPORT

FOR

UNION COUNTY UTILITIES AUTHORITY

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TABLE OF CONTENTS

Page

I. OVERVIEW 1

Background 1

Background Facts 1

Relevant Witnesses Interviewed 3

II. MANNER OF INQUIRY 4

Manner of Interviews 4

Documents Reviewed 4

III. SUMMARY OF WITNESS INTERVIEWS 5

Commissioners Edward Kahn and John Kulish 5

Commissioner James D. Huff 5

Commissioner James Kennedy 5

Lisa M. da Silva 6

Suzanne Kinloch, William Neafsey, Minerva Rosa, and Jeffrey Hummel .. 7

Jonathan Williams, Esq. 8

Kraig Dowd, Esq. 8

Daniel P. Sullivan 9

Thomas Brennan 10

Robert J. Butvilla and Anthony P. Cardone 12

IV. INQUIRY FINDINGS 13

a. Municipal and County Utilities Authority Law 14

b. UCUA By-Laws 15

c. Employee Handbook of the UCUA 16

d. Policies and Procedures Manual of the UCUA 16

e. Past Practices of the UCUA 17

V. CONCLUSION & RECOMMENDATIONS 17

I. OVERVIEW

Background

On or about April 11, 2014, Kraig Dowd ("Dowd"), General Counsel for the Union County Utilities Authority ("UCUA") contacted Pawar Gilgallon & Rudy ("PGR") and advised that the Board of Commissioners ("Board") of UCUA at its April 9, 2014 meeting appointed PGR to conduct an inquiry into the facts surrounding payments made to certain UCUA employees. The payments were made as compensation for work done by those employees pursuant to a Shared Services Agreement ("SSA") between the UCUA and the Union County Improvement Authority ("UCIA"). The inquiry was necessitated because the Board had not approved such compensation and was unaware that payments were being made to these employees. The Board appointed PGR to:

(a) Conduct an appropriate inquiry into the facts surrounding the issuance of the payments;
(b) Provide a report to the Board of its findings; and
(c) Provide specific appropriate recommendations to the UCUA as to steps it can and should take to assure the propriety of all remuneration to UCUA employees.

On April 14, 2014, the undersigned met with Dowd and Richard Bausch ("Bausch"), labor counsel for the UCUA, at Dowd's office to discuss the parameters of the fact-finding inquiry and provide the undersigned with certain documentation. On behalf of the Board, Dowd and Bausch requested that a prompt and thorough inquiry be conducted into the matter.

Background Facts

The Union County Utilities Authority ("UCUA") is a public body created by the Union County Board of Chosen Freeholders ("Freeholder Board") in accordance with the provisions of the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1, *et seq.* The UCUA is governed by 11 Commissioners and the day-to-day operations are handled by an Executive Director appointed by the Commissioners. On August 17, 2011, the Commissioners of the UCUA appointed Daniel P. Sullivan ("Sullivan") to serve as Interim Executive Director of UCUA. Subsequently, on April 18, 2012, the Commissioners appointed Sullivan as the Executive Director of the UCUA for a 5-year term.

The Union County Improvement Authority ("UCIA") was similarly created by the Freeholder Board in accordance with the provisions of County Improvement Authorities Law, N.J.S.A. 40:37A-44, *et seq.*, which provides an Improvement Authority with the power and resources to construct and operate a variety of facilities within the county. Charlotte DeFilippo served as the Executive Director of UCIA for over 10 years until her announcement in May 2013 that she would retire effective August 2013. At the time of her announcement, UCIA was in midst of several improvement projects. Subsequently in June 2013, the Freeholder Board commissioned a study to evaluate whether a consolidation of the UCUA and the UCIA would be beneficial for the County and provide savings and efficiencies. As a result of the pending feasibility study of the

merger[1] of the two authorities, in August 2013, UCUA and UCIA discussed entering into a Shared Services Agreement ("SSA") for the services of the Executive Director and other staffing needs in order to reduce costs and increase efficiency for both authorities. There were a number of UCIA projects that needed day-to-day supervision and direction, and these projects could not wait while the merger study was being conducted by the Freeholder Board. Since UCIA needed an Executive Director on a temporary basis while awaiting the results of the study, a SSA seemed an appropriate alternative.

On August 21, 2013, the UCUA adopted Resolution (53-2013) approving a SSA with the UCIA for a term of 6 months.[2] Under Resolution (61-2013), the UCIA similarly approved the SSA on an interim basis. Under the SSA, the UCUA agreed to provide UCIA with the services of UCUA's Executive Director as the interim Executive Director of the UCIA. UCUA also agreed to provide office space in its premises at the Union County Resource Recovery Facility in Rahway, New Jersey for purposes of its own staff and storage. Lastly, UCUA agreed to allow the UCIA the use of UCUA staff, which included reception, secretarial, clerk, deputy clerk, comptroller, and accounting services. In exchange for the Executive Director services, office space, and staff services, the UCIA agreed to make a payment of $15,000 per month to the UCUA. None of the resolutions nor the SSA described how the payment would be distributed internally within the UCUA.

Subsequently, out of the $15,000 monthly payment to the UCUA, certain UCUA non-union employees received separate payments as additional compensation. These payments were not processed through regular UCUA payroll but were provided as separate checks. Below is the chart of payments with names of the seven (7) employees who received additional compensation and dates of payments:

	9/6/13	9/30/33	10/31/13	12/2/13	1/8/14	1/30/14	TOTAL
Daniel P. Sullivan	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$15,000
Thomas M. Brennan	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$6,000
Jeffrey P. Hummel	$500	$500	$500	$500	$500	$500	$3,000
Lisa M. da Silva	$500	$500	$500	$500	$500	$500	$3,000
William J. Neafsey	$500	$500	$500	$500	$500	$500	$3,000
Suzanne Kinloch	$500	$500	$500	$500	$500	$500	$3,000
Minerva Rosa	$500	$500	$500	$500	$500	$500	$3,000
	$6,000	**$6,000**	**$6,000**	**$6,000**	**$6,000**	**$6,000**	**$36,000**

[1] While throughout these reports, witnesses have used the word "merger" of the authorities, it should be noted that the Freeholder resolution simply authorizes a study of the "County created authorities for potential savings and efficiencies, including but not limited to those which may be realized by dissolution."

