



Report of the Vermont State Auditor

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October 18, 2012

# TAX INCREMENT FINANCING DISTRICT

Winooski Made Errors in  
Administering the TIF District  
and Underpaid the State

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**Thomas M. Salmon, CPA, CFE**  
**Vermont State Auditor**

**Rpt. No. 12-06**

### **Mission Statement**

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**THOMAS M. SALMON, CPA, CFE**  
**STATE AUDITOR**



**STATE OF VERMONT**  
**OFFICE OF THE STATE AUDITOR**

October 18, 2012

The Honorable Shap Smith  
Speaker of the House of Representatives

The Honorable John Campbell  
President Pro Tempore of the Senate

The Honorable Peter D. Shumlin  
Governor

The Honorable Michael O'Brien  
Mayor, City of Winooski

Ms. Katherine Decarreau  
City Manager, City of Winooski

Dear Colleagues,

Act 45 of 2011 requires that the State Auditor's Office audit all active tax increment financing (TIF) districts every four years. Currently, the City of Burlington, Milton, Newport, and Winooski have established TIF districts and financed improvements in their districts.

This report assesses whether Winooski established and administered the downtown TIF district according to statutory requirements and the extent to which the city has established performance measures and monitors actual results that demonstrate the TIF district is meeting intended goals.

Winooski did not comply with many state statutes in the formation of its districts and the city did not always administer its TIF district according to statutory requirements. Although Winooski has utilized incremental property tax revenue for eligible purposes through June 30, 2011, the city has committed incremental property tax revenue to repay \$4.1 million of ineligible debt and, further, the city miscalculated incremental property tax revenue. As a result of the miscalculation, the city retained too much statewide education increment underpaying \$1.5 million of education property taxes to the state.

In addition to recommending that the city pay \$1.5 million of statewide education property taxes to the state, we also make many recommendations designed to improve the city's administration of the TIF district. For example, we recommend that Winooski designate a city official to be responsible for reviewing statutory reporting requirements and documenting policies and procedures to ensure timely and accurate reporting.

I would like to thank the management and staff of the City of Winooski for their cooperation and professionalism during the course of the audit. If you would like to discuss any issues raised by this audit, I can be reached at (802) 828-2281 or at [auditor@state.vt.us](mailto:auditor@state.vt.us).

Sincerely,

A handwritten signature in cursive script that reads "Thomas M. Salmon CPA, CFE".

Thomas M. Salmon, CPA, CFE  
Vermont State Auditor

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## Introduction

Since 1985, tax increment financing (TIF) districts have been available as a tool for Vermont municipalities to finance public infrastructure improvements in support of economic development. Typically, when a TIF district is established, certain real estate parcels within a municipality are designated as comprising the TIF district. Debt and other resources are utilized to finance public infrastructure improvements which support development in the district. Future incremental property tax revenue,<sup>1</sup> which is comprised of 1) incremental municipal property tax revenue (hereafter known as municipal increment) and 2) incremental statewide education property tax revenue (hereafter known as statewide education increment), within this designated district is utilized over a set time period to pay for the debt incurred to finance the improvements. During this set time period, taxing authorities, such as the municipality and the state, continue to receive property taxes (e.g., the base property tax revenue) based on the property value of the TIF district properties at the time the district was established.

TIF districts have been used in Vermont to finance public infrastructure improvements such as extending access to, or increasing capacity of waste water treatment plants and modifying or adding roadways. The city of Winooski established its TIF district on November 2, 2000 to initiate the commercial, residential and governmental redevelopment and rehabilitation of a portion of its downtown area.

At the time municipalities were first granted authority to establish TIF districts each municipality determined the amount of property taxes necessary to fund the local public school system and municipal operations. The establishment of a TIF district in a municipality potentially impacted the amount of funding available for general municipal operations and that municipality's school system. With the passage of Act 60 in 1997 and the establishment of a statewide education property tax set by the state to fund public education the method of funding public education costs for schools in Vermont changed dramatically. Because of the change to a statewide education property tax funding mechanism, municipalities with TIF districts

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<sup>1</sup>Incremental property tax revenue is calculated based on the current property values of the TIF district less the TIF district property values at the time the TIF district was established, multiplied by the municipal and education property tax rates.

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retain monies that otherwise would have been remitted<sup>2</sup> to the state for funding public education throughout the state.

Act 45 of 2011<sup>3</sup> required the state auditor of accounts to audit all active TIF districts every four years. Because requirements for establishment and administration of TIF districts are largely set out in state statute, we elected to focus our audit towards determining compliance with the statutes applicable to Winooski's TIF district. Our audit objectives were to:

- Assess whether Winooski adhered to requirements in state statute governing establishment of the TIF district;
- Ascertain whether since inception to June 30, 2011 Winooski has administered the TIF district according to statutory requirements, including a) utilizing the incremental property tax revenue to pay for eligible TIF district debt, b) retaining the appropriate statewide education increment and c) timely and accurately reporting TIF district property values and incremental tax revenue to city officials, the legislature and other state officials, as appropriate; and
- Assess the extent to which Winooski has established performance measures and monitors actual results that demonstrate achievement of the state and municipality's economic and fiscal goals.

The audit work for our first objective largely consisted of comparing Winooski's documentary evidence of activities and actions associated with establishing its TIF district to the statutory requirements governing establishment of a TIF district. Our methodology for the second objective included a) obtaining TIF district debt payment schedules and analyzing other financial records to verify that incremental property tax revenue was used solely for debt payment or prefunding, b) obtaining legal opinions from the Office of the Attorney General (AG) regarding the calculation and retention of incremental property tax revenue, recalculating the incremental property tax revenue from inception of the TIF district through June 30, 2011

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<sup>2</sup>Annually, the state establishes statewide education property tax rates. Municipalities collect statewide education property taxes on behalf of the state and remit the taxes collected to their local school systems, on behalf of the state, or to the state directly, depending on the amount collected relative to the amount required to fund the local school system. Since these are all state revenues, for simplification purposes, in our report, we refer solely to remitting payments to the state.

<sup>3</sup>Previously, Act 190 of 2008 required the state auditor of accounts to audit all active TIF districts every three years.

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and verifying that Winooski retained only those amounts allowed per statute and c) comparing reports of TIF district property values and incremental property tax revenue to source documentation. To accomplish our third objective, we interviewed Winooski officials and reviewed Winooski's processes and procedures related to monitoring results of the TIF district. We also reviewed the TIF district financing documents to ascertain if performance measures were considered during the TIF district's establishment. Additional detail on our scope and methodology can be found in appendix I. Abbreviations used in this report can be found in appendix II.

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# Highlights: Report of the Vermont State Auditor

## Tax Increment Financing District: Winooski Made Errors in Administering the TIF District and Underpaid the State

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(October 18, 2012 Rpt. No. 12-03)

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### Why We Did This Audit Findings

Pursuant to statutory requirements that we audit the TIF districts, our objectives were to 1) assess whether Winooski adhered to requirements in state statute governing establishment of the TIF district, 2) ascertain whether, since inception through June 30, 2011, Winooski has administered the TIF district according to statutory requirements, including a) utilizing the incremental property tax revenues to pay for eligible TIF district debt, b) retaining the appropriate statewide education increment and c) timely and accurately reporting TIF district property values and incremental tax revenues to city officials, the legislature and other state officials, as appropriate, and 3) assess the extent to which Winooski has established performance measures and monitors actual results that demonstrate achievement of the state and municipality's economic and fiscal goals.

### What We Recommend

We made multiple recommendations, including that Winooski pay \$1.5 million of statewide education property taxes to the state.

Winooski complied with some, but not all, of the statutory requirements associated with establishing its TIF district. For example, the city held public meetings to discuss formation of the district, but could not produce the required official list of properties comprising the district. This may be due to a lack familiarity with the statutory requirements for TIF formation. In the absence of required documents, the city relied on institutional knowledge of city personnel, which may not be carried forward if turnover occurs.

Winooski did not administer the TIF district in accordance with many statutory requirements. As of June 30, 2011, Winooski utilized incremental property tax revenues to pay for eligible debt service, but we identified risk that the city will use future incremental property tax revenue to repay ineligible debt. For example, the city has committed to repay \$4.1 million of private loan obligations with incremental property tax revenue, but these are not eligible TIF district financing instruments. The risk of using incremental property tax revenue to pay for ineligible debt is heightened because the city has failed to distinguish its accounting for TIF district activity from a broader downtown development project. As a result, the city's ability to specifically identify its use of incremental property tax revenue is obscured.

Winooski miscalculated incremental property tax revenue, thereby retaining too much statewide education increment and underpaying \$1.5 million of education property taxes to the state. The city's miscalculations were due to multiple errors in its calculation of original taxable value (OTV). In addition, the city treated three taxable TIF district properties as non-taxable. In these cases, determining a definite effect on incremental property tax revenue is not possible since Winooski did not assess the value of these properties. In part, these errors were the result of reliance on a single individual to perform complex calculations without review. If the city does not correct its misstated OTV or change the tax status of the three properties, it will continue to underpay statewide education property taxes and certain property owners in the TIF district may be shielded from paying their share of the improvements from which they are benefitting.

Winooski failed to provide all required reports to state and city officials. When the city provided reports, it did not consistently meet reporting deadlines and did not provide all the information required. This failure may be attributed to a lack of documented policies and procedures related to TIF district reporting requirements. Timely and accurate reporting of the TIF district data facilitates monitoring of the status of the TIF district which is critical to ensuring that the TIF district operates as expected.

The city's establishment and monitoring of performance measures to indicate the extent to which its TIF district was meeting state and municipal economic and fiscal goals was limited. Winooski established measures and targets for some objectives, but did not consistently track actual results. Without measures for all objectives and consistent monitoring during the life of the TIF district for the measures it established, the city lacks a systematic mechanism to accurately determine whether the TIF district is operating as intended.

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## Background

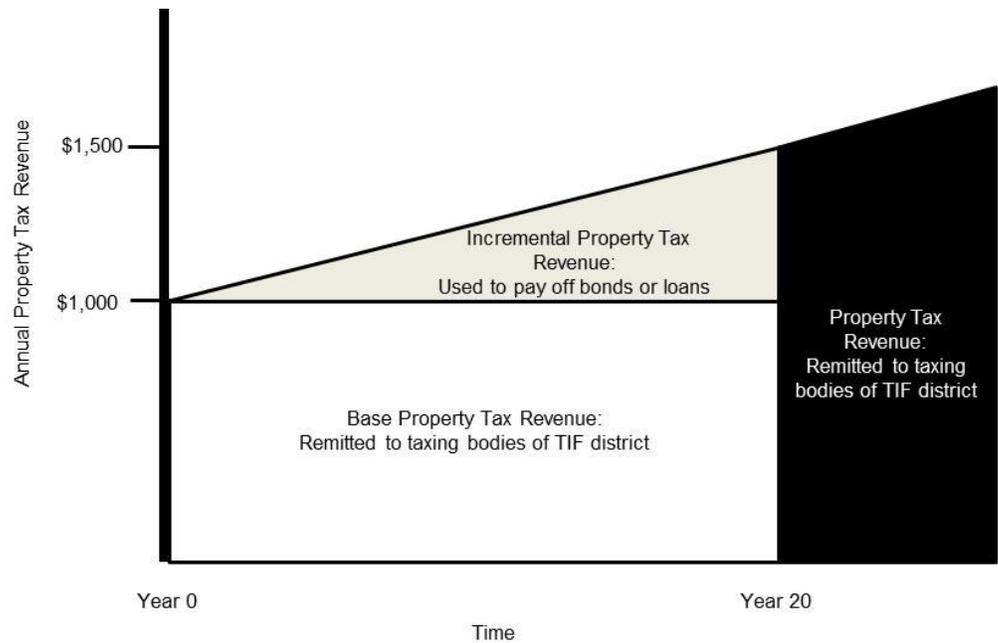
Establishment of a TIF district allows a municipality to designate an area for improvement and earmark expected future growth in property tax revenues (i.e., incremental property tax revenue) in the designated area to pay for debt incurred to finance the costs of improvements. In theory, the improvements lead to increased property values and the resulting increased property tax revenues fund the cost of development. For example, assume that existing property in a TIF district generates \$1,000 a year in tax revenues. The municipality obtains approval for the use of incremental property tax revenue for a new project in the district and issues twenty-year bonds to finance the project's costs. Over time, the district's property values grow and annual property tax revenues increase to \$1,500. The taxing authorities, including the municipality and the state, continue to receive their respective portions of \$1,000 (i.e., the base property tax revenue), and the \$500 difference (i.e., the incremental property tax revenue) is used to pay off the bonds over 20 years.<sup>4</sup> Once the bonds are paid off, the taxing authorities (municipality and state) receive all of the property tax revenues (\$1,500 per year). Figure 1 illustrates how this example works.

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<sup>4</sup>In the event that a TIF district's incremental property tax revenue exceeds the amount needed to make bond payments in a given year, this "excess" incremental revenue is distributed to the municipal and state taxing authorities using a statutory formula as established in 24 VSA §1900. Alternatively, municipalities may retain the excess for the purpose of prefunding future TIF district debt. (32 VSA §5401(10)(E))

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**Figure 1: Simplified Illustration of How a TIF District Can Generate Incremental Revenue**



*Note: This simplified graphic assumes a stable tax rate.*

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## Statutory Requirements Governing Winooski's TIF District

Municipalities are responsible for establishing and administering TIF districts according to statutory parameters, including overseeing the financing for construction of public infrastructure improvements, calculating incremental property tax revenue, determining the amount of incremental property tax revenue the TIF district may retain, and deciding how it may be utilized.

Acts 87 (1985) and 204 (1988) established the initial framework in Title 24 Chapter 53 Subchapter 5 for the formation and operation of TIF districts in Vermont. Later, Act 71 (1998) added the requirement that municipalities seeking TIFs must apply to the Vermont Economic Progress Council (VEPC) for approval. Generally, provisions of these acts are applicable to TIF districts unless they are superseded by TIF specific legislation. The Winooski TIF district was created by legislative Act 159 (2000), and the city was not obligated to apply to VEPC for approval. In addition, certain specific requirements enumerated in Act 159, such as the length of the indebtedness period and the percent of incremental property tax revenue due to the state education fund, differ from the provisions listed in Title 24. According to Act

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159 (2000) the provisions of Title 24, with the exception of those enumerated in Act 159, are applicable to the Winooski TIF district.

The following is a summary of the original criteria of Acts 87 and 204 for establishing and administering TIF districts. The specific criteria of Act 159 applicable to Winooski are highlighted in italics.

