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Jeb Spaulding, Secretary

MEMORANDUM

TO: Emergency Board Members

FROM: Jeb Spaulding, Secretary of Administration JS

DATE: September 6, 2013

SUBJECT: Next Emergency Board Meeting

There will be an Emergency Board meeting on Wednesday, September 11, 4:30 p.m., 5th Floor Conference Room, Pavilion Office Building, 109 State Street, Montpelier, Vermont.

As authorized by 32 V.S.A. Secs. 133(b) and 706(2), the agenda item is the transfer of $5.5 million from the FY 2014 General Fund appropriation for Corrections – Correctional Services to the Department of Finance and Management for the purpose of making a payment to the Vermont Economic Development Authority, to make a loan to the developer of the new St. Albans office building, which will be repaid over 20 years. The Administration will request replenishment of the Corrections appropriation in the Fiscal Year 2014 Budget Adjustment, making use of the net proceeds from the sale of 20 Houghton Street, St. Albans.

The St. Albans office building sale and lease are authorized by Act 10 of the 2013 legislative session.

The Attorney General's office concurs that the cited statutes authorize this action by the Emergency Board, and will provide a written statement to the Board.

Materials are enclosed.

cc: Steve Klein, Joint Fiscal Office

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Jeb Spaulding, Secretary

MEMORANDUM

TO: Emergency Board Members

FROM: Jeb Spaulding, Secretary of Administration JS

DATE: September 6, 2013

SUBJECT: St. Albans State Office Building

The 2013 legislature passed Act 10, which provides authorization for the Commissioner of Buildings and General Services to sell the State Office Building at 20 Houghton Street in St. Albans. Act 10 also authorizes the Commissioner of Buildings and General Services to enter into a lease or lease-purchase agreement to replace that State Office Building, in downtown St. Albans.

Act 10 reads as follows:

Sec. 1. SALE OF ST. ALBANS STATE OFFICE BUILDING
(a) Notwithstanding 29 V.S.A. § 166(b), the Commissioner of Buildings and General Services is authorized to sell the state office building at 20 Houghton Street in St. Albans. The Commissioner is authorized to convey 20 Houghton Street by warranty deed.
(b) The Commissioner of Buildings and General Services is authorized to negotiate and enter into a lease or lease-purchase agreement to replace the state office building at 20 Houghton Street in St. Albans. It is the intent of the General Assembly that the replacement state office building remain in downtown St. Albans.

The optimal funding arrangement for development of this new office building would be to use the proceeds from the sale of 20 Houghton Street for that purpose. Act 10 anticipates this transaction. Indeed, statute (29 V.S.A. Sec. 166(d)) provides that:

(d) The net proceeds from the sale of any real property owned by the state shall be paid into a capital fund account to be used for future capital construction projects as authorized by the general assembly, except that such proceeds may be used as otherwise directed by the general assembly, which legislative direction may be by resolution.

Sale of 20 Houghton Street is set for November 15, 2013, and execution of the lease for the new building at or before that date. This short time-frame requires action by the Emergency Board to make funds for development of the new building available prior to the next legislative session, when the net proceeds from the sale of 20 Houghton St. could be directed to this project.

Our proposal is, as provided by 32 V.S.A. Secs. 133(b) and 706(2), to request Emergency Board approval to transfer $5.5 Million from the FY 2014 General Fund appropriation for Correctional Services, to the Department of Finance and Management, for payment to the Vermont Economic Development Authority, to make a loan to the developer of the new office building, which will be repaid over 20 years. The loan will be used to buy-down the cost of the State's annual lease of the building. We will then propose in the FY 2014 Budget Adjustment to replenish the Correctional Services budget and to transfer $5.5 Million from the capital fund account into which the sale of 20 Houghton Street was deposited, to the General Fund at the end of FY 2014, thereby making Corrections and the General Fund whole. The capital account will be reimbursed through the loan repayments.