[2] On February 12, 2014, under UCUA Resolution (18-2014), the Shared Services Agreement was further extended for a second 6-month term to end on August 1, 2014.

The above-payments were authorized by the Executive Director but were not approved by the UCUA Board even though the payment checks had the stamped signatures of two Commissioners: Clifton People and Edward Jackus.

Once the payments were brought to the attention of the Board, on February 26, 2014, the Board passed Resolution (24-2014) directing that no additional remuneration or reimbursement payments of any kind and in any amount shall be made to any Authority employee or officer until after such proposed payment has been presented to the Board of Commissioners and a duly authorized Resolution has been adopted by the Board of Commissioners approving of same. In the same resolution, the Board directed that an independent fact-finder be retained to conduct an inquiry into the facts surrounding the issuance of the payments to employees and provide the Board with its findings.

As previously stated, I was contacted on April 11, 2014 and immediately began an inquiry into the facts surrounding employee payments.

Relevant Witnesses Interviewed

Commissioners Edward Kahn and John Kulish – Members of the UCUA PPI Committee

Commissioner James D. Huff – Chairman of the UCUA Board

Commissioner James Kennedy – Member of the UCUA PPI Committee

Daniel P. Sullivan – Executive Director of the UCUA and manages the day-to-day operation at the UCUA.

Thomas Brennan – Deputy Executive Director and Comptroller of the UCUA.

Jeffrey Hummel – Director of the Division of Solid Waste Enforcement for the UCUA.

Lisa M. da Silva – Deputy Clerk and Office Manager of the UCUA.

William Neafsey – Chief Enforcement Officer for the UCUA.

Suzanne Kinloch – Payroll clerk/bookkeeper for the UCUA.

Minerva Rosa – Receptionist for the UCUA.

Kraig Dowd – General Counsel for the UCUA

Jonathan Williams – General Counsel for UCIA.

Robert J. Butvilla and Anthony P. Cardone – Partners at accounting firm Suplee, Clooney & Company. The firm serves as auditors for the UCUA and UCIA.

II. MANNER OF INQUIRY

Manner of Interviews

I conducted several interviews at the Union County Utilities Authority facility in Rahway, New Jersey. I was provided with a private conference room to conduct these interviews. Other interviews were conducted either at my office, other attorney's offices, other locations or on the telephone.

At the outset of each interview, I advised the interviewee that I was retained by the UCUA to conduct a fact-finding inquiry into payments made to certain employees between September 2013 and February 2014. I thoroughly explained the inquiry process, including the fact that, at the conclusion of my inquiry, I would be preparing a confidential report for the UCUA that would contain statements made by them during our interview as well as my factual findings. The interviewees were also informed that based on my report, the UCUA Board, in its sole discretion, would make a decision on how to move forward.

Documents Reviewed

1. Resolution (2013-584) by the Union County Board of Chosen Freeholders approving a study of the "County created authorities for potential savings and efficiencies, including but not limited to those which may be realized by dissolution. **Attached as Exhibit A**
2. Resolution (53-2013) by the UCUA Board approving the Shared Services Agreement. **Attached as Exhibit B**
3. Resolution (61-2013) by the UCIA Board approving the Shared Services Agreement. **Attached as Exhibit C**
4. Shared Services Agreement. **Attached as Exhibit D**
5. 2013 By-Laws of the UCUA. **Attached as Exhibit E**
6. 2014 By-Laws of the UCUA.
7. Employee Handbook of the UCUA. **Attached as Exhibit F**
8. Policies and Procedures Manual of the UCUA. **Attached as Exhibit G**
9. Copies of Checks made payable to employees as additional compensation. **Attached as Exhibit H**
10. 2013 IRS Tax Form 1099-MISC issued to the employees for additional compensation. **Attached as Exhibit I**
11. UCUA Transaction List by date; January 2013 through January 2014. **Attached as Exhibit J**
12. UCUA Resolution (7-2014) – Bill List for 1/15/14 - 2/12/14. **Attached as Exhibit K**
13. UCUA Resolution (26-2014) – Bill List for 2/13/14 - 3/19/14. **Attached as Exhibit L**

III. SUMMARY OF WITNESS INTERVIEWS

Commissioners Edward Kahn and John Kulish – Members of the UCUA PPI Committee

On May 1, 2014, I met with two members of the Personnel, Procurement, and Insurance (PPI) Committee – Commissioner Edward Kahn ("Kahn") and Commissioner John Kulish ("Kulish") at the UCUA facility in Rahway, New Jersey. Kahn and Kulish had knowledge of the SSA between the UCUA and UCIA and were aware of the $15,000 payment from UCIA to UCUA. Neither Kulish nor Kahn recalled approving any payments to employees. Both Commissioners raised concerns that the Board was not aware of these payments to employees and wanted someone to obtain all the facts surrounding the payments, determine whether proper procedure was followed, and also make recommendations on how to improve the process. Commissioner Kulish was concerned that the payment checks had the stamped names of two Commissioners (Clifton People and Edward Jackus) who were not aware of the payments to employees. Kahn and Kulish could not recall another situation where the Board had authorized separate payments to an employee.

Commissioner James D. Huff – Chairman of the UCUA Board

On May 13, 2014, I met with the Chairman of the UCUA Board James D. Huff at my office in Morristown, New Jersey. Chairman Huff confirmed the scope of my fact-finding inquiry to include why the payments were made, how the payments were made, whether proper procedure was followed, and the justification for the payments. Although not present at the August 2013 meeting when the SSA was approved by the UCUA Board, Chairman Huff was aware of the terms of the SSA and believed that the $15,000 payment by UCIA to UCUA was to reimburse UCUA for allowing UCIA the use of its employees and facilities. Chairman Huff was concerned that the first time the Board became aware of the payments to the employees was at the February 2014 Board meeting and the payments had never been included on the Bill Lists provided to the Board for approval. Chairman Huff also was under the belief that all payments that are made by the UCUA appear on the Bill List and was surprised to learn of these payments to employees.