**Establish, approve and record**

- The purpose of TIF districts is to provide revenues for improvements<sup>5</sup> located wholly or partly within the district that will encourage development, provide for employment opportunities, improve and broaden the tax base or enhance the general economic vitality of the municipality, region or state. [24 VSA §1893]
- *Winooski’s TIF district’s purpose is to revitalize and improve a significant downtown area; enhance employment opportunities within the city of Winooski and the surrounding region; provide business stability and growth incentives; preserve and enhance the tax base of the city of Winooski; redevelop high-density housing in the commercial center; and reduce traffic congestion and protect existing interstate interchanges.[Act 159 Sec. 37]*
- The municipality’s legislative body<sup>6</sup> determines that the TIF district will serve the public purpose and creates the TIF district. [24 VSA §1892(a)]
- At least one public meeting, duly warned, must be held on the proposed TIF district plan with a description of TIF district boundaries and properties. [24 VSA §1892(a)]
- Upon adoption by the municipality’s legislative body, the TIF district plan must be recorded with the municipal clerk and lister or assessor. [24 VSA §1892(b)]

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<sup>5</sup>The statute defines improvements as including installations, construction, or reconstruction of streets, utilities, parks, playgrounds, land acquisition, parking facilities and other public improvements necessary for carrying out the objectives of the TIF district.

<sup>6</sup>Legislative body means the mayor and alderboard, the city council, the selectboard and the president and trustees of an incorporated village.

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### **Financial plan**

- At least one public meeting, duly warned, must be held on a financial plan for proposed improvements. The elements of the financial plan shall include a statement of costs and sources of revenue, estimates of assessed values within the district, identification of the portion of assessed value to be applied to proposed improvements, tax increments for each year of the financial plan, amount of bonded indebtedness to be incurred, other sources of anticipated revenues and the duration of the financial plan. [24 VSA §1898(e)]

### **Allowable debt and period that debt may be incurred**

- Incremental property tax revenue may be pledged and appropriated for payment of principal and interest on bonds issued for improvements contained wholly or partially within the district. [24 VSA §1897]
- Bonds may take the form of general obligation bonds or revenue bonds and must be approved by a majority of registered voters at a duly warned special or annual meeting. [24 VSA §1898(b) and 24 VSA §1897]
- If revenue bonds are issued, they are payable solely from income proceeds, revenues, and tax increments resulting from the improvements in the TIF district. [24 VSA §1898(b)]
- The municipality may incur debt relative to the TIF district for a period of ten years following creation of the TIF district. The ten-year borrowing period commences April 1 of the year the TIF district is created by the municipality's legislative body. [24 VSA §1894]
- *Bonds issued [by Winooski] and secured by tax increment pledge shall have a maximum maturity of twenty years, but may be refunded from time to time, provided that the maximum term does not exceed twenty years from the date of original issue, and that the total principal amount of the bonds shall not exceed \$30,000,000, and that all such bonds shall be issued by July 1, 2005. [Act 159 Sec. 38(1)]*

### **Establish original taxable value (OTV)**

- OTV is the sum of the aggregate taxable valuations of land and improvements in the TIF district on the date the district was approved as then most recently determined. [24 VSA §1895 and 24 VSA §1898(b)]

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- *For Winooski, OTV is the grand list<sup>7</sup> value of the TIF district on April 1 preceding commencement of the development. [Act 159 Sec 38(3)] Effective June 18, 2003 OTV is established on April 1 immediately preceding the date of issuance of bonds. [Act 68 (2003)]*
  - On April 1 of the first year, the lister or assessor certifies the OTV of the TIF district parcels as then most recently determined. [24 VSA§1895]

### **Calculation and utilization of incremental property tax revenue**

- Incremental property tax revenue equals current assessed value of properties located wholly or partially within the TIF district less OTV multiplied by the current tax rates of the municipality, the school district<sup>8</sup> and any other taxing authority.<sup>9</sup> [24 VSA §1896, 24 VSA §1897 and 24 VSA §1898(b)]
- The municipality's legislative body may pledge and appropriate incremental property tax revenue received from the TIF district for the payment of bond principal and interest. [24 VSA§1897]
- *5 percent of the incremental education property taxes imposed annually on the excess valuation<sup>10</sup> of the residential property within the district shall be paid to the education fund [and] 100 percent of the municipal taxes assessed against the excess valuation of the property within the district shall be pledged and appropriated solely for debt service on the bonds. [2000 Act 159 Sec. 38(3)]*

### **Period that incremental property tax revenue may be retained for payment of debt**

- Incremental property tax revenue may be retained in each year subsequent to creation of the district for which the current assessed

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<sup>7</sup>The grand list is a listing of the total assessed value of all real estate parcels within the City of Winooski.

<sup>8</sup>The school district rate is determined by the state and is a statewide property tax.

<sup>9</sup>TIF district taxable property shall be subject to the same total tax rate as other taxable property in the municipality, except as otherwise provided by law.

<sup>10</sup>Excess valuation is incremental property value and is equal to the current assessed value of TIF district properties less OTV.

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valuation exceeds the OTV until all capital indebtedness of the district has been fully paid. [24 VSA §1896 and 24 VSA §1898(b)]

- *For Winooski, the increment may be retained to the extent incremental property tax revenue is pledged and appropriated for payment of bonds incurred to finance development in the district or to fund reserves for payment of the bonds. [Act 159 Sec.38 (3)]*
- The TIF district continues until all indebtedness incurred by the municipality to fund the improvements in the TIF district has been paid. [24 VSA §1898(b) and 24 VSA §1894]
- To the extent incremental property tax revenue is pledged and appropriated for payment of debt incurred to finance development in the district, it must be segregated in a special account of the municipality. [24 VSA §1896]

#### **Distribution of incremental tax revenue**

- Incremental property tax revenue which in any tax year exceeds the principal and interest payments for the bonds issued for improvements in the district is required to be distributed to the municipality and school district in proportion that each budget bears to the combined total of both budgets unless otherwise negotiated. [24 VSA §1900]

#### **Reporting**

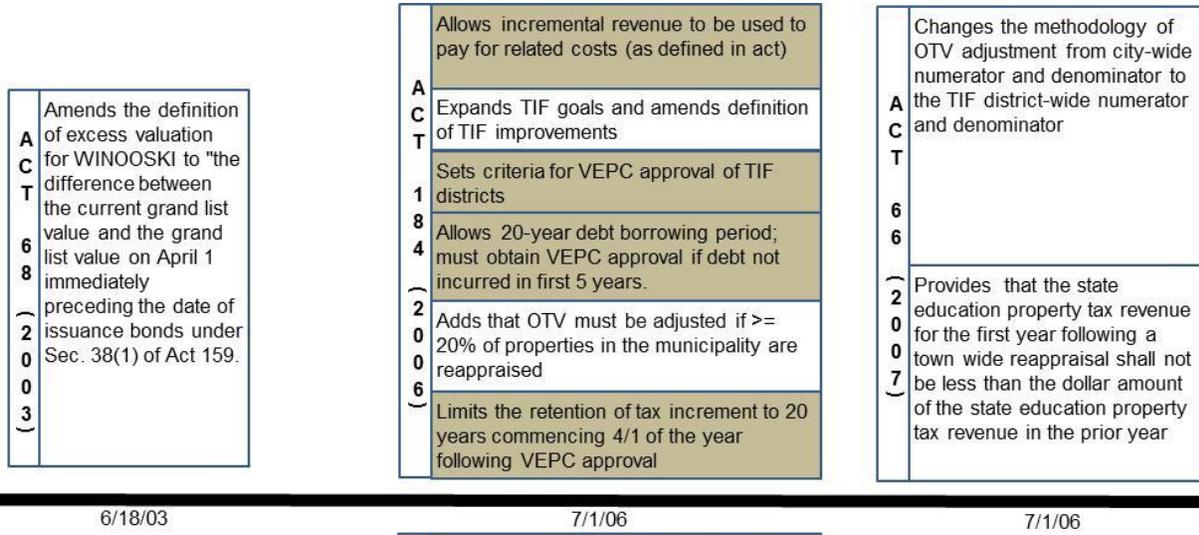
- Each year of the life of the TIF district, the lister or assessor for the municipality shall certify and report to the legislative body the amount that the OTV has increased or decreased and the proportion that any increase or decrease bears to the total assessed valuation of real property for that year. [24 VSA §1895]
- *Within sixty days of issuing the bonds, Winooski shall provide to the joint fiscal committee of the general assembly comprehensive cost-benefit and financing data for the project for use in analyzing similar redevelopment projects in other municipalities. [Act 159 Sec. 38(9)]*

Since the passage of Act 60 (Equal Education Opportunity) in 1997, the statutes related to TIF districts have undergone numerous amendments. Per 1 VSA §212, amendments generally take effect prospectively on July 1 following the date of their passage unless otherwise specifically provided. Accordingly, many of the changes to TIF statutes are applicable to Winooski's TIF district. See Figure 2 for a timeline of selected amendments

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to TIF legislation, the effective dates, and those changes impacting the Winooski TIF district from 1997 through 2011. Items in grey do not apply to Winooski's TIF district.

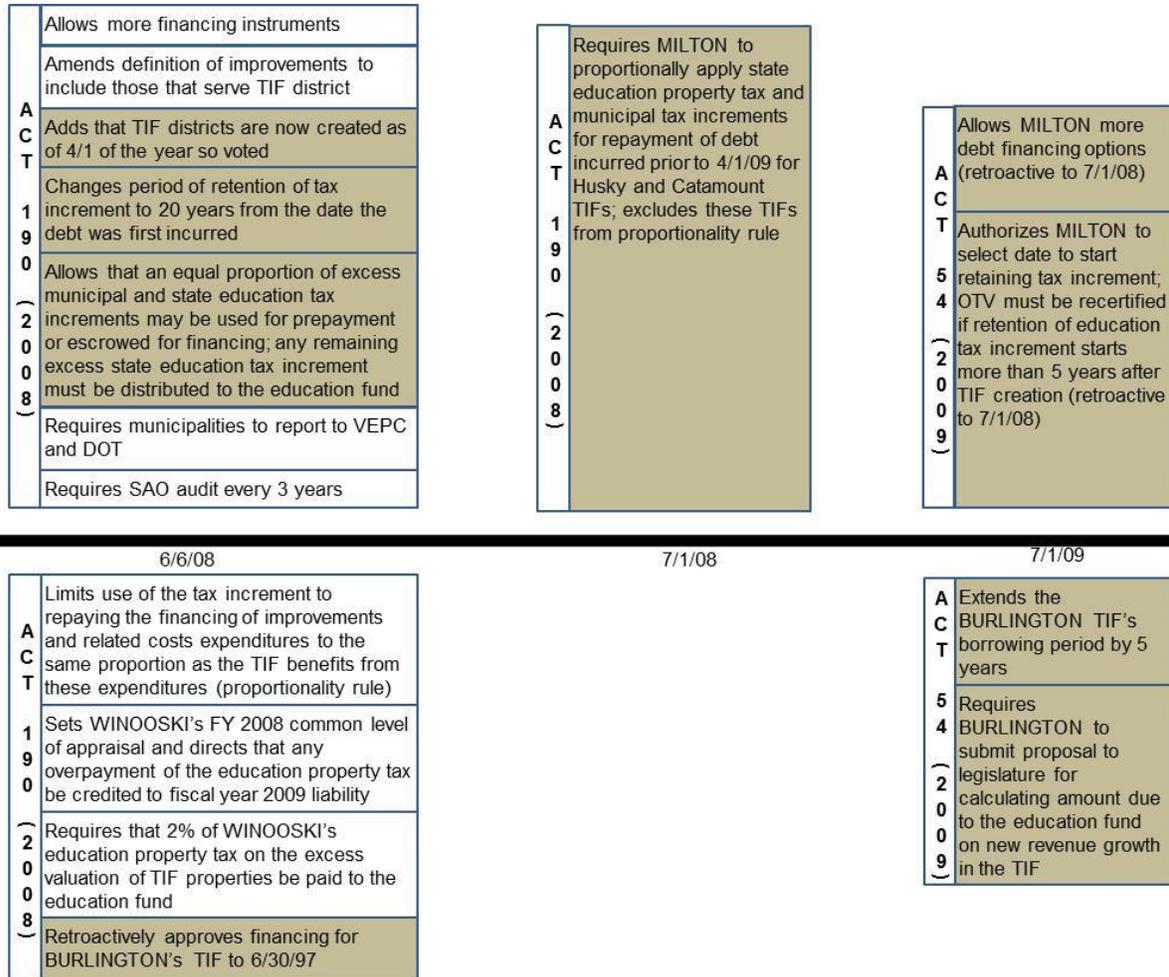
**Figure 2: Timeline of Select Changes to TIF District Statutes and Applicability of Certain Amendments to Winooski (appendix III contains greater detail)**



= not applicable to Winooski TIF

<b>A C T 1 8 4 2 0 0 6</b>	Amends tax increment utilization so that no more than 75% of state education property tax increment and no less than 75% of municipal tax increment may be used to service debts and related costs Requires that distribution of excess municipal tax increment be distributed in proportion to the budget; limited usage of excess state education tax increment to prepayment and escrow for debt Requires VEPC and DOT report to legislature Allows extensions to the life of the MILTON TIFs
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**Figure 2: Timeline of Select Changes to TIF District Statutes and Applicability of Certain Amendments to Winooski (appendix III contains greater detail)—continued**



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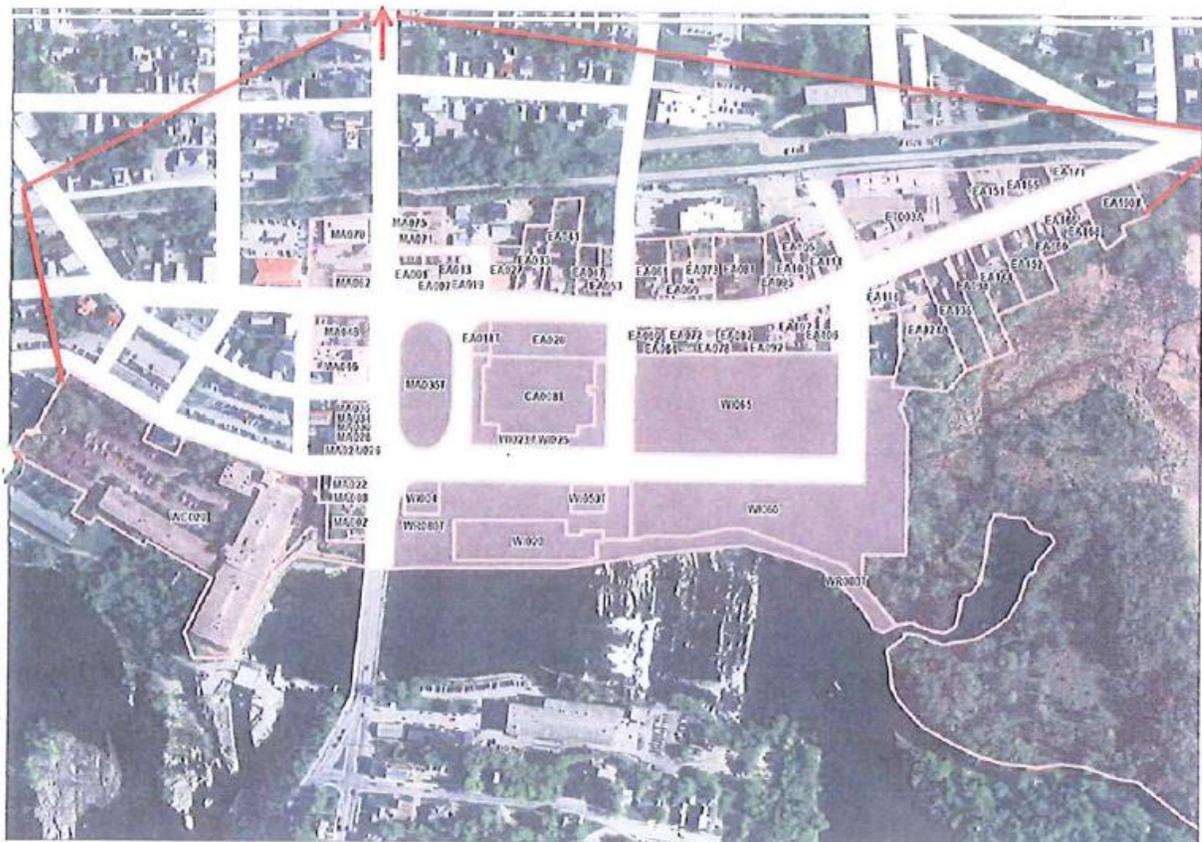
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## Winooski TIF District

On November 2, 2000, the Winooski city council approved the Winooski Downtown Tax Increment Financing District plan. The TIF district was a component of a broader downtown redevelopment project.