Since the sale of the 20 Houghton Street property and a lease for its replacement are already authorized by 2013 Act 10, the (temporary) transfer of funds under the authority of 32 V.S.A. Secs. 133(b) and 706(2) is the only action being requested of the Emergency Board. 32 V.S.A. Sec. 133(b) reads as follows:

> *(b) Pursuant to section 706 of this title, the board shall also have authority to transfer appropriations made to other agencies, and to use the transferred amounts to make expenditures necessitated by unforeseen emergencies.*

32 V.S.A. Sec. 706(2) reads as follows:

> *§ 706. Transfer of appropriations*
> *Notwithstanding any authority granted elsewhere, all transfers of appropriations shall be made pursuant to this section upon the initiative of the governor, or upon the request of a secretary or commissioner.*
>
> * * *
>
> *(2) Except as specified in subdivisions (1) and (4) of this section [certain transfers are permissible not to exceed $50,000], the transfer of balances of appropriations may be made only with the approval of the emergency board.*
>
> * * *

As outlined in the accompanying documents, due to the use of a formula to calculate the lease rate and the presence of variables within that lease rate (such as the total amount of New Market Tax Credits, the interest rate for financing, final design, and final construction estimates), the lease rate for the new SOB was not known with certainty when the General Assembly considered and passed Act 10. The timing of this project is at a critical juncture: the developer must close on financing for the project on November 15th, 2013, in order to preserve the ~3 million in New Market Tax Credits, and to avoid cost impacts that would result from delays to the construction schedule, and to allow for State occupancy of the new SOB by fall of 2014.

Agency of Commerce and Community Development Secretary Lawrence Miller and BGS Commissioner Michael Obuchowski provide detail in the accompanying memos.

PROPOSED MOTION

Pursuant to 32 V.S.A. Secs. 133(b) and 706(2), the Emergency Board hereby approves a reduction of $5.5 Million from the General Fund appropriation to Corrections – Correctional Services in 2013 Act 50 Sec. B.338, and transfer of that amount of General Fund appropriation to the Department of Finance and Management for the purpose of making a payment to the Vermont Economic Development Authority, to make a loan to the developer of the new St. Albans office building, which will be repaid over 20 years. The Emergency Board further expresses its intent that the Administration request replenishment of the Corrections appropriation in the Fiscal Year 2014 Budget Adjustment, making use of the net proceeds from the sale of 20 Houghton Street, St. Albans.

St. Albans Redevelopment Project – Financing Proposal 9/6/13
Prepared by Commissioner Obuchowski, Dept. Buildings and General Services

Basic overview of project: This project is part of a downtown redevelopment strategy for St. Albans, under which a private developer (ReArch) is building a new state office building (SOB) to be occupied by state employees who are currently housed at 20 Houghton Street. The State is selling the 20 Houghton Street property to Mylan Technologies, which will then expand its operations to that site. The City is constructing a parking garage adjacent to the new SOB. The garage will have 358 spaces, 170 of which will be dedicated to the exclusive use of the new SOB. The remaining spaces will be used by the public and by a hotel to be constructed in the nearby downtown area.

Agreements associated with project:

-**Development Agreement** (between City, State & Developer): Outlines the roles and responsibilities that each party has in the project. Has been signed by the City and Developer as of 9/6/13.

> *Key Contingencies*: purchase and sale must be executed between Mylan and State to sell 20 Houghton, State and Developer must enter into a lease agreement, Developer must obtain financing to construct SOB that will enable Developer to provide a lease rate that is acceptable to State, City must deed a portion of Houghton Street to Mylan, must be a successful bond vote in St. Albans to finance construction of the parking garage by City (scheduled for 9/10).

-**Parking Management Agreement** (between City & Developer): Governs how the parking garage will be operated and managed.

-**Purchase and Sale** (between City & Developer): to sell site for SOB, along with permanent easement for 170 spaces in to be built parking garage, for $2.5 million.

-**Purchase and Sale** (between State & Mylan): to sell current SOB at 20 Houghton Street to Mylan.

-**Lease** (between State & Developer): State (AHS/DOL) occupies 46,029 gsf office building..