Commissioner James Kennedy – Member of the UCUA PPI Committee

On May 15, 2014, I had a telephone discussion with Commissioner James Kennedy ("Kennedy"). Commissioner Kennedy previously served as Chairman of the UCUA Board for many years and currently serves on the Board's PPI Committee. Kennedy reiterated the concerns of the other Commissioners that the Board was completely unaware of the payments to the employees and wanted my inquiry to focus on how it happened, why it happened and recommendations to avoid a similar situation in the future.

Kennedy confirmed that around June 2013, the Union County Board of Chosen Freeholders had commissioned a study to evaluate the merger of UCUA and UCIA. After the retirement of UCIA Executive Director Charlotte DeFilippo and due to the pending merger of the two authorities, there were discussions regarding a shared services agreement between the two authorities for a short period of time. According to Kennedy, UCUA would provide the services of the executive director and his staff to the UCIA as well as allow UCIA the use of UCUA facilities for office space in exchange for a monthly payment of $15,000. Kennedy does not recall any discussion by the

UCUA Board on the allocation of the $15,000 payment, however, it was Kennedy's understanding that a portion of the payment would be used to compensate the executive director and the staff for the additional services they would provide to the UCIA. After the Board passed the resolution approving the SSA in August 2013, Kennedy believed that the agreement/payment issue would go through an internal process, a trial period to allow the Executive Director time to determine the amount of work required under the SSA and to identify the staff members who would handle the additional work load. At the conclusion of this internal process, Kennedy expected the Board to receive a recommendation on the allocation of compensation or an update on the SSA. He was very surprised to learn that employees had already started to receive compensation payments.

Kennedy also expressed his opinion that the use of signature stamps for checks was a common practice at the UCUA and he never had a concern before because he believed all payments would appear on the Bill List, which gets approved by the Board.

Lisa M. da Silva

On April 30, 2014, I met with Lisa da Silva ("Silva") and her attorney at my offices in Morristown, New Jersey. Silva stated that she had been employed at the UCUA since 2004 and currently holds the title of Deputy Clerk/Office Manager. Silva stated that after the adoption of the SSA in August 2013, Sullivan had a staff meeting with all non-union employees, which was attended by Silva, Daniel P. Sullivan, Thomas Brennan, Jeffrey Hummel, and Suzanne Kinloch. Two other employees Minerva Rosa and William Neafsey did not attend the staff meeting. Rosa was out to lunch and Neafsey was out of the office on the meeting date. At the staff meeting, Sullivan explained the SSA and that the UCIA operations would be moving to the UCUA facility. He indicated to the attendees that the staff would see an increased responsibility under the SSA and he expected the staff to be on board and provide assistance. According to Silva, Sullivan explained that the UCIA would make a monthly payment of $15,000 to the UCUA and stated that the staff members would receive a payment to compensate them for the increased responsibilities, although he was not sure at that time as to the amount of compensation. The staff members were told that this was a temporary situation while the Freeholders were studying a potential merger of the UCUA and UCIA and that the study and merger would be completed by January 2014. Sullivan explained that the additional payment to the staff would not be included in their regular salary paycheck, but instead would be a separate check and that each staff member would receive a Tax Form 1099 at the end of the year for tax purposes.

Following the SSA, Silva saw an increased role in administrative duties including but not limited to coordinating the UCIA move to the UCUA facility, familiarizing with UCIA projects, coordinating UCIA's Request For Qualifications process, attending Commissioner meetings, and working with Sullivan in his role as the interim Executive Director of the UCIA. Silva stated that she received a total of 6 payments of $500 each beginning in September 2013 and the payments stopped in February 2014. She further stated that she received a Tax Form 1099 from the UCUA for the 4 payments received by her in 2013.[3]

[3] For the year 2013, UCUA issued Tax Form 1099-MISC to the following individuals: Daniel P. Sullivan, Thomas Brennan, Lisa M. da Silva, Suzanne Kinloch, William Neafsey, Minerva Rosa, and Jeffrey Hummel and same are attached as Exhibit J).

Suzanne Kinloch, William Neafsey, Minerva Rosa, and Jeffrey Hummel

On May 7, 2014, I met with the Suzanne Kinloch ("Kinloch"), William Neafsey ("Neafsey"), Minerva Rosa ("Rosa"), and Jeffrey Hummel ("Hummel"). The undersigned met with each of the employees separately at the UCUA facility in Rahway. Consistent with Silva's statement, all witnesses stated that a staff meeting was held in August 2013, which was attended by Sullivan, Brennan, Silva, Hummel and Kinloch. The topic of discussion at the meeting was the study and/or merging of the UCUA and UCIA, the SSA, and additional responsibilities for the staff. Also discussed at the meeting was the $15,000 monthly payment that was being made to UCUA by the UCIA for services and staff, and that UCUA staff would be compensated for their additional work for the UCIA.

The above employees were consistent in their description of the discussions at the meeting regarding additional compensation, and that at the meeting, Sullivan stated that the staff would receive separate compensation checks and each staff member would receive a Form 1099 at the end of the year for tax purposes.

Kinloch stated that after the SSA, she had additional responsibilities and increased administrative duties due to UCIA phones and personnel being transferred to the UCUA. Kinloch stated that she received a monthly payment of $500 (total of 6 payments) beginning in September 2013 and the payments stopped in February 2014. Kinloch received a Tax Form 1099 for the 4 payments received by her in 2013.

Neafsey stated that he did not attend the staff meeting previously mentioned because he was out of the office on that day. However, Sullivan discussed the details of the meeting with Neafsey when he returned the following day. Sullivan told Neafsey that he was taking over as the interim Executive Director of the UCIA and that there would be additional responsibilities for Neafsey. Neafsey stated that according to Sullivan, the staff would receive additional compensation but Sullivan did not know the amount because he did not know how much work each of the staff members would be doing. Sullivan also stated that the additional payment would be by separate check and Neafsey would receive a Tax Form 1099 for the payments. After the adoption of the SSA, Neafsey attended several UCIA meetings and became involved in many of the UCIA projects, such as the proposals for the sale of County Golf Courses, Court House construction, and construction at Union County College. Neafsey received a total of 6 payments of $500 each beginning in September 2013 and received a Tax Form 1099 for the 4 payments received by him in 2013.