See Figure 3 below for the map of the Winooski TIF district as presented by city officials. The broader downtown development area, in general, has been denoted by SAO with drawn lines.

**Figure 3: Map of the TIF District (Highlighted areas show the TIF district while the broader downtown development is indicated with drawn lines.)**



Winooski, Vermont  
TIF District Parcels - 2008



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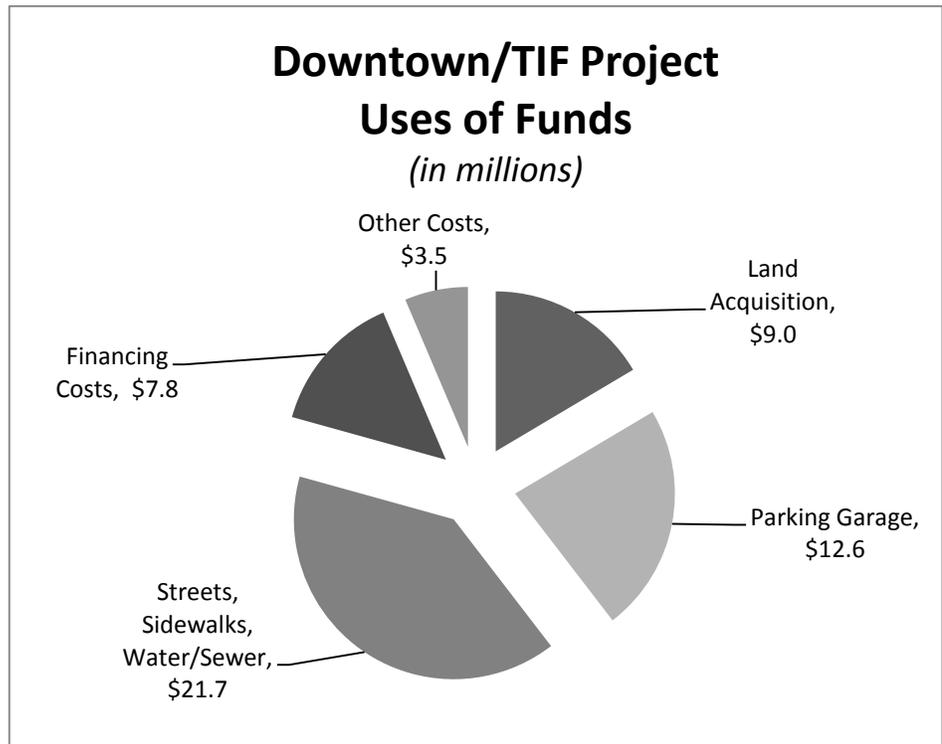
Beginning in May, 2004 the city entered into a number of financing agreements for funding the downtown and TIF development projects. The cost of the project improvements was predominantly funded as follows:

- \$16.8 million in federal and state transportation grants,
- \$25.9 million in revenue bonds,
- \$4.1 million in private loans, and
- \$7.8 million in other sources.<sup>11</sup>

Figure 4 shows the uses of funds in the Downtown/TIF district.

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**Figure 4: Downtown/TIF Project Uses of Funds**



Source: Winooski project records from May 25, 2004 through June 30, 2011

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<sup>11</sup>Other sources include proceeds from land sales, payments in lieu of taxes (PILOT), and fees from lease agreements, among others.

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## Winooski Complied with Some, but Not All, State Statutes in Establishing Its TIF District

The city complied with some, but not all, of the statutory requirements associated with establishing its TIF district. Among the requirements with which it complied, Winooski:

- held publicly warned meetings to discuss formation and financing of the TIF districts,
- passed a city council resolution approving the TIF district plan, and
- obtained voters' approval for anticipated financing.

However, the city did not comply with other statutory requirements, namely the city could not produce a copy of a financial plan nor an official record of properties comprising the district.

Table 1 presents our assessment of Winooski's compliance with the requirements for creating a TIF district and authorizing financing for improvements in the TIF district.

**Table 1: Assessment of Winooski's Compliance with Required Steps for Creating a TIF District and Authorizing Financing**

Statutory Requirements	Comments	Compliance
Creation of TIF district upon a finding of the municipal legislative body that TIF district will serve the public purpose.	City council passed a resolution to create the TIF district on October 2, 2000.	✓
Hold publicly warned meetings on proposed TIF district plan, with a description of the TIF district boundaries and properties.	Meetings held on October 19, 26 and November 2 of 2000. <sup>a</sup> The meeting minutes indicate that the TIF district boundaries were discussed.	✓
Hold publicly warned meetings on a financial plan for proposed improvements and related costs to be funded, including a statement of costs and sources of revenue, etc.		City officials were unable to locate a financial plan for SAO to review and the minutes documenting the public meetings do not specify that a financial plan was presented.
Adoption of TIF district plan by legislative body of municipality (e.g. city council).	City council adopted the TIF district plan on November 2, 2000.	✓
Record TIF district plan, including a list of properties in the district with municipal clerk and lister or assessor.		City officials provided SAO with three slightly different listing of TIF district properties, but were unable to demonstrate that a plan with a list of TIF district properties was recorded with municipal clerk and lister or assessor.
Obtain approval of majority of registered voters for general obligation or revenue bonds at a warned special or annual meeting.	Vote held on November 7, 2000 for financing of the Winooski TIF district developments. <sup>a</sup> Financing was approved by the majority of the voters.	✓
Certification of the assessed valuation of all taxable real property within the district (i.e. the OTV) by the lister or assessor on April 1 immediately preceding the date of issuance of bonds.	TIF district bonding was obtained on May 29, 2004, therefore the date for the purposes of establishing OTV is April 1, 2004.	Of the three different lists <sup>b</sup> of TIF district properties provided to SAO by city officials, one was not dated and two were dated April 1, 2004. None of the lists was certified by the city assessor.

<sup>a</sup>The city was not able to provide SAO with copies of the public warnings. However, the city officials provided a copy of the city clerk's attestation, dated June 24, 2002, that all requisite steps were followed to publicly warn the meetings.

<sup>b</sup>Each of the TIF property lists had differences in property composition and property values. The number of properties and respective total property values on these lists were 62 and \$22,328,446, 58 and \$24,822,900, and 57 and \$24,185,659.

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State statute requires that a financial plan be developed and presented to city residents in order to provide financial information about the proposed TIF district such as cost of TIF district improvements, amount of debt needed to finance the improvements and projected incremental property tax revenue. City officials could not produce such a plan and the minutes of the public meetings held to present information about the TIF district do not reflect whether a financial plan was discussed.

Recording a list of TIF district properties in the city's official records and certification by the city assessor of the assessed values of these properties (i.e. OTV) is required by state statute. City officials provided three copies of lists of TIF district properties with assessed values to SAO – one list was not dated and the other two were dated April 1, 2004. None of the lists was recorded in the city's records as the official list of properties comprising the TIF district and none were certified by the assessor. The city assessor maintained a spreadsheet of TIF district properties and their values in his records for purposes of calculating incremental property tax revenue, but he acknowledged that it was not a formally recorded list of TIF district properties. The other two lists were provided to SAO by other city officials. Both of these lists were slightly different from the one maintained by the city assessor. The city's failure to record the list of TIF district properties and to certify their assessed values by the assessor may be the result of the lack of familiarity with the statutory requirements for establishing the TIF district.

The city's inability to substantiate that it had documented significant aspects of its formation and financing of the TIF district could cause the city to place undue reliance on the knowledge of elected officials and city employees involved in the establishment of the TIF district. If turnover occurs, institutional knowledge may not be carried forward, and the city is at risk of improper administration of the TIF district. Even absent turnover, without a documented financial plan, an officially recorded list of TIF district properties and certification of the properties' values, the city risks mistakes in the administration of the TIF district. In fact, as discussed in the next section, the city made errors in its calculation of the incremental TIF revenue, partially due to the failure to record an official list of TIF district properties.

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## Winooski Did Not Administer Its TIF District According to Many Statutory Requirements

Many aspects of the city's practices for administering its TIF district were not in accordance with statute. The city utilized incremental property tax revenue

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for appropriate purposes through June 30, 2011, but plans to use future revenue to repay ineligible debt. In addition, the city erred in its calculation of the incremental property tax revenue, understating OTV. As a result, the city failed to remit \$1.5 million of statewide education property taxes to the state education fund. Further, the city treated certain taxable TIF district properties as exempt from municipal and statewide education property taxes, understating incremental property tax revenue. However, since the city did not assess the value of these properties it is not possible to determine the extent of the understatement. Because of these errors, Winooski may have less incremental property tax revenue than they anticipated and may have to use other sources to repay their TIF district obligations.

Finally, the city met some, but not all reporting requirements, and the information reported was mostly consistent with the city's financial records. Timely and accurate reporting is needed to monitor the status of the TIF district and to provide decision makers with information to make decisions about the TIF program.

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### Through FY2011 Revenue Utilized to Pay Eligible Debt but Future Payments Could Be Ineligible

State statute restricts the use of incremental property tax revenue to repaying or prefunding eligible debt.<sup>12</sup> To be eligible, Winooski's TIF district debt must be a general obligation or revenue bond and the proceeds of the bond may only be used to finance improvements<sup>13</sup> located wholly or partially within its TIF district.

Winooski has issued a \$25.9 million revenue bond and through June 30, 2011 has used \$4.1 million in incremental property tax revenue to repay this obligation, which is an eligible purpose under the TIF statutes. However, we are concerned that the city has pledged to use future incremental property tax revenue for ineligible purposes, namely 1) the portion of the revenue bond used to pay for activities that are not TIF district improvements, 2) debt that is not general obligation or revenue bonds and 3) developer<sup>14</sup> payments that are neither TIF district improvements nor general obligation or revenue bonds. Our concern is heightened by the city's lack of segregation in the accounting for the overall downtown project and the TIF district subset.

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<sup>12</sup>24 VSA §1897 and Act 159 (2000) Sec 38 (3).

<sup>13</sup>Per 24 VSA § 1891, improvements include land acquisition and construction of streets and utilities.

<sup>14</sup>The developer was a private real estate company responsible for construction of housing in the district.

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## Portion of Revenue Bond that is Ineligible

Winooski obtained interim financing through the United States Department of Housing and Urban Development (HUD) Section 108 loan program in 2004 to fund the cost of development in a downtown project area, which was inclusive of the TIF district. Subsequently, the city issued revenue bonds in 2006 in the amount of \$25.9 million which were used to pay off, or refinance, the HUD Section 108 loan.<sup>15</sup> Development activities originally paid for with the HUD Section 108 loan ultimately were financed with the revenue bond.

The activities paid for by the revenue bond included costs financed with the HUD loan that we concluded are ineligible under the TIF statute because they do not meet the statutory definition of improvements<sup>16</sup> in the district or were for construction project costs outside of the TIF boundaries. As a result, at least \$250,000 of the revenue bond is ineligible for repayment with incremental property tax revenue.

- City's administrative costs. During the construction period, 2004 through 2007, the city used the HUD loan to pay for \$250,675 in ancillary costs associated with planning and managing the overall downtown project including salary and benefits allocation of the city manager and the public works director and a fee for administering the HUD loan. These are not eligible costs as they are fixed costs that the city would have incurred absent the TIF project given that the city manager and public works director are responsible for overseeing any projects in which the city is involved. Further, the concept of allowing payment of related costs,<sup>17</sup> other than direct cost of construction, was not introduced in the TIF statutes until 2006 and related only to VEPC-approved TIFs.
- Construction project costs outside the TIF district boundaries. The HUD loan was used to pay the costs of projects undertaken for the overall downtown project, some of which were located outside of the TIF district boundaries. As a result of analyzing the city's project records, we found that approximately 6.6% of the work orders issued by construction contractors for the downtown project and paid with the HUD Section 108 loan were for unrelated work that occurred

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<sup>15</sup>The HUD Section 108 loan issuance on May 25, 2004 was interim financing for the revenue bond issued April 1, 2006.

<sup>16</sup>24 VSA §1891 and §1893 define improvements as including acquisition of land and construction of streets, utilities, parks and parking facilities located wholly or partly within the TIF district.

<sup>17</sup>Act 184 (2006).

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outside the TIF district boundaries. Work order costs were not allocated to the different activities comprising the work order, and city officials were unable to provide us with adequate documentation for us to determine the actual cost of the ineligible activities. However, to provide context for the possible amount of construction costs for non-TIF district work orders we applied a rough estimate of 6.6% of the \$17 million of direct project construction costs paid by the HUD Section 108 loan which yields \$1.1 million.

#### Debt that is not General Obligation or Revenue Bonds

In May 2004, reissued in 2006, Winooski issued two notes for \$4.1 million. The terms and conditions of these notes guaranteed repayment with incremental property tax revenue subordinate<sup>18</sup> to the revenue bonds. The notes, one issued to the Winooski Community Development Corporation<sup>19</sup> and the other to a private landowner, were for the purpose of making infrastructure improvements within the TIF district. However, the notes are not a type of financing allowed for TIF districts.

As of June 30, 2011, according to the terms of the notes, interest only payments were due to the private landowner. Based on Winooski's records, we believe that incremental property tax revenue was not used to make the interest payments. As a result, through June 30, 2011, despite the terms and conditions of the notes, there has not been improper use of incremental property tax revenue. However, Winooski has pledged incremental property tax revenue to pay these private obligations. We are concerned that Winooski plans to use these revenues to pay these debts in the future, which would be an ineligible use of incremental property tax revenue.

