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Justin Johnson, Secretary

MEMORANDUM

TO: House and Senate Institutions Committees

FROM: Justin Johnson, Secretary of Administration
VIT Executive Director

DATE: February 18, 2016

RE: Legislative Report Required by 2015 Acts and Resolves No. 26, Sec. 34 Regarding Ownership of all VIT Property Funded in Whole or in Part by the Capital Construction Act 4.

Section 34(a) of the 2016-2017 Capital Construction Act (Act 26 of 2015) instructs that the Secretary of Administration and the Executive Director of Vermont Interactive Technologies, or its successor entity, shall examine and submit a report to the House Committee on Corrections and Institutions and the Senate Committee on Institutions on the ownership of all VIT property funded in whole or in part by a capital construction act.

In response to this request we have researched Capital Bill appropriations relating to VIT from fiscal year 2004¹ to and including fiscal year 2016. During this period, \$2,549,638 was appropriated to VIT through capital bill funding, with \$2,329,638 designated to fund property.² A grid providing a concise overview of this funding is appended to this report as Attachment A. In all instances, the section heading of the capital bill related to these appropriations was Vermont Interactive Television (2004 to 2013) or Vermont Interactive Technologies (2014 to 2016). From 2004 to 2007, appropriations for VIT were made "To BGS for Vermont Interactive Television." From 2008 to 2013, appropriations for VIT were made "To Vermont Interactive Television." In 2014 and 2015, appropriations for VIT were made "To Vermont State Colleges for Vermont Interactive Technologies." The 2016 appropriation for VIT was made "To Vermont State Colleges on behalf of Vermont Interactive Technologies." It is our opinion, based on the clear language of capital bills FY2004 to FY2015 as referenced on Attachment A, that funding was intended for VIT to purchase equipment and upgrade or create new VIT sites (White River Junction and Montpelier).

Part of the instruction in section 34(a) of Act 26 is to report on ownership of VIT property funded in whole or in part with capital bill funds. In August 2015, VIT Executive Director Tara Lidstone provided a

¹ No information on Capital Bill appropriations for VIT prior to FY2004 Capital Bill H.457 were available on the legislative council or joint fiscal office websites. As a result, this report begins with appropriations beginning in FY2004.

² \$220,000 was appropriated in the FY2016 Capital Bill (Act 52) to Vermont State Colleges on behalf of Vermont Interactive Technologies for all costs associated with dissolution of VIT's operations. Funds were not appropriated for the purchase of property.



list of inventory located at all VIT sites, in response to a request from the VIT Working Group created in Section E.602.1(a) of the FY2016 Big Bill (Act 58 of 2015). The complete listing of VIT inventory is appended to this report as Attachment B. The total purchase price of equipment listed in the inventory in Attachment B. is \$2,032,687.93.³

Ms. Lidstone relayed that all of the property⁴ \$2,032,687.93 inventory listed in Attachment B. was purchased with capital bill funds. Act 26 instructs us to report on ownership of all VIT property funded in whole or in part by a capital construction act. As a result, we report on ownership of all inventory listed in Attachment B.

By way of background, Vermont Interactive Television is an active domestic non-profit corporation registered with the Vermont Secretary of State. Vermont Interactive Technologies is a registered trade name owned by Vermont Interactive Television and Vermont Technical College. *See* Attachment C₁ and C₂. It does not appear that VIT has By Laws related to its dissolution.

According to Vermont State Colleges Financial Statements dated June 30, 2015: *Vermont State Colleges include the following entities: System Office and Services, Community College of Vermont (CCV), Castleton University (CU), Johnson State College (JSC), Lyndon State College (LSC), Vermont Technical College (VTC), Vermont Interactive Television (VIT), Allied Health Nursing Program (Allied Health), Vermont Manufacturing Extension Center (VMEC), Small Business Development Center (SBDC), and Vermont Tech Office of Continuing Educations and Workforce Development (TED). VIT is an audio-video network bringing instruction and public service events to sites throughout Vermont (currently Bennington, Brattleboro, Johnson, Lyndon, Middlebury, Montpelier, Newport, Randolph Center, Rutland, Springfield, St. Albans, White River and Williston). Budgetary management of VIT is maintained separately.*⁵