Rosa stated that she did not attend the staff meeting but was advised of the details of the meeting by Sullivan and Silva. After the SSA, Rosa saw an increase in secretarial responsibilities. Rosa stated that she received a total of 6 payments of $500 each beginning in September 2013 and received a Tax Form 1099 for the 4 payments received by her in 2013.

Hummel similarly stated that at the August 2013 staff meeting, Sullivan told the staff that UCUA and UCIA would merge into one unit at some point soon and there would be enhanced duties for the staff members. Sullivan wanted to get his arms around the pending UCIA projects and needed assistance from his staff. At the meeting Sullivan stated that all staff members, including Brennan and himself, would receive additional compensation from the $15,000 monthly payment from UCIA to UCUA. Since the August staff meeting, Hummel has attended several meetings

regarding pending UCIA projects. For his work on UCIA matters, Hummel was paid an additional $500 per month beginning in September 2013 and received a Tax Form 1099 for the 2013 payments.

Jonathan Williams, Esq.

On May 1, 2014, I met with Jonathan Williams, Esq. ("Williams") at his office in Teaneck, New Jersey. Williams serves as the General Counsel for UCIA. Williams stated that he has worked with the UCIA for over 10 years and provided me with a lot of critical background information regarding the SSA. Williams stated that after the announcement of the retirement of the UCIA Executive Director in May 2013, the Freeholder Board adopted a resolution to study a merger of UCUA and UCIA and to evaluate whether dissolving one of the authorities would be efficient and save taxpayer funds. Williams stated that while the study was being conducted, the UCIA needed a temporary executive director to oversee the pending UCIA projects. There were discussions between UCUA and UCIA about the possibility of a shared service agreement for the use of executive director services, staff services, and use of UCUA facility by UCIA. Prior to the approval of the SSA by the Boards of the respective authorities, Williams stated that he met with Thomas Neff, Director of the Division of Local Government Services, in Trenton to discuss the SSA. Neff stated that he did not see any problems with moving forward with the SSA pending the study by the Freeholder Board.

Some of the many UCIA projects and issues that needed attention by the interim Executive Director at the time of the SSA included: Reviewing and evaluating Request For Proposals for potential sale of the Runnells Specialized Hospital and reporting to UCIA and Union County Freeholders; Union County College expansion of the Cranford campus, including the construction of a Student Services Center and the associated public bidding process; New Union County Family Courthouse that required attendance at meetings and coordination between construction managers, court personnel and project engineers; Project involving the County Golf Courses and the negotiations for the lease or sale of the golf courses; Host fee dispute involving the Park Madison building in Plainfield, NJ and Redevelopment Project in Linden, NJ.

Williams stated that since August 2013, he has attended several meetings with Sullivan with regards to the pending UCIA projects and that having Sullivan involved in these projects has been critical to moving them forward.

Kraig Dowd, Esq.

On May 19, 2014, I had a discussion with Kraig Dowd, Esq. ("Dowd"), who serves as General Counsel for the UCUA. Dowd stated that he was not involved in the negotiations of the SSA but received a draft of the SSA on August 15, 2013, which had a blank in Section 1.04 for the remuneration amount from UCIA to UCUA. Subsequently, the amount of $15,000 was inserted in the SSA as the amount of payment from UCIA to UCUA. Dowd's understanding was that the $15,000 payment from UCIA to UCUA was to offset the costs to UCUA for providing use of facility, staff and executive director services. Dowd also stated that he first became aware of the payments to employees in February 2014 and at no time between August 2013 and February 2014 did anyone at UCUA contact him to seek his guidance on the distribution of the $15,000 payment or the compensation payments to employees.

Daniel P. Sullivan

On May 12, 2014, I met with Daniel P. Sullivan ("Sullivan") at his attorney's office in Morristown, New Jersey. Sullivan stated that he has been responsible for the day-to-day operations at the UCUA since being appointed as the interim Executive Director in August 2011. He was appointed to a full 5-year term as the UCUA's Executive Director in April 2012. Sullivan also served on the Union County Board of Chosen Freeholders and was scheduled to retire when his term ended on December 31, 2013.

With regards to his involvement in the UCIA, Sullivan stated that in June 2013, the Freeholders became aware of the pending retirement of UCIA's Executive Director Charlotte DeFilippo and commissioned a study to evaluate a merger of UCUA and UCIA.[4] Since the UCIA had several pending projects and would have no executive director beginning August 1, 2013, Sullivan was approached in July 2013 on whether he would assume the title of interim Executive Director of the UCIA on a temporary basis pending the completion of the merger study. Sullivan understood that the merger would require the dissolution of the UCUA and that UCUA operations would be shifted to UCIA. The original discussion was for Sullivan to assume the role of UCIA's interim Executive Director in January 2014 after the expiration of his term on the Freeholder Board. However, since the UCIA could not operate without an executive director until January 2014, the discussions turned to Sullivan resigning from the Freeholder Board in August 2013. Sullivan had discussions with Jonathan Williams, General Counsel of the UCIA, during which Sullivan expressed his interest in serving as long as there was compensation for his staff who would take on a lot of additional responsibilities with respect to UCIA projects. UCUA and UCIA subsequently entered into the SSA, under which the UCIA agreed to pay the UCUA a monthly payment of $15,000 for executive director services, staff services, and use of UCUA facilities.