Winooski obtained a legal opinion in 2009 regarding the use of the incremental property tax revenue. The city's attorney advised that revenue generated within the TIF district is available for other purposes once current debt service and reserves required by financing covenants of the revenue bond were satisfied. However, this treatment is not consistent with state statute<sup>20</sup> which limits the eligible use of incremental property tax revenue to repaying or prefunding bonded debt. Specifically, for Winooski, 100 percent of the municipal portion of the incremental property tax revenue and 98

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<sup>18</sup>Subordinated debt refers to debt paid secondary to the primary debt.

<sup>19</sup>According to Winooski's financial statements, this note was transferred to a trust managed by the City in 2009 as WCDC had dissolved.

<sup>20</sup>24 VSA §1897 and Act 159 (2000) Sec 38 (3)

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percent of the education portion of incremental property tax revenue is to be used solely for payment or prefunding of bonds. Further, SAO was advised by the AG's office that use of the statewide education increment is restricted to repaying or prefunding bonds.

Taken together, the terms of the notes and the city attorney's advice, it seems likely that if there is incremental property tax revenue available in the future, Winooski intends to use it to repay these notes.

### Developer Payments

In December 2005, as amended in 2009, Winooski entered into an agreement with the developer contracted to construct housing in the district which set a limit on the amount of property taxes the developer would have to pay annually through 2024. The agreement guarantees that incremental property tax revenue would be used to refund the difference between the amount of property taxes assessed on the developer's property and the amount established in the agreement to the extent the amount assessed was greater. This is not an eligible use of incremental property tax revenue as the agreement does not qualify as bonded debt.

As of June 30, 2011 payments had been made to the developer. However, based on Winooski's records, we believe that incremental property tax revenue was not used to make the payments. As a result, despite the terms of the agreement, there has not been improper use of incremental property tax revenue. However, Winooski's agreement with the developer shows the city's intent to use incremental property tax revenue in a manner that contravenes state statute.

### Downtown and TIF District Activity Not Separated

Winooski has not established processes to separately identify and account for TIF-specific activities. As a result, the city did not track project expenditures with consideration given to the parameters of the TIF district. Further, the city has collectively recorded downtown<sup>21</sup> and TIF district revenues, allocations of city operational costs<sup>22</sup> and debt payments but failed to separately identify TIF district activity. For example, according to

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<sup>21</sup>Downtown revenues include payments in lieu of taxes (PILOTs), lease payments, parking and developer fees.

<sup>22</sup>Downtown costs include an allocation of staff salaries for general municipal operations, direct costs of services provided by police and fire, and an allocation of costs to run a municipal library and recreation department.

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Winooski's public works director, he considered the terms "downtown project" and "TIF project" interchangeable. He asserted that he was not directed to differentiate between the downtown project and TIF project activities.

The failure to distinguish between the downtown district and the TIF district may be due in part to the city partnering with the state<sup>23</sup> to obtain the HUD Section 108 loan. Project costs attributable to both the downtown and TIF districts were submitted for reimbursement under the HUD Section 108 loan and state agencies were involved in monitoring and verifying the appropriateness of the city's use of the HUD Section 108 loan for these development projects. The city cited this oversight and lack of issues resulting from it as verification of the appropriateness of these costs relative to the TIF district. However, the state agencies were monitoring and verifying transactions relative to how HUD funds may be utilized, not whether the development funded with the HUD Section 108 loan met the definition of TIF district improvements.

By failing to distinguish between the downtown district and TIF district, Winooski has obscured the actual use of the incremental property tax revenue and increased the risk that incremental property tax revenue will be used for ineligible purposes.

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### Winooski Underpaid \$1.5 Million to the State Education Fund

State statute establishes the methodology municipalities are to use to calculate incremental property tax revenue generated by TIF districts and to determine the proportion of statewide education increment that may be retained.

Due to multiple errors in the calculation of its OTV and its incorrect treatment of some taxable TIF district properties as non-taxable, Winooski 1) miscalculated incremental property tax revenue and 2) retained an incorrect amount of statewide education increment. As a result of the errors in its OTV, Winooski underpaid \$1.5 million of statewide education increment to the state. Moreover, the city incorrectly treated some taxable TIF district properties as non-taxable, but the effect of this error is not determinable because Winooski did not assess the value of these properties. Without an assessed value, it is not possible to determine a definite effect on incremental property tax revenue and the amount that may be retained by the city.

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<sup>23</sup>This particular HUD loan program required the state to guarantee repayment with federal funds received from the federal Community Development Block grant program.

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## Miscalculation of Incremental Property Tax Revenue

Incremental property tax revenue is required by statute to be calculated as incremental property value growth (total current April 1 assessed value of TIF district properties less OTV) multiplied by the municipal and statewide education property tax rates (i.e., tax rates of all taxing authorities).<sup>24</sup> Winooski's OTV is defined as the sum of the assessed valuation of all taxable real property within the district on April 1 immediately preceding the date of issuance of bonds<sup>25</sup> (April 1, 2004).<sup>26</sup> Furthermore, effective July 1, 2006, TIF district OTV was required to be adjusted upon a reappraisal of 20 percent or more of all parcels in the municipality.<sup>27</sup>

SAO found that the city 1) erred in its determination of the TIF district OTV at the establishment of OTV on April 1, 2004, 2) failed to adjust OTV upon the 2007 city-wide reappraisal, and 3) mischaracterized the tax status of three TIF district properties.

If Winooski continues to use the incorrect OTV and mischaracterize taxable properties as non-taxable, the city will continue to miscalculate the amount of incremental property tax revenue generated by the TIF district. This will increase the risk that the city will retain funds that should be sent to the state for purposes of funding public education.

It appears that the city solely relied on the city assessor for determining the TIF district OTV and performing all TIF-related calculations as there was no evidence of review of the calculation by the city manager or another city employee. Such reliance on a single individual for complicated calculations increases the risk of errors in these types of calculations.

### **Errors in OTV on April 1, 2004**

According to state statute, OTV is based upon the assessed values<sup>28</sup> of taxable properties within the TIF district. However, contrary to the requirements, in its calculation of OTV, Winooski 1) omitted certain taxable properties, 2)

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<sup>24</sup>24 VSA §1896, 24 VSA §1897 and 24 VSA §1898(b) establish the requirements for calculating incremental property tax revenue.

<sup>25</sup>24 VSA §1895 and Act 68 (2003).

<sup>26</sup>OTV was established April 1, 2004, as a result of the HUD Section 108 loan issuance on May 25, 2004, which was interim financing for the revenue bond issued April 1, 2006.

<sup>27</sup>Act 184 (2006), as amended by Act 66 (2007).

<sup>28</sup>According to the Lister's Handbook, a guide prepared by DOT for municipal personnel responsible for property valuation, assessed values are the result of a systematic professional valuation methodology.

included the value of some tax-exempt properties, and 3) applied a commercial adjustment to certain properties' assessed values. Based on documentation provided by the city, SAO recalculated Winooski's April 1, 2004 OTV according to statutory criteria and concluded that the city overstated its OTV by approximately \$3.25 million, as shown in table 2.

**Table 2: Reconciliation of the TIF district OTV, as calculated by Winooski to the OTV calculated by SAO**

Comment	Effect on the OTV	Amount
<b>OTV, per Winooski's calculations</b>		<b>\$24,822,940</b>
Omission of taxable properties	Understatement	243,000
Inclusion of non-taxable properties	Overstatement	(1,325,400)
Application of a commercial adjustment <sup>a</sup>	Overstatement	(2,169,140)
<b>OTV, per SAO's calculations<sup>b</sup></b>		<b><u>\$21,571,400</u></b>

<sup>a</sup>Commercial adjustment was applied to twenty-three of sixty-two properties.

<sup>b</sup>This is not the final OTV as a 2007 city-wide property value reappraisal triggered a requirement to adjust OTV, as discussed in the next section.

- Omission of taxable properties. The city assessor explained that he omitted from OTV two taxable properties because they were not intended to be in the TIF district when it was formed. However, based on the evidence provided by the city, including three different lists of TIF district properties – one of which included the two properties - pre and post development maps of the TIF district, records of property transfers, records of condemnation proceedings<sup>29</sup> and property tax calculations, SAO concluded that the preponderance of the evidence supported that the two taxable properties were within the TIF district. Furthermore, the assessor included these two properties in his calculation of incremental property tax revenue which is inconsistent with his position that these properties should be excluded from OTV since only growth in properties designated as TIF district properties yields incremental property tax revenue.
- Inclusion of non-taxable properties. The assessor included three tax-exempt properties in OTV, but did not provide an explanation for including the tax exempt properties. It may be attributable, in part, to

<sup>29</sup>Condemnation is a judicial process of taking certain lands for the purposes of laying out or altering highways, or for other municipal redevelopments.

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the significant amount of change that occurred in the character of the TIF district properties (e.g., ownership and intended purpose) from the time the TIF district was established in 2000 through 2004 and a failure to recognize that the city's ownership of the properties for redevelopment purposes (properties were acquired through condemnation proceedings) changed the tax status of the properties to tax-exempt.<sup>30</sup>

- Application of commercial adjustment. The assessor applied a 20% adjustment factor to twenty-three of the TIF district properties.<sup>31</sup> The city assessor asserted that this was appropriate because the adjustment was included in the municipal property values reported to the DOT as part of the required annual report of assessed property values that all municipalities submit. However, in the same report the values reported for education property tax purposes excluded the commercial adjustment.<sup>32</sup> SAO sought the advice of the Vermont Department of Taxes and the Attorney General's Office. Both advised our office that it was not appropriate to include the commercial adjustment in the calculation of Winooski OTV as this type of adjustment is not statutorily authorized to be applied for purposes of calculating the TIF OTV.

The Winooski city assessor was responsible for calculating OTV and incremental property tax revenue. He disagrees with our conclusion regarding which properties should be included in OTV and at what value, but has not provided additional documentation to support his position.

### **Failure to adjust the OTV upon the 2007 city-wide reappraisal**

Effective July 1, 2006, the legislature amended 24 V.S.A. §1896 (b), requiring that OTV be adjusted upon a city-wide property reappraisal. OTV is required to be adjusted by a factor that is based on changes in property

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<sup>30</sup>32 VSA § 3802 (4).

<sup>31</sup>Winooski city charter provides the authority for the municipality to apply a 120% commercial adjustment as a local option tax to all personal and real property not used as residential property, farmland and vacant land zoned for recreation, conservation and open space.

<sup>32</sup>Vermont municipalities report assessed property values to the Department of Taxes annually.

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values in the TIF district.<sup>33</sup> From the reappraisal forward, the incremental property tax revenue is calculated based on the difference between the current property values of TIF district properties and the adjusted original taxable value.

Winooski underwent a city-wide reappraisal, adopting the newly appraised values on April 1, 2007. However, the city did not adjust its OTV, as required by the amended statute. This may be because, at the time, DOT concluded that this requirement did not apply to Winooski. In addition, the city had email communication with DOT in 2007 that the city believed articulated DOT's position to the city. DOT's current position, based on an opinion co-signed by the AG and DOT general counsel, is that the reappraisal adjustment does apply to Winooski.

Based on the calculations performed by SAO, the Winooski TIF district OTV should have been increased from \$21,571,400 (see Table 2) to \$54,575,642<sup>34</sup> due to the 2007 reappraisal. This adjusted OTV should have been used to calculate incremental property tax revenue starting in fiscal year 2008.

Winooski disagreed and sought the advice of legal counsel. Winooski's attorneys provided our office with a legal analysis in which they proffered multiple rationales to dispute our conclusion that Winooski's OTV is required to be adjusted upon reappraisal. We consulted with the AG's office and the general counsel of DOT regarding Winooski's attorneys' analysis and, in summary they advised that the requirement to adjust OTV applies equally to all municipalities which conducted a substantial reappraisal subsequent to the effective date of the statute, July 1, 2006. See appendix IV for greater detail regarding Winooski's attorneys' analysis and the AG's advice regarding this issue.

### **Mischaracterization of taxable properties as non-taxable**

Incremental property tax revenue results from growth in the property value of taxable properties in a TIF district. Accordingly, tax exempt properties in a

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<sup>33</sup>In the event of a reappraisal of 20 percent or more of all parcels in the municipality, the value of the original taxable property in the district shall be changed by a multiplier, the denominator of which is the municipality's education property grand list for the property within the district in the year prior to the reappraisal or partial reappraisal and the numerator of which shall be the municipality's reappraised or partially reappraised education property grand list for the property within the district.

<sup>34</sup>For the Winooski TIF district, the multiplier for the OTV adjustment should have been calculated based on the assessed property values of 2006, as a denominator, and the after-the-reappraisal values of 2007, as a numerator. This yields a multiplier of 2.53.

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TIF district are excluded from the consideration of TIF district growth. Municipal listers/assessors are responsible for determining which properties are exempt from taxation, based on statutory criteria, and therefore which, if any, TIF district properties would be excluded from the calculation of incremental property tax revenue.

Based on our review of documentary evidence provided by Winooski, such as land records, property ownership data and lease agreements, we discerned that three properties – a municipally-owned parking garage, a partially University of Vermont (UVM) owned<sup>35</sup> condominium property (Spinner Place), and municipally-owned land under Spinner Place – characterized by the municipal assessor as non-taxable, were actually taxable. For example, more than 95 percent of the parking garage was leased to private parties and was not available for public use which is one of the conditions required for tax-exempt status.<sup>36</sup>

We addressed concerns about the tax status of these properties with city officials and they sought the advice of legal counsel. Winooski's attorneys provided our office with a legal analysis in which they posited various arguments to support the tax exempt status of the properties.

We consulted with the general counsel of DOT and the AG's office regarding Winooski's attorneys' legal arguments. DOT and the AG reviewed the attorneys' analysis and advised us that they were not persuaded by the attorneys' analysis and affirmed that the parking garage and the UVM-owned property were taxable. With regard to the municipal-owned land, they advised that since Winooski's attorneys asserted that this property was tax exempt based upon its character as urban renewal property,<sup>37</sup> SAO should seek evidence from the city demonstrating that it had followed the process outlined in statute to classify municipal property as held for urban renewal purposes. We sought this information from Winooski in mid-June, and the city was provided with a draft of this report in September with an opportunity to provide additional evidence, but the city has not provided the requisite documentary evidence. See appendix IV for greater detail regarding Winooski's attorneys' analysis and the AG's advice regarding Winooski's attorneys' legal arguments.

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<sup>35</sup>Per the ground lease between the city of Winooski and UVM, UVM agreed to make annual payments to the city in lieu of taxes (PILOT) during the lease term.

<sup>36</sup>32 VSA §3802(4).

<sup>37</sup>Property held by a municipality for urban renewal purposes is tax-exempt. (24 VSA §3216(b))

Based upon the advice of the AG and DOT and Winooski's failure to provide evidence we requested regarding the urban renewal designation, we concluded that all three properties are taxable. Such a change in property tax status means that the value of these properties should have been subject to property tax levies and been included in the TIF district incremental property tax revenue calculations for the last several years. Accordingly, the city has misstated its incremental property tax revenue.