> -20 year term with a purchase option to purchase the building at fair market value that begins in year 10. If State exercises option, State pays to City the difference between PILOT and property tax on building through year 20 in order to support TIF district.
>
> Lease Rate: Based on a formula and comprised of two parts: base and operating.
>
> > - Base includes project and construction costs, financing costs, and New Market Tax Credits (NMTCs estimated at approximately $3 million).
> >
> > - Operating includes expenses of operating the building, including maintenance of the State's 170 parking spaces in the garage, utilities, taxes, insurance, and interior and exterior maintenance.
> >
> > -Gross rent rate under current proposal: $24.20/s.f., yielding a gross rent in year 1 of $1,113,902.
> >
> > -Gross rent rate without current proposal: $29.02/s.f., yielding a gross rent in year 1 of $1,335,761.

St. Albans Redevelopment Project – Financing Proposal 9/6/13
Prepared by Commissioner Obuchowski, Dept. Buildings and General Services

Current Proposal: The current proposal is to use a portion of the proceeds from the sale of 20 Houghton Street to help finance the project. The expected proceeds from the sale are $8 million. Approximately $2.5 million of that is owed and will be returned to an internal building management fund. The remaining $5.5 million would then be placed in a capital account through VEDA to be loaned to the Developer at 0.1% interest at 25 years with a 20 year note resulting in an annual payment from the Developer back to the State of $222,770. If the State elects to exercise its purchase option, the outstanding principal would be applied to the purchase price of the SOB as a credit. The loan repayments received over the term of the loan would be paid into the VEDA capital account and would be available for future capital projects. It is the recommendation of BGS that those funds be used for the future purchase of the SOB.

- ➔ This financing proposal reduces the annual lease cost by $221,860 (due to avoided private financing costs), while still preserving the full $5.5 million in sale proceeds to be used for future capital projects.

Existing Legislative Authority:

-Act 10 of 2013: authorized BGS to sell the SOB at 20 Houghton and enter into a lease or lease-purchase for a replacement SOB.

-29 V.S.A. § 166(d): "The net proceeds from the sale of any real property owned by the state shall be paid into a capital fund account to be used for future capital construction projects as authorized by the general assembly, except that such proceeds may be used as otherwise directed by the general assembly, which legislative direction may be by resolution."

Legislative Action Sought: The current proposal comes after much effort to structure the project so that the goals of the project are realized at the least total cost to the state. Due to the use of a formula to calculate the lease rate and the presence of variables within that lease rate (such as the total amount of New Market Tax Credits, the interest rate for financing, final design, and final construction estimates), the lease rate for the new SOB was not known with certainty when the General Assembly considered and passed Act 10. When the lease rate became more certain, BGS (working with ACCD and in consultation with Finance and Management, JFO, the Treasurer's office, and VEDA) developed the current proposal as a way to meet the objectives of reducing the annual impact of this lease to the general fund while still preserving the sale proceeds from 20 Houghton.

In order to accomplish those objectives, legislative action by the Emergency Board is sought under 32 V.S.A. § 133(b) to transfer funds from the FY 2014 Correctional Services appropriation to the Department of Finance and Management. Finance and Management will then transfer the funds to VEDA for the purpose of establishing a capital account to finance a portion of this project and to receive payments of principle and interest. During the FY 2014 Budget Adjustment, we will propose that the funds transferred from Correctional Services be refunded with the proceeds from the sale of 20 Houghton Street.

The timing of this project is at a critical juncture: the Developer must close on financing for the project on November 15th, 2013, in order to preserve the ~3 million in New Market Tax Credits and to move forward with construction so as to allow for occupancy of the new SOB by fall of 2014.

VERMONT

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St. Albans State Office Building and Downtown Redevelopment
September 5, 2013 Project Update
Lawrence Miller, Secretary, ACCD

During the 2013 Legislative Session the City of St. Albans brought forward a redevelopment project for downtown St. Albans which included the proposal that the State of Vermont sell its office building at 20 Houghton Street and relocate to a new building in the downtown core. In support of the project the City commissioned EPRI to prepare a St. Albans State Office Building Impact Analysis, completed February 12, 2013. In response the General Assembly passed Act 10, which was signed by the Governor on April 26, 2013 which provides that:

(a) Notwithstanding 29 V.S.A. § 166(b), the Commissioner of Buildings and General Services is authorized to sell the state office building at 20 Houghton Street in St. Albans. The Commissioner is authorized to convey 20 Houghton Street by warranty deed.