Sullivan stated that he had a staff meeting at the end of August 2013 wherein he explained to the staff the additional responsibilities that accompanied the SSA and expected them to assist in any way they could. Sullivan also told the staff about his decision to compensate them for the additional responsibilities but did not disclose the amount of compensation since he himself was not aware of the amount of work necessary and the involvement of specific employees. The day prior to the staff meeting, Sullivan stated that he consulted with Thomas Brennan, UCUA Comptroller. They discussed Sullivan's intentions to compensate the staff for the additional responsibilities and the appropriate mechanism to achieve that. According to Sullivan, Brennan advised him that he did not see a problem with the additional compensation, as long as it was a separate check and the employees received a Tax Form 1099 for the payments. Sullivan also stated that Brennan told him that he informed the auditors and the auditors did not have any issues with the arrangement.[5]

Sullivan stated that all the payments to employees were made via UCUA check, were properly accounted for in the financial books and the transactions were transparent. The checks were issued from the $15,000 monthly payment from UCIA to UCUA, which Sullivan stated that Brennan accounts for separately, and keeps separate from other UCUA funds. Since this was a temporary

[4] Sullivan abstained from the Freeholder's Resolution authorizing the study.

[5] Sullivan recalled a discussion towards the end of 2013 with Robert Butvilla, who stated that they (the auditors) would prefer the payments to the employees be done through their salary rather than separate payments.

situation, he believed that requesting salary adjustments for the employees would not be appropriate. Sullivan believed the UCUA resolution approving the SSA as well as the language of the SSA clearly outlined the purpose of the $15,000 payment from UCIA. He believed he had the authority and discretion to allocate the funds from the UCIA payment towards staff compensation since the payment was made to UCUA for purposes of compensating the executive director and the staff for additional responsibilities. Sullivan further believed that the By-Laws gave the Executive Director discretion over expenditure for goods and services necessary for the day-to-day operation of UCUA without Board approval. In addition, Sullivan reasoned that since the SSA did not have specific allocations for the $15,000 and the Board did not provide any further guidance on the matter, it was his discretion to allocate the additional payments to the employees.

Upon further questioning, Sullivan conceded that the payments to the employees were "compensation" and acknowledged that generally, if he believed an employee deserved a raise or change in compensation, he would make a recommendation to the PPI Committee and obtain Board approval to effectuate a change in compensation. Sullivan explained that he did not go to the PPI Committee for these payments to employees because the PPI Committee had already approved the SSA and none of the UCIA activities were directly related to PPI.

Although Sullivan believed he had the authority to authorize the payments to the employees, he stated that if he could go back in time, he would have requested approval from the Board prior to issuing the payments. He explained that he never intended anything to be hidden from the Board and was operating under the impression that he was following proper procedure, which he believed was approved by his Chief Financial Officer and the auditors.

When questioned about the general payment process at the UCUA for goods and services, Sullivan stated that vendors submit a voucher, which gets placed on a "Bill List" and the List is provided to the Board for approval. Similarly, for any reimbursement to an employee, a voucher is submitted by the employee, which is added to the Bill List for approval by the Board.

With respect to the payments made to the seven (7) employees from the UCIA funds, including himself, Sullivan stated that no vouchers were submitted by the employees nor did the payments appear on the Bill List for Board approval.

Sullivan stated that as the interim Executive Director of UCIA, his main goal was to familiarize himself with current UCIA projects and to "straighten out" UCIA's finances. Sullivan stated that since August 2013, he continues to be Executive Director for both the UCUA and UCIA, overseeing day-to-day operations for both authorities. Sullivan has attended "countless" meetings regarding pending UCIA projects and has been deeply involved in negotiations of several pending UCIA matters.

Thomas Brennan

On May 13, 2014, I met with Thomas Brennan ("Brennan") and his attorney at my offices in Morristown, New Jersey. Brennan stated that he has been employed at the UCUA since 1993 and was first hired as UCUA's Comptroller. Since 1993, Brennan has gathered additional titles and currently serves as the Comptroller, Deputy Executive Director, Chief Financial Officer, and Affirmative Compliance Officer at the UCUA. Brennan is responsible for the accounting, financial reporting, cash management, budget preparation and all oversight of the Authority's

finances. Brennan stated that he is the person responsible for creating Bill Lists that are provided to the Board for approval. The Bill Lists contain payments for all professionals, submitted vouchers and direct contributions made by the UCUA and is created by using data from QuickBooks, financial accounting software.

Brennan stated that in August 2013, he was told about the $15,000 payment arrangement from the UCIA to the UCUA at a meeting with Sullivan, but also read about it in the SSA. He stated that when he receives the payment, he places the $15,000 payment into the UCUA operating account, but into a separate "reserve" account, which is only to be used for the operation of the UCIA. After the August 2013 staff meeting held by Sullivan to explain the possible merger, increased responsibilities and additional payments, Brennan and Sullivan met to discuss how to make these payments to the employees. Sullivan explained to Brennan that this was a temporary situation that was not anticipated to last longer than 6 months. Sullivan also gave Brennan the amounts to be given to each employee. Brennan explained to Sullivan that the money needed to be a separate payment as opposed to being added to the staff's salaries, and that each employee would receive a Tax Form 1099. Brennan stated that the payments were deemed "non-employee compensation," and no vouchers were submitted.

Brennan stated that he met with UCUA auditor Robert Butvilla from Suplee, Clooney & Company on or about September 5, 2013, just before the first checks were distributed to the staff.[6] They met so Brennan could explain these payments. Brennan admitted that Butvilla preferred the money to go through payroll, but Brennan explained to Butvilla that UCUA did not want to inflate payroll and wanted to issue separate checks instead. Brennan stated that Butvilla agreed, so long as the money was eventually reported to the IRS.

Brennan stated that in his over 20 years with the UCUA, he could not recall an employee ever receiving a bonus or non-employee compensation (other than the payments in question). He stated that in the past, stipends had been paid to union employees pursuant to the Collective Bargaining Agreement ("CBA"), but that those stipends had been approved by the CBA, which was in turn approved by the Board.