The city's property records did not contain assessed values for these properties. Because there are multiple acceptable approaches to property valuation, including fair value, cost, and income, we are unable to anticipate the outcome of a formal appraisal of the properties and therefore are not able to determine a definite effect on incremental property tax revenue.

#### Retention of Incorrect Amount of Statewide Education Increment

Winooski may retain ninety-eight percent of statewide education increment for repayment or prefunding of TIF district debt. SAO calculated incremental property tax revenue based on statutory requirements and using the revised OTV amounts described in the previous section and determined that Winooski retained at least \$1.5 million more statewide education increment than statutorily allowed. Table 3 provides a summary of the differences between the amount Winooski retained and the amount SAO calculated could be retained according to statute.

**Table 3: Comparison of Incremental Property Tax Revenue per Winooski to Amount Calculated by SAO.**

<b>Comparison of the Total Difference</b>			
	<u>Municipal</u>	<u>Statewide</u>	<u>Total</u>
Incremental property tax revenue retained, per Winooski	\$1,717,199	\$2,346,136	\$4,063,335
Cumulative effect of OTV errors	\$(1,165,366)	\$(1,519,345)	\$(2,684,711)
Incremental property tax revenue that could be retained, per SAO	<u>551,833</u>	<u>826,791</u>	<u>1,378,624</u>

The \$1.5 million is a minimum because, as we noted in the previous section, Winooski failed to assess the values for the properties that it incorrectly treated as non-taxable. As we are unable to anticipate the values that would result from an appraisal of these properties, we cannot quantify the impact on incremental property tax revenue and therefore, the amount Winooski owes to the State. At a minimum, according to statutory requirements, Winooski

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will owe the state two percent<sup>38</sup> of the statewide education increment annually. Whether the city owes the state additional money will depend on the magnitude of incremental property tax revenue that results from taxing these properties. Since municipalities are allowed to use incremental property tax revenue to repay or prefund eligible debt, as long as the amount of incremental property tax revenue derived from these properties is less than Winooski's outstanding eligible TIF district debt, the city may retain the incremental property tax revenue for future debt payments. As of June 30, 2011, Winooski's TIF district debt obligation was \$20.9 million.<sup>39</sup>

If the city continues to treat these properties as non-taxable, the statewide increment will be diverted from the state education fund for a greater period of time than allowed. In addition, certain property owners in the TIF district may be shielded from paying their share of the improvements from which they are benefitting.

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### **Winooski Did Not Meet All Reporting Requirements, but the Information Reported Was Consistent with Its Financial Records**

At various times Winooski has been required to issue reports related to the TIF district to both city and state organizations (executive and legislative branches).

#### **City Council**

In each year after the establishment of the TIF district OTV and until the end of the TIF district life, the assessor is required to certify to the city council the amount the TIF district properties have either increased or decreased in relation to the value established initially.<sup>40</sup> Winooski is partially compliant with the requirement. Since July of 2007 (FY 2008), the city assessor has been providing information regarding current year TIF district property values to the city council, as part of a municipal tax rate setting, however, the information has not been formally certified, as required. Per the city assessor, "no TIF information was provided to the city council before 2007, as the TIF was either not productive or not productive enough to influence the city tax

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<sup>38</sup>Per Act 190 (2008), Winooski is allowed to retain 98 percent of the statewide education increment.

<sup>39</sup>We have identified \$250,675 of ineligible expenditures which are included in this amount. In addition, the City may have used bond proceeds to pay for work done outside of the TIF district which will reduce the total eligible TIF district debt when actual costs are identified by the City.

<sup>40</sup>According to the statutory authority, Winooski TIF district was created in 2000 and its OTV was established on April 1, 2004.

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rate.” This statement presumes that the change in TIF district value is only relevant to the extent it impacts the tax rate. Changes in TIF district value also provides other information relative to understanding the performance results of the district and to not report changes in value because the assessor deemed them not significant results in an incomplete picture of the TIF district performance.

### **State Agencies**

Per a statutory amendment effective in 2008, the city is required annually to provide information about the TIF district to DOT and VEPC by December 1.<sup>41</sup> The required information includes scope of the planned improvements and development, the original taxable property value, incremental property value growth, the annual tax increment, and the annual amount of tax increments utilized.

Winooski did not provide the required information to DOT and VEPC in 2009 and 2010, issuing its first annual report to VEPC in the fall of 2011. One piece of the required data, incremental property growth, was provided to the Department of Taxes annually in connection with the state’s data gathering processes related to statewide public education funding. We found this reported data to be consistent with city schedules. Per the city manager, the city complied with all reporting requirements once they became aware of them.

### **Legislative Committee**

Act 159 required the city to provide a one-time report to the Joint Fiscal Committee (JFC) within 60 days of issuing bonds associated with the TIF district. Per our inquiries with a staff member in the offices of the Legislative Council and the Joint Fiscal Committee and with Winooski officials, the report was not submitted.

The city’s failure to meet some of its reporting requirements could be the result of a lack of documented policies and procedures related to TIF district reporting requirements. If the city had established and documented policies and procedures related to reporting requirements, they may have recognized more timely that statute required that certain data be reported to the city council and to VEPC and DOT. Without documented procedures, the risk increases that reporting will not be timely or will not occur at all.

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<sup>41</sup>24 VSA 1901.

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Timely and accurate reporting of the TIF district data to city and state officials facilitates monitoring of the status of the TIF district which is critical to ensuring that the TIF district operates as expected. Accomplishing this may be difficult without periodically reviewing applicable statutes and establishing policies and procedures to ensure timely and accurate reporting. Further, without accurate information, municipal and state officials may find it difficult to make informed decisions about the program.

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## Winooski's Establishment and Monitoring of Performance Measures Was Limited

The city's establishment and monitoring of performance measures to indicate the extent to which its TIF district was meeting municipal and state economic and fiscal goals was limited. Specifically, Winooski did not 1) establish measures for all objectives (i.e., goals), 2) consistently set targets, and 3) consistently track actual results. Without pertinent data indicating the extent to which the municipality has met its goals, decisions made regarding the TIF district may be less effective than if complete performance information was available and utilized.

Although the statutes governing TIF district creation and administration do not contain an explicit requirement for municipalities to establish and monitor performance relative to achievement of the three state TIF district goals, benefits can accrue from the effective use of performance measurement. In addition, the state emphasizes performance measurement via its requirement for state organizations to annually submit a variety of performance measurement information to the general assembly. According to the Government Finance Officers Association, for every specific economic development incentive (e.g., tax increment financing), the economic benefit to the government, as well as the cost of the incentive, should be measured and compared against the goals and criteria that have been previously established for the incentive.

The legislature established specific objectives for the Winooski TIF district in Act 159 (2000). Two of the objectives mirror state statutory objectives that apply to all TIFs – 1) preservation and enhancement of the tax base, and 2) enhance employment opportunities. The remaining city objectives all relate to the third state objective – encouraging development. Table 4 provides a comparison of the city's objectives (i.e., goals) related to measures and targets established by Winooski and whether actual results were monitored.

**Table 4: Comparison of Objectives and Measures to Targets Established and Actuals Monitored**

<b>Objectives in Act 159 (2000)</b>	<b>Measures</b>	<b>Targets Established</b>	<b>Actuals Monitored</b>
Preservation and enhancement of the tax base	Growth in incremental property value and incremental property tax revenue	No	Yes
Revitalization and improvement of a significant downtown area	Public improvements – streets, sidewalks, public lighting, water and sewer, recreation	No	Yes
	Construction of additional parking facilities	Yes	Yes
Business stability and growth incentives	Commercial development	No	No
	None	No	No
Development of high-density housing in the commercial center	To have the highest density of housing reasonably possible	Yes	Yes
Reduction of pressure for commercial and residential development upon open lands in the region	None	No	No
Reduction of traffic congestion and protection of existing interstate interchanges	None	No	No
Integration into and compatibility with regional development and capital plans	None	No	No
Creation of affordable housing	At least 10% of the housing in the TIF district shall be affordable <sup>a</sup>	Yes	No
Enhanced employment opportunities within the city of Winooski and the surrounding region	None	No	No

<sup>a</sup>This measure was created by the legislature in Act 159 (2000).

Specific targets were established in various agreements entered into by Winooski with the federal government, the state of Vermont and the project developer but actual results for these targets were not consistently monitored. In addition, creation of affordable housing is a specific requirement of Winooski’s enabling statute which specified that 10% of the housing in the TIF district should be affordable. City officials did not monitor this measure to determine whether they had met the requirements of state statute. Instead, monitoring of actual results was only done to satisfy federal funding requirements and was performed by the Vermont Housing Finance Agency

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(VHFA) through the construction phase of the project. Rather, the target for affordable housing was deemed to have been met by VHFA because Winooski's total city population was predominantly low and moderate income. However, demographic information about the city's population does not provide information about whether the target to create affordable housing in the TIF district has been met. Accordingly, the VHFA analysis does not provide sufficient information to determine whether 10% of the housing in the TIF district is considered affordable housing according to Vermont statute.

Winooski officials believed its project monitoring done quarterly through the construction process gave them sufficient information to know whether the TIF district had met its objectives. While this rationale may be valid for certain measures, such as the number of housing units or parking spaces constructed, this limited monitoring only provided information relative to a short period of time and only for certain measures. However, it seems that the purpose of a TIF district is not simply to construct improvements, but to achieve long-term goals, such as enhanced employment opportunities and business stability, which last beyond the construction phase. Consistently monitoring performance for other measures against established targets would give Winooski officials information about the performance of the TIF district throughout its life.

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## Conclusion

Weaknesses in Winooski's approach to administering its TIF district from its inception have had cascading and ongoing detrimental effects on the management of the TIF, including the underpayment of \$1.5 million of statewide education property tax. In particular, 1) the lack of an officially recorded list of TIF district properties, 2) the city's failure to clearly distinguish the TIF district from other downtown development efforts comingling project and accounting records, 3) the use of the wrong OTV, and 4) mischaracterization of taxable properties as tax-exempt led to incorrect calculation of incremental property tax revenues and, therefore, incorrect payments to the state. Without immediate corrective action, the city risks continued underpayment of amounts owed to the State's education fund and use of tax increment for repayment of ineligible debt. Moreover, continued incomplete reporting and monitoring of performance measures will perpetuate an incomplete picture of the TIF district's actual results for municipal and state officials.

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## Recommendations

We recommend that the Winooski city manager:

1. Work with other city officials to approve and record an official list of TIF district properties.
2. Implement procedures to ensure that incremental property tax revenue is not used to repay the portion of the revenue bond that paid for city administrative costs and other costs not related to the TIF district, including developing a methodology to determine the dollar amount of the work orders for construction that occurred outside of the TIF district.
3. Segregate the accounting for incremental property tax revenue and its related debt service from other types of revenue and costs to ensure that incremental property tax revenue is only used for payment of, or prefunding, eligible debt.
4. Direct the city assessor to make the following corrections to the OTV:
  - a. Include the two taxable properties and remove the three non-taxable properties,
  - b. Eliminate the commercial adjustment, and
  - c. Adjust the OTV to reflect the city-wide reappraisal.
5. Arrange to pay \$1.5 million of the state education property tax to the state education fund.
6. Work with the city assessor to develop and document processes for calculating incremental property tax revenue, including ensuring a second review of the calculations is performed by another city official.
7. Direct the city assessor to appraise the municipally-owned parking garage, land under Spinner Place and the UVM-owned portion of Spinner Place.
8. Direct the city assessor to recalculate the incremental property tax revenue through June 30, 2011, including the three taxable properties the city incorrectly treated as non-taxable.

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9. Designate a city official to be responsible for reviewing the statutory requirements for reporting and to document policies and procedures to ensure timely and accurate reporting.
  10. Designate a city official to establish and monitor a set of performance measures, including numerical targets for all measures, for each of the objectives outlined in Act 159 (2000).

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## Management Comments and Our Evaluation

In a letter dated October 9, 2012, the Winooski city manager provided a written response to a draft of this report, which can be read in its entirety in appendix V.

The city disagreed with the conclusions of the audit report, indicating that the city does not believe funds are owed to the state and it does not plan to remit funds nor adjust the city's practices at this time. The city offered various reasons for its disagreement, including referencing an April 2012 legal analysis by the city's attorneys, but provided no new documentary evidence to support its position and disagreements.<sup>42</sup> We based our analysis and conclusions on the evidence gathered during our audit and guidance from the AG's office, including advice concerning the April 2012 legal analysis by the city's attorneys. Since the city has not provided new documentary evidence for our consideration and we previously considered the legal analysis the city references in its response to our report, we did not revise our findings and conclusions, although we made technical changes where appropriate.

The following summarizes the city's major points and our evaluation.

Failure to record an official list of TIF district properties and lack of certification of the TIF district property values by the city assessor.

The city acknowledged that it provided three different versions of TIF district properties to us during the audit, but claims that we took the information out of context. We disagree. The three versions were provided to us as we attempted to determine 1) whether the city had an official record of the TIF district boundaries and properties comprising the TIF district and 2) whether

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<sup>42</sup>The city noted in its response that additional documentation is available in a HUD Section 108 loan closing binder which we have and the contents of which we considered as part of our audit. No additional documentation has been provided.

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the city assessor had certified the assessed values comprising the TIF district on April 1 prior to the bond issuance as required by statute. We reviewed the three versions provided during our audit and concluded that none of the versions were an official record and none were certified by the city assessor. The city claims that the third version it provided to us was a certified copy of the TIF district properties and assessed values reported to DOT on July 6, 2004. However, the copy provided to us during the audit had no certification evident. In addition, this version omitted two properties that are in the TIF district, mischaracterized the tax status of certain properties and inappropriately added a 20% commercial adjustment factor to 23 properties. These errors caused the city to have an original taxable value that was overstated by \$3.25 million and to miscalculate the amount of incremental property tax revenue generated by the TIF district.

#### Ineligible TIF expenditures

The city asserts that all expenses were approved by the state via monitoring conducted by VHFA; specifically asserting that VHFA reviewed every project invoice. Documentary evidence provided to SAO by the city and VHFA demonstrated that VHFA performed a monitoring role with respect to the downtown project which encompasses, but is not limited to, the TIF district. However, it also showed that the monitoring conducted by VHFA was intended to ensure appropriate use of HUD Section 108 loan proceeds and the city's ability to repay these funds, and did not address the state's statutory requirements associated with what constitutes a valid TIF district improvement. To date, Winooski has not provided evidence that VHFA's review addressed these requirements and our analysis showed that the city failed to distinguish the activity in the greater downtown area from TIF district activity. As a result, our conclusion remains the same - the city utilized a portion of its HUD Section 108 loan proceeds to pay for activities that do not constitute TIF district improvements and incremental property tax revenue may not be used to repay that portion of the city's TIF district debt.