(b) The Commissioner of Buildings and General Services is authorized to negotiate and enter into a lease or lease-purchase agreement to replace the state office building at 20 Houghton Street in St. Albans. It is the intent of the General Assembly that the replacement state office building remain in downtown St. Albans.

The principal beneficial impacts of the proposed project are that Mylan Technologies would acquire the 20 Houghton Street property at a premium and be able to continue their job growth in St. Albans and that the location of the new State Office Building in the core downtown block would be an anchor of the broader downtown redevelopment project. The obvious hurdle is that moving from an old building with surface parking to a new building in the downtown core does increase direct costs. BGS (supported by ACCD and in consultation with Finance and Management, JFO, the Treasurer and VEDA) has been working with the City of St. Albans, the developer of the new State Office Building (ReArch), and Mylan Technologies to create a deal structure that meets the intent of the project at the least total cost to the state. In the following discussion the reader should know that all figures represent best estimates and that some factors, such as the market interest rate at the time of closing and the yield on tax credits sold could change the actual results slightly. The precision of the figures should not imply that they are entirely firm but do represent very close estimates.

Emergency Board Action Required: Nearly all authority is clearly established for the Commissioner of BGS to complete the project within the time constraints except that the legislature did not foresee the need to authorize the transfer of funds to VEDA in order to fulfill the legislature's intent. The Commissioner is instructed, under standing authority, to place all net proceeds of the sale of a capital asset into a capital account, but we find no clear authority or precedent to place that account with VEDA without legislative action. The timing of the New Markets Tax Credits's closing in November and the cost impact of delays to the construction schedule make action prior to the coming legislative session imperative.

General Considerations: There are several important considerations that influenced how the final structure was developed. First, the developer was able to secure an allocation of New Market Tax Credits that will inject over $3,000,000 of Federal Tax Equity into the project. This reduces the total project budget subject to lease cost by 25%, from $12,270,137 to $9,247,416. Certain methods of reducing the lease cost such as buying down fit-up costs would have foregone Federal dollars and were rejected. Second, it is important that the lease not be considered a capital lease and thus be factored into debt affordability calculations. Third, the equity the state has in 20 Houghton Street should not be used in a way that unintentionally results in increased costs to the state not reflected in the economic analysis used when the legislature decided to authorize the project.

Sale of 20 Houghton: Following a request for proposals, review, and negotiation BGS came to agreement with Mylan Technologies on a purchase price of $8,000,000 for 20 Houghton Street. The City of St. Albans will also convey to Mylan a section of Houghton Street that will allow Mylan to operate on one contiguous parcel. This is substantially above market value, and adds significant value to the total transaction. Of the sale proceeds, approximately $2,500,000 is owed to an internal building management fund. Assuming a 3.75% bond rate and a 20 year simple amortization the $2,500,000 returned to the treasury results in average annual avoided borrowing costs of $179,905. Under his standing authority the Commissioner of BGS is directed to place the remaining $5,500,000 in a capital account for use against future authorized capital expenditures. We propose that these funds be used to help finance the project in a way that will reduce the annual lease cost by $221,860. Of the lease payment $222,270 will be paid back to the Capital Account at VEDA in principal and interest so that the total $5,500,000 is available for future authorized capital costs, such as when the State decides to purchase the new State Office Building. Mylan would purchase 20 Houghton on November 15th 2013 at the same time ReArch closes on their financing and the State signs the lease so that there is no possibility of the State winding up with either two or zero locations. The State would continue to occupy 20 Houghton until the new building is completed at the end of 2014.

New State Office Building: After a competitive bid process with eight respondents ReArch was selected as the developer for the new State Office Building. ReArch is a well regarded developer best known for their redevelopment of the Digital Equipment property in South Burlington. Working closely with BGS to meet the State's needs ReArch has designed a 46,029 square foot building. As previously stated, the total project cost is $12,270,137. This includes the developer purchasing from the City of St. Albans the ground under the building and a permanent easement for 170 parking spaces in the City's proposed parking garage for a combined total of $2,500,000. The project cost is partially funded by an estimated $3,022,721 in New Market Tax Credits, leaving a net cost subject to the lease of $9,770,137.