With regards to the allocation of the $15,000 payment, Brennan took the position that under the By-Laws of the UCUA, the Executive Director has the authority to make expenditures for goods and services under $15,000 without the need for approval from the Board. However, upon further questioning and request for examples where expenditures were made by the Executive Director without Board approval, Brennan could not recall any. He also stated that other than the payments to the UCUA employees, the funds from UCIA had only been used for the recent purchase of a computer and printer for a UCIA employee. This purchase was done using a voucher and was placed on the Bill List and approved by the UCUA Board. Brennan also stated that in the past, when furniture was purchased or vehicles purchased at the discretion of the Executive Director, even when the expenditures were under the $15,000 threshold, purchase orders were created or the purchases were placed on the Bill List and approved by the Board. When asked whether there had been instances of payment for "services" to individuals who were not employees, Brennan recalled instances where UCUA hired interns or temporary employees and although there were no vouchers

[6] As discussed later in this report, Robert Butvilla denies such a meeting took place in the first week of September.

submitted, payments to the interns/temporary workers were approved by the Board and the names of the interns/temporary workers appeared on the Bill List.

Brennan claims that the payments to UCUA employees for UCIA work did not appear on the Bill List, because the Board had already approved the $15,000 payment from the UCIA to UCUA and the payment was understood to be partially used for compensation for UCIA work. Furthermore, although the UCIA funds were paid to UCUA, they were kept separate and were (and to date have not been) allocated to the UCUA. Throughout the interview, Brennan maintained that the $15,000 received from UCIA and deposited into the UCUA account was not UCUA funds but was in fact UCIA funds.

Since August 2013, Brennan has added additional responsibilities related to UCIA to his existing UCUA responsibilities. Brennan has assessed the finances of the UCIA and analyzed the UCIA's financial documents. He has reviewed the financial documents of the UCIA for the last 2 years, including leasing contracts, agreements, and bonds. He also has financial oversight for active, ongoing, and new projects for UCIA.

Robert J. Butvilla and Anthony P. Cardone (Suplee, Clooney & Company)

On May 15, 2014, I met with Robert J. Butvilla ("Butvilla") and Anthony P. Cardone ("Cardone") at their offices in Westfield, New Jersey. Both Butvilla and Cardone are employed by the auditing firm of Suplee, Clooney & Company, the firm that serves as the auditor for both UCUA and UCIA. I interviewed Butvilla and Cardone separately in a private conference room.

Butvilla stated that he is the manager of the UCUA account on behalf of the auditing firm and has served in that role since 1983. Butvilla stated that the auditing firm is retained to audit the finances of the UCUA, to review the internal controls on "how revenue comes in and how it goes out", to review payments made by UCUA and authorization for those payments, to review contracts, resolutions and board minutes to reconcile the payments and the general financial process at the UCUA. Butvilla stated that he became aware of the SSA in October 2013 when he received a call from Cardone, who at the time was running certain reports for the UCIA. Cardone noticed the $15,000 payment, requested information on the payment and was advised that UCIA was making a monthly payment to UCUA pursuant to a shared services agreement and that UCUA was using a portion of the payment to pay certain employees. Cardone relayed the information to Butvilla that payments were being made by UCUA to its employees as compensation but that the payments were not being run through payroll. Butvilla stated that the day after being informed by Cardone in October 2013 about payments being made to UCUA employees outside of payroll, he contacted Brennan and advised him that he "cannot do that and that the payments have to run through payroll". According to Butvilla, Brennan informed him that he planned to send Tax Form 1099 to the employees and since it was already the end of the year, he would run everything through payroll in 2014.[7]

Approximately 3 weeks after the call between Butvilla and Brennan, Butvilla attended a meeting at the UCUA facility in Rahway, New Jersey, which was attended by Sullivan, Brennan, Williams

[7] The payments to the employees continued to be made in 2014 as a separate payment and outside of regular UCUA payroll.

and Dennis Enright from NW Financial, financial advisors to the UCIA. After the meeting, Butvilla met with Sullivan and advised him that Brennan was not running the employee payments through payroll and that he could not do that since it would get the UCUA "in hot water" with the Internal Revenue Service. Sullivan stated that he would discuss the issue with Brennan.

Butvilla stated that he was not aware of the issue of whether the payments were approved by the Board. His concern only pertained to potential tax implications and in his experience the consequences could be severe for UCUA. The individuals receiving payments were full time employees and not consultants and their salaries were approved via Board resolutions. In his opinion, even if the employees were provided with additional duties, they were still salaried employees and his concern was that the IRS would assess fines against UCUA for not withholding taxes from these additional payments.

Butvilla stated that the firm began an audit of UCUA earlier than normal in February/March 2014 for the calendar year 2013 because the County was looking at the merger of UCUA and UCIA. During the audit, Butvilla also discovered that Brennan was not booking the $15,000 payment from UCIA as a revenue item but was booking the payment in a liability account in the financial books. In Butvilla's opinion, the UCIA payment should have been booked as a revenue item.

In his interview, Cardone similarly stated the various purposes of an audit and the procedures used by him for UCUA and UCIA audits. In October 2013, while running some reports for UCIA, Cardone became aware of the SSA. Cardone asked Mark Brink, a UCIA employee, about the $15,000 payment that appeared in the reports and was advised that the payment was being made to UCUA for staff services and use of UCUA facility and that UCUA was paying certain employees through separate checks. Cardone stated that he immediately contacted Butvilla. He did not have any further discussions with anyone at UCUA regarding this issue. Cardone also stated that as part of his general audit responsibilities, he reviewed minutes and resolutions to find backup material for the payments to the employees but was unable to find any.

The only time that Cardone had a conversation with Brennan about the employee payments was in April 2014 while performing the UCUA audit. Cardone asked Brennan why the payments were not placed on the Bill List for Board approval. Brennan responded that he was treating the UCIA payment as "restricted" and placing it into a separate account. Hence, Brennan's position was that the payment was not UCUA money but belonged to UCIA.

IV. INQUIRY FINDINGS

I found all witnesses to be very forthcoming and willing to answer any and all questions posed by me. The facts regarding the SSA are undisputed. Pursuant to the SSA between UCUA and UCIA, UCIA agreed to pay $15,000 per month to UCUA for Executive Director services, use of office space at the UCUA facility in Rahway, and "from time to time" use of UCUA staff, including "reception, secretarial, clerk and deputy clerk and comptroller and accounting services."[8] After receiving the monthly payments from UCIA, starting in September 2013 UCUA began making payments to all non-union staff employees as additional compensation. A total of seven

[8] Exhibit D – Shared Services Agreement

(7) employees received additional compensation by the UCUA for work related to the UCIA. Below is the chart showing the names of employees receiving separate compensation, dates of the payments, and the amount of the payments.