Based on this conclusion, we reported there is risk that future incremental property tax revenue will be used to pay ineligible TIF district debt. The city indicated that it was not sure why SAO speculated in what the city may or may not do over time with its funds (i.e., incremental property tax revenue). Our report expresses our concern that the city may utilize incremental property tax revenue for ineligible purposes in the future. This risk exists because the city has entered into certain agreements that pledge the use of incremental property tax revenue in a manner that is inconsistent with the uses specified in statute. For example, the terms and conditions of the two private loan agreements state that incremental property tax revenue is

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pledged for repayment of these obligations, but state statute restricts the use of incremental property tax revenue to repayment of general obligation or revenue bonds authorized by the city's registered voters. Thus, should the city choose to use future incremental property tax revenue in the manner suggested by these agreements, it would be an ineligible use. We continue to recommend that Winooski develop and implement processes to ensure that incremental property tax revenue is used only for eligible purposes.

#### Downtown and TIF district activity not separated

According to the city, it has segregated its funds, but not in a separate fund. Further, the city stated that it tracks the source of funds, has a record of tax revenues versus other income and can clearly track which funds were used for which purpose and that revenue other than taxes is used to meet its obligations. Although the city provided evidence that it records its property tax revenue and other income sources in separate accounts and also records expenditure activity associated with the *downtown* project in its accounting system, the city does not have a systematic process to separate the activity associated with the *TIF district*. This obscures the city's ability to track the use of incremental property tax revenue, which can only be used to pay TIF district debt and may not be utilized for the other aspects of the downtown project.

#### Failure to adjust the OTV upon the 2007 city-wide reappraisal

The city disagrees with our conclusion that Winooski is required to adjust OTV upon a city-wide reappraisal. Moreover, the city believes that legislation enacted after its TIF bonds were issued cannot retroactively change the TIF income stream pledged to secure such bonds. The city posits four main arguments for its position.

First, the city argues that a 2009 statutorily required DOT/Joint Fiscal Office (JFO) report supports the city's contention that the requirement to adjust OTV upon a city-wide reappraisal does not apply to Winooski. Specifically, the city cites appendix A to the 2009 DOT/JFO report which included a notation stating that Winooski's "OTV is not affected by reappraisal." The city also references its attorneys' April 20, 2012 analysis which stated that appendix A to the 2009 DOT/JFO report indicated legislative intent was that Winooski's OTV would not be affected by the OTV reappraisal adjustment provision. AG and DOT counsel advised our office that the 2009 DOT/JFO report does not cite any legislative text or history or rationale that would suspend the application of the OTV adjustment to Winooski and therefore, is not a reliable indicator of legislative intent. Further, the AG and DOT counsel

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advise that the requirement to adjust OTV upon a city-wide reappraisal applies to Winooski. See appendix IV for greater detail regarding the AG and DOT advice.

Second, the city contends that the state reviewed certain of Winooski's OTV calculations and relayed the Winooski-derived OTV in the state's own mandated reporting (i.e., a 2009 DOT/JFO report on TIF districts and the statutorily required annual reporting by VEPC). At the time these interactions occurred, DOT had concluded that the reappraisal adjustment requirement did not apply to Winooski. DOT's current position, based on an opinion co-signed by the AG and DOT general counsel, is that the reappraisal adjustment does apply to Winooski.

Next, the city argues that adjusting OTV subsequent to a reappraisal would decrease incremental property tax revenue and lenders would not choose to issue bonds carrying this risk. TIF district financing already carries risk for bond holders since there are significant unknowns at the time debt is issued, including the amount of revenue that will be available to repay the debt. In the case of Winooski, the lender mitigated the risk to bond holders by requiring a letter of credit<sup>43</sup> that assures bondholders will be repaid regardless of whether incremental property tax revenue materializes.

Lastly, the city contends that changing the law after the city has entered into contractual agreements is unconstitutional and the city believes the state does not have the authority to render the city unable to meet its obligations by statutory change. In addition, the city refers to its attorneys' April 20, 2012 analysis which among other things also references the Contract Clause of the U.S. Constitution (U.S. Const., Art. I, § 10), prohibiting states from passing laws that impair the obligations of contracts. We consulted with the AG and DOT general counsel who explained that the 2007 OTV statutory change was not a substantial impairment because the statute was crafted so that any adjustment to values would not affect the municipalities' claim on incremental tax revenues that result from improvements within a TIF district (e.g., the adjustment is to capture the change in value of properties resulting from factors other than improvements within the TIF district). See appendix IV for greater detail on the city's attorneys' analysis and the guidance provided to our office by the AG and DOT general counsel in response to the city's attorneys' analysis.

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<sup>43</sup>The letter of credit, issued by TD Bank, N.A., allows use of the letter of credit when the city defaults on its bond obligations (e.g. does not make payments of principal and/or interest on the bonds). The city agrees to reimburse the TD Bank, N.A. for any draw on the letter of credit.

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## Taxable properties

The city indicated that the audit's view that the parking garage and UVM student housing (i.e., UVM-owned portion of Spinner Place) are not public uses is contrary to longstanding practices, defies tax-exempt treatment of such traditionally public structures and would result in devastating impacts to parking facilities and colleges throughout the state. Further, the city states it will continue to treat the parking garage and the UVM property as tax-exempt.

The city's description of the UVM-owned property as UVM student housing and a UVM residence hall is inconsistent with UVM's use of the property. UVM owns the property, but does not manage it as UVM student housing. Rather, UVM leases the property to Collegiate Housing Foundation, a nonprofit financing agency, which in turn, leases some of the space to Champlain College.

We do not question the statutory premise that certain properties dedicated to public use may achieve tax-exempt status nor are we challenging that state statute provides for UVM-owned property to be tax-exempt when used for purposes delineated in statute (i.e., educational purpose). Rather, based on the evidence provided by Winooski and consultations with the AG's office, we concluded that three properties classified by Winooski as tax-exempt, are not used in a manner that would provide these particular properties tax-exempt status under state statute. For example, the UVM-owned property is not used as a UVM residence hall as the city indicated in its response, rather the property is leased to another entity which then leases it to a third entity. The AG advised since UVM leases the property, which is arguably a commercial use, not an educational purpose, the property is not tax-exempt (see appendix IV for the AG's opinion).

## Supervision of city employee

The city stated that the audit finding of the city employee acting on his own without supervision is a misunderstanding and any notion that he works unchecked is wrong. We have provided clarifying language in the report to indicate that our comment relates solely to the assessor's performance of TIF district calculations, not the entire function of the city assessor. The city asserted that the staff accountant verifies the assessor's calculations. However, the staff accountant position originated in 2010 and most of our findings pre-date this year. In addition, the city did not provide evidence that the TIF district calculations performed subsequent to 2010 were reviewed by the staff accountant.

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Reporting requirements were not met

The city indicated that all reporting requirements are now being met, including routine reports to the council on developments in the TIF and asserted that all reporting requirements have always been met. Based on the evidence provided during the audit, Winooski has not met all reporting requirements. A statutorily required report to JFC was never filed and only one statutorily mandated annual report to VEPC was filed in 2011 although the requirement has been in place since 2008. Winooski also indicated that providing evidence of required reporting to the city council was complicated by the loss of documents in a fire that occurred in 2003, but noted that the information was available in the HUD 108 closing binder. We were not provided with evidence of reports to the city council from 2004 to July of 2007, subsequent to the noted fire, and the HUD 108 closing binder did not contain evidence of the reporting that the city was required to perform. Although the city states that reporting requirements are being met now, documenting policies and procedures related to TIF district reporting requirements will help ensure that timely and accurate reporting continues to occur.

Performance measures establishment and monitoring is limited

The city manager stated that several indicators are watched carefully and provided information in an appendix to the response that addressed how the district is performing at this time. The city also noted that a footnote to table 4 of the draft report did not reflect the city's monitoring of incremental property value growth. As a result, we deleted the footnote from the table.

While the performance information compiled by the city in response to our report is informative, the city has not provided evidence that it has a systematic approach to consistently monitor performance of the TIF district against established targets. Establishing and monitoring a set of performance measures would give Winooski officials valuable information about the performance of the TIF district on an ongoing basis.

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In accordance with 32 V.S.A. §163, we are also providing copies of this report to the secretary of the Agency of Administration, commissioner of the Department of Finance and Management, and the Department of Libraries. In addition, the report will be made available at no charge on the State Auditor's website, <http://auditor.vermont.gov/>.

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## Appendix I

### Scope and Methodology

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To address our three audit objectives we performed an analysis of the legislative statutes related to the creation, financing, administration and reporting requirements for tax increment financing districts in Vermont (contained in Titles 24 and 32 and specific to Winooski Act 159), including numerous amendments and legislative acts since the original enabling legislation in 1985 (Act 87). In addition, we met with officials from the municipality and DOT to understand their statutory interpretation of TIF legislation and sought authoritative opinions from the Office of the Attorney General in cases in which interpretations diverged.

We reviewed a wide variety of published guidance and research on the use of tax increment financing as an economic development tool. This included publications by the Government Finance Officers Association, audit reports of TIFs in other states, a 2009 study conducted jointly by DOT and the legislative joint fiscal office, which reported specifically on the existing TIF districts in Vermont,<sup>44</sup> among others.

In planning our work with respect to our first objective, we interviewed municipal officials and obtained available documentation for the establishment of the TIF district, city council approval, minutes of regular and special city council meetings, and the TIF district maps. These documents and records were assessed against the requirements contained in Vermont statutes Titles 24 and 32 to determine whether the municipality adhered to requirements for the establishment of a TIF district. We reviewed documents for the debt financing, including the city clerk's attestation that all requisite steps were followed to publicly warn the TIF district financing, voter approval, loan documents, and a grant agreement.

In performing work in support of our second objective, we interviewed city officials, personnel from DOT's Division of Property, Valuation and Review and the Vermont Department of Education regarding their processes, policies, and procedures related to administering the TIF district. We gained an understanding of internal controls sufficient to plan the scope of our detail testing related to the utilization of incremental property tax revenue, calculation and retention of incremental property tax revenue, and reporting. We performed detail expenditure testing, detail review and recalculation of the OTV at its establishment and subsequent to a city-wide reappraisal in 2007, and recalculation of property tax increment for fiscal years 2006 through 2011.

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<sup>44</sup>As required by 32 V.S.A. §5404a(i).

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## Appendix I

### Scope and Methodology

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We performed a variety of tests, as follows:

- Traced project expenditures from HUD Section 108 loan requests to the general ledger.
- Analyzed the project documents maintained by the city, including the expenditures submitted for reimbursement to HUD, construction project change orders, and the city accounting records.
- Evaluated the allowability of TIF expenditures by reviewing original source documentation such as construction project work orders and change orders.
- Compared the debt service payments reported in the city's general ledger to the debt amortization schedules.
- Cross referenced TIF parcels from the property maps to the TIF property reports to determine proper inclusion/exclusion of TIF properties since inception of the TIF district.
- Reviewed TIF property value trends for all years by comparing the property values from inception through FY 2011 for consistency, errors, and missing information.
- Traced the information recorded in the New England Municipal Resource Center (NEMRC) property records module<sup>45</sup> for TIF properties for FY 2005 and FY 2008 to source documents such as the grand list, property tax bills, and lister cards to assess the accuracy of the information.
- Reconciled Form 411<sup>46</sup> TIF exclusions to NEMRC records for the period from FY 2005 through FY 2011, and cash flow statements prepared by the Vermont Department of Education to ensure that consistent TIF property information was reported to the state.
- For FY 2005 through FY2011 verified that the city remitted the appropriate statewide education property taxes to the state by

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<sup>45</sup>NEMRC is an accounting system used by many municipalities in Vermont. The property records module is used to maintain records related to properties in the municipality.

<sup>46</sup>Form 411 is the required form that each municipality must use to report property information to the state each year.

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## Appendix I

### Scope and Methodology

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reconciling the information reported on Form 411 to the Department of Education cash flow worksheet.<sup>47</sup>

- Obtained the city's TIF incremental property tax revenue calculation schedule for fiscal years 2007 through 2011, recalculated the revenue and agreed the information used in the calculation to underlying support such as city and state approved tax rates and TIF property reports as recorded in the NEMRC system.
- Recalculated the city's TIF incremental property tax revenue since inception of the TIF district. Included in the analysis was a calculation of TIF incremental property tax revenue by SAO using all appropriate tax rates, a summary of TIF incremental property tax revenue calculated and retained by the city, and a reconciliation of both calculations.
- Compared incremental property tax revenue per SAO calculation to the amount calculated by the city to determine what, if any, amount is owed to the state.
- Assessed the timeliness of the city's reporting by comparing the dates the reports were delivered to the report deadlines.
- Assessed the accuracy of the city's reports by comparing the information reported to the city's source documents.

We consulted with the AG and obtained legal opinions and advice from the AG regarding 1) the applicability of statutory amendments to TIF districts that were established prior to the amendments, 2) the calculation of OTV, including whether municipalities must adjust OTV as a result of reappraisals, 3) whether municipalities have discretion to determine how much statewide education increment may be retained, and 4) whether certain TIF district properties treated by the city as non-taxable are taxable properties.

In addition, in order to ascertain the ownership of two properties in the city of Winooski's TIF district, specifically the property known as "Spinner Place" and the property known as "Community College of Vermont," we engaged external legal services to review certain documents, including land records

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<sup>47</sup>Department of Education utilizes the cash flow worksheet to calculate the amount of statewide education property tax each municipality owes to its local school district and/or to the state.

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## Appendix I

### Scope and Methodology

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and lease agreements, and to perform property title searches for these properties.

Our audit approach to the third objective began by identifying and reviewing sources of information for best practices related to performance monitoring of TIF district financing. We made inquiries of city officials to determine if the city established performance measures for the TIF district or if there were any periodic reviews or mechanisms in place to monitor the actual performance of the TIF district. We also reviewed the TIF district financing documents to ascertain if performance measures were considered during the TIF district's establishment.

We considered internal controls and information systems controls to the limited extent to which they related to our objectives. For example, we interviewed several members of city's staff (i.e., the accountant, city assessor, project manager) to determine the levels of accounting and general data controls related to TIF district administration.

Our audit fieldwork was performed between September 2011 to July 2012 and included site visits to the city offices in Winooski. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Appendix II

### Abbreviations

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ACCD	Vermont Agency of Commerce and Community Development
AG	Office of the Attorney General
CHF	Collegiate Housing Foundation
DOT	Vermont Department of Taxes
FY	Fiscal Year
HUD	United States Department of Housing and Urban Development
JFC	Joint Fiscal Committee
JFO	Joint Fiscal Office
NEMRC	New England Municipal Resource Center
OTV	Original Taxable Value
PILOT	Payment In Lieu of Taxes
SAO	State Auditor's Office
TIF	Tax Increment Financing
UVM	University of Vermont
VEPC	Vermont Economic Progress Council
VHFA	Vermont Housing Finance Agency
VSA	Vermont Statutes Annotated

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## Appendix III

# Summary of Select Additions and Amendments to State Statutes Relevant to Establishing and Administering TIF Districts

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The following summarizes the additions and amendments to TIF statutes that were made subsequent to the Act 159 (2000), the legislation that approved the Winooski TIF district. The TIF statutes in place at the time the Winooski TIF district was created are summarized in the background section of the report.