Given the language in Vermont State Colleges financial statements concerning VIT, contrasted with the fact that VIT is itself an active domestic non-profit corporation registered with the Vermont Secretary of State – with no apparent By Laws relating to its dissolution – making a determination regarding ownership of VIT’s property is complicated. However, capital bill language makes a clear distinction between appropriations designated for Vermont State Colleges and appropriations designated for VIT. The VIT governing body – the Coordinating Council – asserts that the physical equipment located at 20 VIT studios statewide is the property of the State of Vermont.⁶ *See* Vermont Interactive Technologies Coordinating Council Resolution of November 3, 2015 appended to this report as Attachment D. Weighing the evidence at hand, it is reasonable to make a determination that VIT property purchased with funds appropriated from capital construction acts were first the property of VIT. However, due to the absence of By Laws regarding dissolution of VIT, the property reverts to the state of Vermont for disposition in accordance with the terms and conditions set forth by the General Assembly consistent with section 34(b) of Act 26: *During the 2016 legislative session, the General Assembly shall determine the ownership of VIT’s property based on the report described in subsection (a) of this section. No State or*

³ The \$2,032,687.93 reflects the total cost as of date of acquisition of all property in the inventory and is not the depreciated or current market value of the inventory.

⁴ Property is defined as equipment, fixtures, furniture and fittings and any other physical materials used in or related to the creation or upgrade of a VIT studio, consistent with the intent of capital bill appropriations.

⁵ VERMONT STATE COLLEGES (a Component Unit of the State of Vermont) Financial Statements and Management’s Discussion and Analysis June 30, 2015 – page 23. http://www.vsc.edu/about-vsc/VSC_Office_of_the_Chancellor/VSC_Financial_Statements_2015.pdf

⁶ Vermont Interactive Technologies Coordinating Council Resolution of November 3, 2015

private entity shall assume ownership of the property until the General Assembly makes this determination.

We respectfully recommend that the General Assembly authorize the Commissioner of Buildings and General Services to dispose of VIT property purchased with capital construction funds in such manner as deemed appropriate.

**Vermont Interactive Technologies
Coordinating Council**

**Resolution
November 3, 2016**

WHEREAS, the Vermont Interactive Technologies (VIT) Coordinating Council was reconstituted by Governor Shumlin under Executive Order No. 06-13, dated July 10, 2013; and

WHEREAS, the Coordinating Council's charge is to "meet periodically and . . . make recommendations to the Secretary of Administration and the Executive Director of [VIT] concerning: A. policy for overall system usage and development; B. priorities for operational scheduling; C. evaluation of system performance; D. future development and/or system expansion; E. budgetary information and requirements; and F. development of funding alternatives; and

WHEREAS, VIT will cease to operate on December 31, 2015, as both state funding for VIT and the employment contracts of current VIT employees expire on that date; and

WHEREAS, the final scheduled events on the VIT system are currently scheduled to occur on or before December 18, 2015; and

WHEREAS, the physical equipment located at 20 VIT studios statewide is the property of the State of Vermont, the terms or locations of its future use or disposal are to be determined by the Vermont legislature, and that future use has not yet been determined by the Legislature; and

WHEREAS, some funding for VIT this fiscal year has come from the Global Commitment funds to support the nursing and other health-related programs that have been so successful over VIT;

WHEREAS, the VIT Coordinating Council wishes the ceasing of VIT operations to be an appreciative experience for our clients and staff to the extent possible;

NOW, THEREFORE, BE IT RESOLVED THAT we, the members of the Vermont Interactive Technologies Coordinating Council do hereby make the following recommendations to the Secretary of Administration:

- I. That the Vermont State Colleges (VSC), and specifically the Vermont Technical College, clearly articulate its transition plan to VIT's Executive Director and work cooperatively with VIT staff and host sites to ensure that all scheduled VIT clients have a positive and professional experience;
- II. That the Agency of Administration take full possession of and responsibility for all VIT physical equipment and agreements with host sites from VIT and its Executive Director no later than Friday, December 18, 2015, including the safe dismantling, transport, storage and preservation of the equipment and fixtures consistent with host site lease agreements;
- III. That the Global Commitment monies appropriated by the Legislature to support VIT programming be strictly applied to that intended use by the VSC, and that VIT and its budget shall be held harmless for any inability to access Global Commitment funds.

- IV. That all equipment and fixtures of VIT be disposed of in accordance with applicable statutory language and consistent with the direction of the VIT Working Group established by the Legislature;
- V. That the VIT staff and Executive Director employment contracts with the Vermont State Colleges be honored until their expirations on December 31, 2015, including any and all rights to severance, unemployment benefits and retirement or other post-employment benefits; and
- VI. That the VSC report back to the Secretary of Administration, the VIT Coordinating Council and VIT's Executive Director on the VIT transition plan and the outcome of Global Commitment funds.

The VIT Coordinating Council will immediately transmit this resolution to the Governor, Secretary of Administration, Chancellor of the Vermont State Colleges and to VIT's Executive Director.

Dated November 3, 2015

_____/s/_____

Barbara Grimes, Chair

Vermont Interactive Technologies Coordinating Council