	9/6/13	9/30/33	10/31/13	12/2/13	1/8/14	1/30/14	TOTAL
Daniel P. Sullivan	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$15,000
Thomas M. Brennan	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$6,000
Jeffrey P. Hummel	$500	$500	$500	$500	$500	$500	$3,000
Lisa M. da Silva	$500	$500	$500	$500	$500	$500	$3,000
William J. Neafsey	$500	$500	$500	$500	$500	$500	$3,000
Suzanne Kinloch	$500	$500	$500	$500	$500	$500	$3,000
Minerva Rosa	$500	$500	$500	$500	$500	$500	$3,000
	$6,000	**$6,000**	**$6,000**	**$6,000**	**$6,000**	**$6,000**	**$36,000**

The payments to the employees were not run through regular payroll but instead were made by separate UCUA checks without any tax withholdings. The payments were also not placed on any of the Bill Lists presented to the Board for approval and I could not locate any Board resolutions specifically authorizing the payments. The two individuals involved in the decision making to provide the additional compensation to the employees were Sullivan and Brennan, who were also two of the employees receiving the payments.

As an initial matter, based on the numerous interviews conducted, I conclude that the employees that received additional payments did perform extra work as a result of the SSA. Whether an employee was overpaid or underpaid for the additional work is beyond the scope of my inquiry. I found that all of the 7 employees saw an increase in their responsibilities. The major issue appears to be whether Sullivan, as UCUA's Executive Director, was authorized to use his discretion in using the $15,000 UCIA payment to grant additional compensation to UCUA employees.

It is my conclusion that Sullivan exceeded his authority in issuing additional compensation to the seven (7) employees without Board approval. I found Sullivan to be honest in his responses during the interview and honest in his belief, albeit misguided, that he had the authority and discretion to award employees additional compensation without approval of the Board. I also disagree with Brennan's position that the $15,000 was not UCUA funds and find that the $15,000 payment from UCIA clearly belonged to UCUA and should have been treated and distributed in accordance with the normal budgetary procedure requiring approval by the Board.

My conclusion is based on the following reasons:

a. Municipal and County Utilities Authorities Law - N.J.S.A. 40:14B-1, et seq.

N.J.S.A. 40:14B-1, *et seq.* governs the creation and the ultimate operation of any municipal or county utilities authority. N.J.S.A. 40:14B-14 provides that the powers of a

municipal utilities authority shall be vested in its members in office. N.J.S.A. 40:14B-15 further provides that no member of the authority or employee shall have or acquire any interest in the system or property or any contract entered into for goods or services. The statute also allows any authority to appoint and employ a full or part time employee including an executive director and managerial personnel, and affords the Board of the authority the right to determine his/her qualifications, terms of office, duties and *compensation*. See N.J.S.A. 40:14B-18 (emphasis added). Thus, under the creation statute of the UCUA, compensation for employees is to be determined by the Board of the established authority. Therefore, only the UCUA Board, not the Executive Director, had the authority to allocate any monies from the $15,000 payment received from UCIA towards compensation of the employees.

b. UCUA By-Laws

The 2013 By-Laws[9] of the UCUA clearly provide that the "powers of the Authority shall be vested in the members thereof in office." See Article 1, Section 7. The By-Laws also provide that the UCUA's officers shall be the Chairperson, Vice Chairperson, Secretary and Treasurer and that they shall be considered members of the UCUA. See Article III, Section 1. The Chairperson shall "[u]nless the Authority otherwise authorizes, ...with the Treasurer and any chief financial officer designated by Resolution, sign all checks, drafts, notes, requisitions of funds, contracts and other agreements and obligations of the Authority." See Article III, Section 5. The Treasurer shall "co-sign all checks, drafts, notes, requisitions of funds, contracts and other agreements and obligations of the Authority. He shall be a member of the Finance and Budget Committee." See Article III, Section 5.

The By-Laws also provide that an Executive Director, Clerk and Deputy Clerk, and such managerial personnel, support staff and others may be hired as needed. The By-Laws state that the "Authority *shall* determine the qualifications, duties and *compensation* of all employees and staff personnel." See Article IV, Section 1. (emphasis added).

With respect to the position of Executive Director, the By-Laws provide that he/she is responsible for performing the administrative duties and controlling the day-to-day operations of the UCUA. The By-Laws give the Executive Director "absolute discretion" to make expenditures without Board approval when the goods or services total less than $15,000. If the purchase exceeds $15,000, but is less than the bid threshold under the Local Public Contracts Law, prior approval from the Chairperson is required. See Article IV, Section 4.

The By-Laws also establish Standing Committees including the Finance and Budget Committee and the Personnel, Procurement and Insurance Committee. The Finance and Budget Committee is responsible for examining all vouchers against the UCUA and certifying same for payment upon approval from the Board. The Personnel, Procurement and Insurance Committee is responsible for "recommend[ing] to the Authority the retainment of such employees and/or officers of the Authority as may be needed from time to time; it shall review wage policies, wage schedules, salary increments and make appropriate recommendations with regard thereto to the Authority." See Article V, Section 3.

[9] Since the last two payments were made in 2014, I reviewed the 2014 By-Laws of the UCUA and found the relevant sections to be identical to 2013 By-Laws.