City Parking Garage: The City of St. Albans is voting on a $13,000,000 bond issue on September 10, 2013, to finance the construction of and associated road and traffic improvements for a 358 space parking garage in the center of the downtown core and adjacent to the proposed new State Office Building. This is necessary to provide parking for the office building, a planned hotel, and other expected development. This construction could not be permitted otherwise. The new State Office Building will have a permanent easement on 170 of these spaces, or 47.5% of the parking garage. Given a total project cost of $13,000,000 the cost share of these spaces is $6,175,000. ReArch is paying the city $2,500,000 for both the site <u>and</u> the parking easement. Because the building is in the TIF, St. Albans will also direct 75% of the property tax on the building during the life of the TIF to debt service on the bond. Property taxes are estimated to be $195,623 so $146,717 would annually be retained by the TIF for this purpose. At a 3.75% bond rate and a 20 year amortization this would cover approximately $2,000,000 of the city's bond. The remaining $1,675,000 of the city's cost to construct the 170 spaces will be borne by other TIF district receipts.

Lease Terms: BGS has negotiated a 20 year lease with a purchase option opening in the tenth year. The Gross Lease is comprised of a "triple net" (NNN) portion which reflects the capital cost of the building including debt service coverage, plus Common Area Maintenance (CAM) and Operating Expenses. To meet all of the general considerations stated above BGS requests authorization to place the $5,500,000 net proceeds from the sale of 20 Houghton with VEDA for the life of the lease or until the State exercises its purchase option. VEDA would then lend those funds into the project at an interest rate of 0.10%, amortized over 25 years. These terms meet the IRS requirements to retain the NMTC financing. By doing so the NNN portion of the lease would cost $11.51 per square foot, with CAM/OPEX of $12.69 per square foot, for a Gross Lease cost of $24.20 per square foot.

Net Direct Cost Impact: Looking at this deal structure from a project perspective and the total State of Vermont treasury impacts: In FY13 20 Houghton Street cost $449,290 in direct occupancy expenses, including PILOT payments (pro-rated at 71%). At $24.20 the new State Office Building will carry total annual costs of $1,113,901 so the visible cost impact to the General Fund will be $664,611 before significant cost offsets that should be considered. The General Fund will realize $179,905 in avoided debt service on the $2,500,000 retained by the treasury from the sale of 20 Houghton so the net direct GF impact is $484,706. Of the $484,706 in increased cost $222,270 comes right back to the capital account in annual principal and interest payments on the VEDA loan so is effectively a transfer from the General Fund to the Capital Fund, further reducing the effective direct cost increase to the State of Vermont to $262,436. The Education Fund will also benefit from the 25% of incremental property tax that is not retained in the TIF account. Putting 20 Houghton back on the tax rolls and adding the new State Office Building will bring $47,125 into the Education Fund for a net cost increase to the State of Vermont overall of $215,311. Additional real estate in the TIF district, including the hotel and other incremental development which are dependent on the parking garage enabled by this project, is expected to contribute another $50,000 to the Education Fund after coming onto the rolls April 1 of 2015.

Economic Development Benefits from EPRI Report:

- A sustained annual average increase of more than 190 net new jobs in the Vermont economy over the 21 year impact assessment period—ranging from a low of 38 new jobs in calendar year 2012 (as development activity begins during the initial partial year of development activity) to a high of 859 new jobs at the height of construction activity).

- A 21-year cumulative total increase of $734.5 million in the Vermont economy in increased output over the impact assessment period (with an annual average increase in output of $34.1 million per year3)—ranging from an increase of $7.2 million in calendar year 2012 (during the initial partial year of development activity) to a high of $78.3 million in 2014 at the height of development/construction activity.

- A 21-year cumulative total of $61.0 million in increased disposable personal income in the Vermont economy over the impact assessment period (with an annual average increase in disposable personal Income of $2.1 million per year4)—ranging from an increase of $0.9 million in calendar year 2012 (during the initial partial year of development activity) to a high of $27.4 million in 2014 at the peak of development/construction activity.