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### Act 68, 2003 session

#### EXCESS VALUATION

Amended: Winooski's excess valuation means the difference between the current grand list value and the grand list value on April 1 immediately preceding the date of issuance of bonds. [Section 38 paragraph 3 of Act 159, 2000 Session]  
Effective date: 7/1/2003

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### Act 184, 2006 session

#### DEFINITION OF IMPROVEMENTS

Amended: Includes brownfield remediation and infrastructure for transportation, telecommunications, wastewater treatment and water supply. [24 VSA §1891]

#### DEFINITION OF ORIGINAL TAXABLE PROPERTY

Added: All the taxable real property located within the district on the day the district was created. [24 VSA §1891]

#### DEFINITION OF RELATED COSTS

Added: Related costs are expenses, excluding actual cost of constructing and financing improvements, directly related to creation of the TIF district and to attaining the purposes and goals of the TIF district. Includes reimbursement of sums advanced by municipalities relative to creation of TIF districts. [24 VSA §1891]

#### PURPOSE

Amended: Includes generation of incremental revenue to pay for related costs and expanded one of the goals to encompass redevelopment of TIF districts, rather than just development. [24 VSA §1893]

#### APPROVAL

Added: Established criteria for VEPC to approve TIF districts pursuant to 32 VSA §5404a(h).

#### BORROWING PERIOD

Amended: A municipality may incur debt against the revenues of the TIF district for a period of up to twenty years following the creation of the district. [24 VSA §1894(a)]  
Added: If debt is not incurred within the first five years following the creation of the district, the district must request reapproval from VEPC. [24 VSA §1894(b)]

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## Appendix III

# Summary of Select Additions and Amendments to State Statutes Relevant to Establishing and Administering TIF Districts

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### DEBT AGREEMENTS

Added: Municipality's debt financing agreements must specify that, in the event the tax increment received by the municipality from property taxes is insufficient to pay the principal and interest on debt in any year, the municipality shall remain liable for full payment of bond principal and interest. [24 VSA §1897(b)]

### CALCULATION OF TAX INCREMENTS

Added: The original taxable value must be adjusted upon a reappraisal of 20% or more of all parcels in a municipality by a multiplier, the denominator of which is the municipality's education property tax grand list in the year prior to the reappraisal and the numerator is the municipality's reappraised education property grand list. [24 VSA §1896(b)]

### UTILIZATION OF TAX INCREMENT

Amended: For tax increment utilization approved pursuant to 32 VSA §5404a(g), no more than 75% of the state property tax increment from properties contained within the TIF district and no less than 75% of the municipal tax increment from properties contained within the TIF district may be used to service debt issued for improvements wholly or partly within the TIF district and for related costs. [24 VSA §1897(a)]

### DISTRIBUTION OF INCREMENTAL TAX REVENUE

Amended: Any excess municipal tax increment<sup>48</sup> received in any tax year shall be distributed to the city, town or village in proportion that each budget bears to the combined total of budgets. Any excess statewide education tax increment received in any tax year shall be used only for debt prepayment, placed in escrow for bond payment or otherwise used for defeasance of bonds. [24 VSA §1900]

### RETENTION OF INCREMENTAL PROPERTY TAX REVENUE

Amended: Allowed tax increments to be retained for payment of related costs. [24 VSA §1896(a)]

Amended: Municipalities that establish TIF districts<sup>49</sup> and obtain VEPC approval may apply no more than 75% of the statewide education increment, and no less than 75% of the municipal increment to repay debt issued to finance improvements and related costs for up to twenty years. The twenty-year period commences April 1 of the year following VEPC approval. [32 VSA §5404a(f) and (g)]

### EXPANSION OF TIF DISTRICTS

Deleted: Eliminated municipalities' ability to apply to VEPC for expansion of TIF districts. TIF districts may no longer be expanded. [Act 184 section 2h, 2006 session]

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<sup>48</sup>Excess means incremental tax revenue received in any tax year that exceeds amounts pledged for payment on TIF district bonds and related costs.

<sup>49</sup>Applies to municipalities that establish TIF districts under subchapter 5 of chapter 53 of Title 24.

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## Appendix III

# Summary of Select Additions and Amendments to State Statutes Relevant to Establishing and Administering TIF Districts

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### REPORTING

Added: VEPC and Department of Taxes shall report to certain legislative committees regarding existing TIF districts on or before January 15 each year. Report must include items such as year of approval, scope of planned improvements, original taxable value of TIF districts property, tax increments and annual amount of tax increments utilized. [32 VSA §5404a(i)]

### EXTENSION OF MILTON TIF DISTRICT

Added: Upon application to VEPC, the Milton Husky and Catamount TIF districts may be extended for an additional ten years beyond the initial ten years originally approved by VEPC. May use OTV established at the initial approval of the TIF district to calculate incremental property tax revenue and may retain 75% of the incremental property tax revenue to repay debt issued to finance improvements within the TIF district and for related costs. [ Sec. 2j of No. 184 of the Acts of the 2005 Adj. Sess. (2006)]  
Effective date: July 1, 2006

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### Act 66, 2007 session

### CALCULATION OF TAX INCREMENTS

Amended: The multiplier used to adjust the original taxable value upon a reappraisal of 20% or more of all parcels in a municipality is clarified to include only properties within the district in both the numerator and denominator. [24 VSA §1896(b)]  
Effective date: July 1, 2006

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### Act 190, 2008 session

### TYPES OF DEBT

Added: Financing means bonds, Housing and Urban Development Section 108 financing instruments, interfund loans within a municipality, State of Vermont revolving loan funds, United States Department of Agriculture loans. [24 VSA §1891]

### PURPOSE

Amended: Previously limited tax increment financing for those TIF districts improvements located wholly or partly within the TIF district. Amended to improvements that serve the TIF district. [24 VSA §1893]

### APPROVAL OF FINANCING

Added: Prior to requesting municipal approval to secure financing, the municipality shall provide VEPC with all information related to proposed financing necessary for approval and to assure its consistency with the plan approved pursuant to 32 VSA §5404a(h). [24 VSA §1894(c)]

Added: Legal voters of a municipality, by a single vote, shall authorize the legislative body to pledge the credit of the municipality up to specified maximum dollar amount to be financed with statewide property tax increment pursuant to approval by VEPC. [24 VSA §1897(a)]

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## Appendix III

# Summary of Select Additions and Amendments to State Statutes Relevant to Establishing and Administering TIF Districts

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### BORROWING PERIOD

Amended: The creation of the district shall occur on April 1 of the year so voted. [24 VSA §1894(a)(1)]

### PERIOD THAT TAX INCREMENT MAY BE RETAINED BY MUNICIPALITY

Added: For debt incurred within the first five years after creation of the district, or within five years after reapproval by VEPC, the education tax increment may be retained for up to twenty years beginning with the initial date of the first debt incurred. [24 VSA §1894(b)]

### UTILIZATION OF TAX INCREMENT

Amended: Municipal legislative body may pledge and appropriate, in equal proportion, state and municipal tax increments received from properties contained with the TIF district for financing improvements and related costs in the same proportion by which the infrastructure or related costs directly serve the district<sup>50</sup> at the time of approval of project financing by VEPC.<sup>51</sup> No more than 75% of the state property tax increment and no less than an equal percentage of the municipal tax increment may be used to service this debt from the TIF district properties. [24 VSA §1897(a)]

Amended: Tax increment utilizations approved pursuant to 32 VSA §5404a(f) shall affect the education property tax grand list commencing April 1 of the year following VEPC approval and shall remain available to the municipality for the full period authorized under 24 VSA §1894. [32 VSA §5404a(g)]

### DISTRIBUTION OF INCREMENTAL TAX REVENUE

Amended: An equal proportion of any excess municipal tax increment and education tax increment<sup>52</sup> may be used for the prepayment of principal and interest on financing, placed in escrow for financing payment or otherwise used for defeasance of financing. Any remaining excess statewide education tax increment shall be distributed to the education fund. [24 VSA §1900]

### AUDIT

Added: The state auditor of accounts shall audit all active TIF districts every three years. [32 VSA §5404a(k)]

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<sup>50</sup>The proportionality rule relates to the determination of the proportion of infrastructure improvements or related costs that directly serve the TIF district. Municipal and state tax increments may only be used to repay a proportion of debt incurred for infrastructure or related costs in the same proportion that the improvements or related costs directly serve the district.

<sup>51</sup>VEPC shall apply a rough proportionality and rational nexus test in cases where essential infrastructure does not reasonably lend itself to a proportionality formula. Per VEPC guidelines, this means VEPC will use available data from comparable situations to make a proportionality determination. The determination will utilize a matrix of factors, such as location, impact on TIF district and whether it is required for the broad TIF outcomes.

<sup>52</sup>Excess means incremental tax revenue received in any tax year that exceeds amounts pledged for payment on TIF district financing and related costs.

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## Appendix III

# Summary of Select Additions and Amendments to State Statutes Relevant to Establishing and Administering TIF Districts

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### REPORTING

Added: Municipalities with active TIF districts shall:

- (1) Report to VEPC and the Department of Taxes on or before December 1 of each year. Report shall include items such as year of approval, scope of planned improvements, original taxable value of TIF districts' properties, tax increments and annual amount of tax increments utilized. [24 VSA §1901]
- (2) Report tax increment financing actual investment, bond or other financing payments, escrow status and related cost accounting to VEPC according to the municipal audit cycle. [24 VSA §1901]

### MILTON TIF DISTRICT

Amended: May apply no more than 75% of the statewide property tax increment and an equal percent of the municipal tax increment to repay debt issued to finance improvements that serve the TIF district and for related costs, upon application by Milton. Must apply equal percentages of the statewide property tax increment and municipal property tax increment to debt obligations incurred prior to April 1, 2009 for the Husky and Catamount TIF districts. Proportionality rule of 24 VSA §1897 does not apply to Husky and Catamount TIF districts. [Sec. 68 of No. 190 of the Acts of the 2008 Session]

### CITY OF WINOOSKI - FY2008 COMMON LEVEL OF APPRAISAL<sup>53</sup>

Added: City shall use a common level of appraisal factor of 1.0952 for fiscal 2008 reappraisal. Overpayment of education property taxes from city of Winooski to the education fund in fiscal 2008 shall be credited against the city's 2009 education property tax liability. [Sec. 70 Act 190 (2008)]

### CITY OF WINOOSKI –CALCULATION OF EDUCATION TAXES DUE TO THE EDUCATION FUND

Amended: 2% of the education taxes imposed annually on the excess valuation of the property within the TIF district shall be paid to the education fund. [Sec. 38(3) OF No. 159 of Acts of 2000]

### CITY OF BURLINGTON - RETROACTIVE APPROVAL OF TIF FINANCING

Added: Retroactive approval to June 30, 1997 for Burlington's use of certificates of participation and HUD Section 108 loans from April 1, 1996 to March 31, 2006 to finance public improvements within the TIF district. Restricted retention of education property taxes for repayment of debt to twenty years from date debt was incurred, including any refinancing. [Sec. 72 of No. 190 of the Acts of the 2008 Session]

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<sup>53</sup>The common level of appraisal is the ratio of a municipality's total grand list value to its corresponding "equalized" value derived through DOT's Property Valuation and Review estimate of market value study. In other words, it is a percentage that compares local assessments to Property Valuation and Review's estimate of market value. The common level of appraisal is based on the relationship between the assessed value and the sale price of a property. For example, if a property is assessed for \$75,000 and sells for \$100,000, the ratio is 75%.

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## Appendix III

# Summary of Select Additions and Amendments to State Statutes Relevant to Establishing and Administering TIF Districts

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Effective dates: upon passage, June 6, 2008, except July 1, 2008 for amendment to Sec. 68

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### Act 54 of 2009

#### MILTON TIF DISTRICT (retroactive to July 1, 2008)

##### TYPES OF DEBT

Added: Milton is authorized to use types of debt financing, in addition to those specified in 24 VSA §1891(7) including conventional bank loans; certificates of participation, approved by the state treasurer; lease-purchase, approved by state treasurer; and revenue anticipation notes, approved by state treasurer.

##### APPROVAL OF FINANCING

Added: Legal voters of Milton may authorize selectboard to pledge credit of Milton for all debt obligations pursuant to 24 VSA §1897(a) in more than one vote.

##### RETENTION OF EDUCATION TAX INCREMENT

Added: Tax increment may be retained for up to twenty years beginning with the initial date of creation of the district<sup>54</sup> or on the date first debt incurred, at Milton's discretion. If Milton elects to start retaining education tax increment more than five years beyond initial date of creation, OTV shall be recertified.

#### BURLINGTON TIF DISTRICT (effective July 1, 2009)

##### DEBT BORROWING PERIOD

Added: Borrowing period for existing TIF district extended for additional five years, commencing January 1, 2010.

##### SUBMISSION OF INFORMATION TO JOINT FISCAL COMMITTEE

Added: Submit to Joint Fiscal Committee ten days prior to September 2009 meeting 1) a business plan and projection of new statewide education increment growth anticipated to be financed by debt incurred during five-year extension and 2) a proposal for payment to education fund in lieu of tax increment which would approximate 25% of new statewide education increment and the mechanism for payment and timing of payment by Burlington to the education fund. If Joint Fiscal Committee approves plan and Burlington incurs new debt in the five-year extension, then Burlington will pay the education fund the amount approved by Joint Fiscal Committee.

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<sup>54</sup>Per 24 VSA §1894(a)(1) creation of a TIF district occurs April 1 of the year the municipal legislative body approved the creation of the district.

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## **Appendix III**

### **Summary of Select Additions and Amendments to State Statutes Relevant to Establishing and Administering TIF Districts**

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#### **Special Session Act No. 3 (2009)**

Technical Corrections of Act 54 of 2009 Session

#### **MILTON TIF DISTRICT**

#### **BORROWING PERIOD**

Added: Milton shall have ten years after the creation of the district to begin incurring debt.

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## Appendix IV

# Winooski Attorneys' Legal Analysis and Attorney General's Office Advice to SAO

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Winooski disagreed with our conclusion that OTV should be adjusted upon a reappraisal and that certain properties in the TIF district that the city has treated as non-taxable are taxable properties. The city sought the advice of its attorneys. The attorneys provided a legal analysis with multiple rationales to support the city's positions which we have summarized below along with the AG's advice with respect to Winooski's attorneys' analysis.

### **OTV adjustment upon reappraisal**

Winooski's attorneys provided our office with a legal analysis in which they proffered multiple rationales to dispute our conclusion that Winooski's OTV is required to be adjusted upon reappraisal. We consulted with the AG's office and the general counsel of DOT regarding Winooski's attorneys' analysis and they advised that the requirement to adjust OTV applies equally to all municipalities which conducted a substantial reappraisal subsequent to the effective date of the statute, July 1, 2006.