As such, it is clear from the language within the By-Laws that any decision about compensation should have been presented to the Personnel, Procurement and Insurance Committee and then presented to the full Board for consideration. The By-Laws only provide the Board with such powers. The language in the By-Laws regarding the Executive Director's discretion on expenditure for "goods and services" certainly did not contemplate service by a salaried employee. Even if Sullivan believed that he could rely on the exception in the By-Laws that permits the Executive Director to expend funds up to $15,000 without permission from the Board, the monies distributed to the employees of the UCUA exceeded that limit as shown in the chart above. Furthermore, even if one is to accept Sullivan's interpretation, Sullivan should not have believed that the Executive Director had the authority to authorize payments to himself without the necessary checks and balances required for transactions involving a financial interest. The By-Laws clearly require the Chairperson and Treasurer to sign all checks of the Authority. Even though stamps of their signatures may be used to facilitate the issuance of checks from the Authority, one can only conclude that the intent was for these members of the Board to be made aware of any checks that were stamped with their name. For the payment checks to be issued to the employees without the Board being aware, especially the Chairman and Treasurer whose signature stamps were used, defeats the entire purpose of the language in the By-Laws and the necessary checks and balances to avoid such situations.

c. Employee Handbook of UCUA effective July 20, 2011

The Employee Handbook of the UCUA provides that all employees shall comply with the Standards of Conduct as set forth in the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 *et seq.* It further provides that "[a]ll UCUA employees and officials must conduct business according to the highest ethical standards of public service." One of the guidelines that applies to all officers and employees is "[n]o officer or employee may use or attempt to use his/her position with the UCUA to secure unwarranted privileges or advantages for him/herself or others."

The Local Government Ethics Law provides that "[n]o local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment." N.J.S.A. 40A:9-22.5d. Sullivan and Brennan should not have been the decision makers in awarding themselves additional compensation and this is a further reason why the PPI Committee is tasked with employee wage and compensation matters – to avoid such conflicts.

d. Policies and Procedures Manual of the UCUA dated August 2012

Policy # 1.11 states that all employees must conduct business according to the highest ethical standards of public service. It also states that employees shall comply with the Local Government Ethics Law, N.J.S.A. 40A:9-22.1, *et seq.* Section (c)(2) of the Policy states that "no employee, Commissioner or other official may use or attempt to use his/her position with the UCUA to secure unwarranted privileges or advantages for him/herself or others."

Policy # 4.1 states that "the Board of Commissioners determines salaries and salary increases for *all* employees, either on its own or through negotiations with a collective bargaining representative of unionized employees, and pays salaries and other compensation in accordance with applicable law." (emphasis added). This policy plainly affords only the Board the right to determine salaries and any increases. Although the additional compensation payments issued to employees were not classified as salary payments for tax purposes, they ostensibly were salary increases, which should have been submitted first to the PPI Committee and then to the Board for review and approval.

e. Past Practices of the UCUA

Upon reviewing past operating and resource recovery vouchers ("Bill Lists") approved by the Board at monthly meetings, it can be seen that reimbursements for travel and seminar expenses, stipend payments, overpayment refunds, petty cash reimbursements, and stipends for affirmative compliance officer have always been listed on the Bill List for consideration and approval. As such, it would seem to be in accord with past practice to have listed these employee payments on the Bill List for the Board's review and approval.

V. CONCLUSION & RECOMMENDATIONS

Based on the totality of the circumstances, the undersigned finds that Sullivan was not authorized by the UCUA to make payments to employees and that any such payments should have been presented to the Board for review and approval. While he relied on his Comptroller and auditors for advice, as the Executive Director, he is ultimately responsible for making decisions, and his decision in this matter was an error.

I also find a certain amount of responsibility on the part of Brennan for allowing these employee payments. Brennan is the Comptroller for the UCUA and is responsible for the accounting, financial reporting, cash management, budget presentation and control functions at the Authority. Brennan should have guided Sullivan and should have known about the pitfalls of issuing separate compensation checks to full time UCUA employees. In his interview, Brennan mentioned that he could not recall any stipends or other non-employee compensation being paid to employees. He mentioned that union employees receive stipends pursuant to the CBA, but are not separately listed on the Bill Lists, because the CBA has already been approved by the Board. However, an examination of the Bill Lists for February 2014 and March 2014 reveal that stipends were paid to four CBA employees in February 2014 and a $300 flat payment was made to Brennan in March 2014 for serving as the Affirmative Compliance Officer for the UCUA. These Bill Lists were presented to and approved by the Board. Similarly, the payments to the seven employees for the additional work under the SSA were compensation and should have been part of the Bill List.

Although Brennan took the position that under the By-Laws of the UCUA, the Executive Director had the authority to make expenditures under $15,000 without Board approval, he could not provide any past examples of an executive director making such discretionary expenditure without the expenditure being placed on the Bill List. Throughout the interview, Brennan took the position that the $15,000 received from UCIA was not UCUA money and therefore any monies used, such as the employee payments, were not required to be on the Bill

List. Not only is this position inconsistent with the auditor's position, this position is also not consistent with Brennan's earlier statement when he stated that a computer/printer was purchased from the UCIA funds and the purchase was placed on the Bill List for UCUA Board approval.

Brennan is the sole person responsible for generating the Bill List for inclusion on the Board's agenda and should have included the employee payments on the Bill List. Further cause for concern is the inconsistency in Brennan's statement and that of the auditor Butvilla. Brennan's statement about speaking to the auditor prior to the issuance of the first checks to the 7 employees is not consistent with Butvilla's statement that the first conversation he had with Brennan regarding the employee payments was in October 2013 after he was informed that UCUA was making payments to employees and not running the payments through payroll.

Despite the above conclusion, the undersigned does not find that Sullivan and Brennan acted with any intent to deceive or hide the transactions. It appeared to me that Sullivan genuinely believed that he had the authority to act without the Board's approval and that the comptroller and the agency's auditors supported his actions. Based on all of the interviews, it appeared to me that everyone believed this arrangement to be temporary due to the pending "merger" and only contemplated it to last a few months. As a result of the uncertainty, Sullivan and Brennan did not follow proper procedures and at worst, made an error in judgment. However, the employee payments were always accounted for in the financial books, were always on the UCUA transaction list and Tax Form 1099 was issued to each of the seven employees. As such, I do not find any effort on the part of Sullivan and Brennan to hide any of these transactions. Nevertheless, they clearly failed to follow proper procedure and were misguided in their interpretation of the By-Laws.

The Board has several options and can take one or more of the following actions:

1. [redacted]

[redacted]

Submitted by:
PAWAR GILGALLON & RUDY, LLC

Vijayant Pawar

Dated: May 21, 2014