Winooski's attorneys contend that a legislatively required 2009 report, prepared by DOT and the Joint Fiscal Office (JFO), indicates that the legislative intent was that Winooski's OTV would not be affected by the OTV reappraisal adjustment provision. The AG and DOT counsel advised our office that the 2009 report does not cite any legislative text or history or rationale that would suspend the application of the OTV adjustment to Winooski and therefore, is not a reliable indicator of legislative intent.

Winooski's attorneys also argue that there are statutory and constitutional prohibitions that prevent this type of statutory revision from affecting Winooski's TIF district. Specifically, the attorneys wrote that the revision must be interpreted to avoid impacting Winooski's obligations and liabilities to its bondholders (incremental property tax revenue is pledged to repay the bond). They cite 1 VSA 214(b)(2) which prohibits retroactive application of statutory amendments, absent specific legislative intent, and also reference the Contract Clause of the U.S. Constitution (U.S. Const., Art. I, § 10), prohibiting states from passing laws that impair the obligations of contracts. According to the AG and DOT counsel, the indexing statute was enacted along with several other laws (Act 184 2005 session) that tend to limit the expansion of TIF financing and that the intent of the laws was to protect education fund revenues generally, and to do so prospectively. With regard to the suggestion that the application of the OTV adjustment could impair the city's obligations to bondholders and so violate the Contract Clause of the U.S. Constitution, the AG and DOT counsel explained that there was not a

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## Appendix IV

### Winooski Attorneys' Legal Analysis and Attorney General's Office Advice to SAO

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substantial impairment because the statute was crafted so that any adjustment to values would not affect the municipalities' claim on incremental tax revenues that result from improvements within a TIF district (i.e., the adjustment is to capture the change in value of properties resulting from factors other than improvements within the TIF district). Incremental revenues remain available to cover payments to bondholders.

#### **Mischaracterization of taxable properties as non-taxable**

There were properties treated as non-taxable by the city that we concluded are taxable, 1) a garage, 2) property partially owned by UVM (Spinner Place), and 3) land beneath Spinner Place.

With regard to the garage, Winooski's attorneys stated that the property is exempt from taxation as "public use" under 32 VSA 3802(4) because the city has the authority to purchase, own and operate a garage and the legislature in 24 VSA 1861(2) defined a structure used for the parking of vehicles as a public parking project. According to advice we sought from the AG, these powers are irrelevant to the question of whether the parking garage is exempt from taxes. Authority to own does not confer an exemption. Rather the parking garage must be dedicated unconditionally to public use. However, in this case, the garage is primarily committed to four long-term leases with less than 5 percent of the spaces available to the public. Further, with regard to the definition of a public parking project cited by Winooski's attorneys, the AG advised that the definition is within statutory provisions that govern municipal indebtedness for parking lots and meters, but does not address taxation.

With regard to Spinner Place, which is partially owned by UVM, Winooski's attorneys argue that it is owned or held by UVM for education purposes because occupancy by enrolled students meets the educational purpose test. Although property owned by UVM for educational purposes is statutorily exempt from property taxes,<sup>55</sup> UVM leases Spinner Place to Collegiate Housing Foundation (CHF), a nonprofit financing agency, and CHF leases some of the space to Champlain College. The leasing arrangements suggest that UVM is holding the Spinner property for commercial purposes, not educational purposes, and therefore the Spinner property does not meet the

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<sup>55</sup>16 VSA §1-15

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## Appendix IV

### Winooski Attorneys' Legal Analysis and Attorney General's Office Advice to SAO

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statutory requirement for tax-exempt status. The AG advised since UVM leases the property, which is arguably a commercial use, not an educational purpose, the property is not exempt.

Winooski's attorneys assert that the land beneath Spinner Place is exempt because it is part of a redevelopment project undertaken as general urban renewal and that property acquired or held for urban renewal purposes is public property, exempt from taxes. Further, the property tax exemption expires when the property is sold or leased to a non-public body and the attorneys assert that this trigger has not occurred. The AG advised that since Winooski's attorneys asserted that this property was tax-exempt based upon its character as urban renewal property,<sup>56</sup> SAO should seek evidence from the city demonstrating that it had followed the process outlined in statute to classify municipal property as held for urban renewal purposes. We sought this information from Winooski in mid-June, and the city was provided with a draft of this report in September with an opportunity to provide additional evidence, but the city has not provided the requisite documentary evidence.

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<sup>56</sup>Property held by a municipality for urban renewal purposes is tax exempt. 24 VSA §3216(b)

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# Appendix V

## Management's Response

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### CITY OF WINOOSKI

#### OFFICE OF THE CITY MANAGER

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KATHERINE R. DECARREAU  
CITY MANAGER  
deac@winooski.vt.org

October 9, 2012

Thomas M. Salmon  
Vermont State Auditor  
132 State Street  
Montpelier, Vermont 05633

Dear Auditor Salmon;

The City is in receipt of your draft audit of the Winooski Tax Increment Financing (TIF). We appreciate the time taken to attempt to understand this complicated project. We also recognize the challenge of looking back over a dozen years where most people who were involved are no longer employed by the City and State agencies and the understanding of the context in which decisions occurred has faded.

Given our understanding of Act 159 (2000), establishing Winooski's Tax Increment Financing District, our compliance with the Agency of Community Development (ACCD) and the Vermont Housing Finance Agency (VHFA) protocol agreement, the ongoing monitoring of project expenses by VHFA, and commitments made to our bond holders, we fundamentally disagree with the conclusions of the Audit. **We do not believe funds are owed to the State of Vermont and, as a result, we do not plan to remit funds, nor adjust the City's practices at this time.**

**Legislation Enacted After The TIF Bonds Were Issued Cannot Retroactively Change the TIF Income Stream Pledged to Secure Such Bonds.**

The Audit found that the City was subject to legislation enacted in 2007 requiring an adjustment to the Original Taxable Value<sup>1</sup> (OTV) in the TIF. The City, however, had already issued bonds using TIF revenues as the pledged assets<sup>2</sup>. We continue to assert that the Audit's recommendation that Section 1896(b) of Title 24 was intended to apply to Winooski's TIF is wrong. This can be demonstrated in a report issued by the Department of Taxes and the Joint Fiscal Office entitled *2009 Tax Increment Financing in Vermont* where it clearly states that "OTV is not affected by reappraisal<sup>3</sup>".

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<sup>1</sup> The OTV is the value of the properties in the TIF prior to the start of the project.

<sup>2</sup> Funds we would use to pay principal and interest on the bonds

<sup>3</sup> See chart in Appendix A

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## Appendix V

### Management's Response

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**The State has consistently used the original taxable value of \$24,822,900 in all mandated reporting to this date.** Since the beginning of the TIF, the City has reported to the Tax Department's Division of Property Valuation and Review (PVR) and the Vermont Economic Progress Council (VEPC) annually. We resolved calculations with PVR on the Winooski payment to the Education Fund of 2% of the incremental TIF value. We have complete VEPC's forms in which they filled out certain cells. In both cases, state staff used the OTV of \$24,822,900. Clearly these offices also believed that the OTV did not and would not change.

**Such adjustment, if required would periodically wipe out most of the revenue to the TIF.** In our case, since construction occurred during 2007 (the "numerator" year) the law would require new buildings become part of the base and not contribute to the TIF. Since using the adjustment would wipe out a significant portion or all of the incremental gain, including new construction, lenders would not choose to issue bonds carrying this risk.

**Changing the law after the City has entered into contractual agreements with funding agencies is unconstitutional.** We do not agree that the State has the authority to render the City unable to meet those obligations by statutory change. We further believe that if that practice is allowed, banks would consider Vermont (both the State and its municipalities) a high risk in the future.

Please refer to our attorney's submission from April 20, 2012.

**The Audit's View That The Parking Garage And UVM Student Housing Are Not "Public Uses" Is Contrary to Longstanding Practices.**

The Audit's recommendation that three properties in the TIF District are not exempt from property tax defies long-standing tax exempt treatment of these traditionally public structures. We will continue to treat the parking garage and a University of Vermont residence hall as exempt. If they were deemed to be taxable, this would have devastating impacts to most structured parking facilities and to colleges throughout the state.

Please refer to our attorney's submission from April 20, 2012.

**All Expenses Were Approved By The State At The Time Of Expenditure.**

By way of context, it is critical to understand that this project was approved by the State as the result of the City meeting fifty-two requirements that were established at the request of Governor Douglas. The Governor asked ACCD to establish these protocols. ACCD then required the City to hire the Vermont Housing Finance Agency (VHFA) to help establish the conditions for that protocol agreement and to monitor the expenses of the project to assure compliance with the agreement and relevant statute at the time. ACCD required the City to pay \$330,000 to VHFA for this service. The City also covered legal expenses associated with the process.

**It was VHFA, acting in this capacity, which required the tax stabilization agreement with HallKeen as their first protocol in the agreement.** It took significant work to design an agreement that met the legal requirements of several agencies including ACCD as tax stabilization agreements are not normally allowed in TIF Districts.

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## Appendix V

### Management's Response

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In addition, VHFA reviewed every project invoice, including the salaries of the Project Manager and Engineer whom the City loaned to the project. Since the City paid more in fees than HUD had ever seen to perform this function, we stand behind our decisions.

#### On the Remaining Issues:

- **Your finding that any City employee acted on his or her own without supervision is a complete misunderstanding.** In fact, the Assessor worked and continues to work, with outside appraisers, with the Staff Accountant for verification of calculations, and with attorneys when necessary to perform the functions of his job. Any notion that he works unchecked is simply wrong.
- **The City routinely reports to the Council on developments in the TIF.** Frankly, there was little growth for several years after 2008, and thus little to report. As the development began to take off again, we have watched several indicators carefully. We simply do not have a chart where we reported every indicator as a whole. Please see appendix 1 for data on the performance of the TIF.
- **All reporting requirements are now being met** as required and have been since inception. The VEPC form of the reporting has changed, and is now in compliance. However, our inability to provide proof of submitting financial reports to the City was complicated by a fire in City Hall on October 31, 2003 that destroyed several file cabinets with information. This information is available in the HUD 108 closing binder, which I can provide upon your request.
- **Your conclusion that there were three versions of the TIF original taxable value (OTV or base) is correct, but out of context.** The issue resulted from the Assessor being out while recovering from surgery during the audit and staff trying to produce requested information. *The final statement of the OTV was presented to the Tax Department, Division of Property Valuation and Review on July 6, 2004.* It is a certified copy and reflects a total value of \$24,822,900 including full disclosure of all properties and the inclusion of the commercial adjustment. This was submitted in the same manner (though technology changed the nature of the forms) for the past eight years. We were transparent, and have not waived except to resolve a Common Level of Appraisal (CLA) issue in 2007. The three versions you received, which we attempted to explain several times, were as follows:
  - Version 1 was in a list from a City Council meeting in 2000. This was the original list and properties changed over the following four years until the TIF was formally established in 2004.
  - Version 2 was the list from May 25, 2004 that was an approximation of the values on April 1, 2004, but based on 2003 values, that was needed to close the HUD 108 loan. This list was the best data available at the time and was provided before the final OTV could be established.

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## Appendix V

### Management's Response

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- Version 3 was the list from July 6, 2004. This is the final list and has not changed since that time.
- **Your requirement to segregate funds is occurring, but not in a separate fund.** We do track the source of funds and have a record of tax revenues versus other income. We can clearly track which funds were used for which purpose. We demonstrated that revenue other than taxes is used to meet our obligations. We are unsure why you speculate in what the City may or may not intend to do over time, but we appreciate your clarity that we have not misused any funds to date.

Thank you for the opportunity to respond. We believe we have addressed all of your concerns. The City looks forward to working with the Auditor's office, the Administration, and the Legislature to resolve these issues and move forward with confidence.

Sincerely,



Katherine R. Decarreau  
City Manager

Cc: City Council  
Murphy, Sullivan, and Kronk

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# Appendix V

## Management's Response

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### Appendix 1

#### Measures

Preservation and Enhancement of the Tax Base – The City is keeping careful watch on tax revenue from the TIF properties. The report's footnote suggests that property value is not being tracked, yet we annually produce a form for the Council with the taxable value of the TIF clearly labeled. We have provided those forms to the auditor. The auditor repeatedly requested a property by property record of value. We explained several times that this could not be provided as many individual properties ceased to exist as the city assembled a single large lot and sub-divided that large parcel into its current configuration. In addition, the Champlain Mill actually lost value, so the base cannot be carried in that building. As such, the City carries any base value that cannot be attributed to its original property in the Keen's Crossing parcel. This is well documented.

*This is carefully tracked, and therefore should not be a finding.*

Revitalization...Commercial Development - The City realized the following new commercial areas as a result of redevelopment:

- VSAC
- CCV
- Spinner Place Retail Units
- Winooski Falls Market in Keen's Crossing
- Renovation and upgrade of 150,00 sq ft at Champlain Mill

#### Business Stability and Growth Incentives

- The City retained VSAC and Physicians Computing Company
- Keen's Crossing and the Champlain Mill both took advantage of tax incentives the State offers.

Reduction of Pressure for Commercial Development upon Open Lands in the Region - VSAC, CCV and MyWebGrocer evaluated building new facilities in other parts of Chittenden County as part of their strategies and all settled in the TIF district. This indicator is difficult to measure. Given the original plans were significantly more aggressive, this is a small, but measureable success.

Reduction of Traffic Congestion and Protection of Existing Interstate Exchanges – The growth in the region makes it difficult to determine if traffic mitigation occurred as it is impossible to estimate what would have happened. From interstate exchanges, Exit 15 was reconfigured with little excess hardscape. Exit 16 is undergoing major redesign. The fact is the traffic in Winooski is part of a system that has long been under study and will need intervention throughout the system (7 North / 2 West, Colchester Avenue, and Route 15 (including the Circ Highway or its replacement.)

Integration into and Compatibility Regional Development and Capital Plan –

# Appendix V

## Management's Response

This is required, and the City continues to work with the Chittenden County Regional Planning Commission (CCRPC) on all planning and zoning issues.

### Creation of Affordable Housing –

Building	Total Units	Affordable Units
Cascades	70	29
Keens Crossing	214	107
Spinner Place	88	0
Additions in the TIF District:	14	14
- Dismas House (10 beds)		
- 105 East Allen Street (3 Units)		
- 114 East Allen Street (1 Unit)		
Total	386	150
Percent Affordable to date		39%
Proposed New Construction	72	0
New Total	458	150
Percent after Current Project		32%

Enhanced Employment Opportunities within the City Limits of Winooski and the Surrounding Region – While the data is difficult to track, especially outside of Winooski, the following jobs were retained or added as a result of TIF construction and within those boundaries:

- V.S.A.C was retained by the project. This project moved approximately 100 employees back to Winooski from Essex prior to the downsizing.
- My Web Grocer added 165 jobs to the City since occupying the Mill in December 2011.
- CCV added about 50 staff plus part time instructors and unknown number of students.
- Opportunities Credit Union moved twenty employees to the City and has become an invaluable partner for the many of our citizens both in the financing and in providing home equity for improvements to other City properties.
- Asian Bistro, CUPPS, Winooski Falls Market each added a small number of jobs.