Report of the Vermont State Auditor

DOUGLAS R. HOFFER
Vermont State Auditor

City of Burlington Downtown Tax Increment Financing District

Missteps in TIF District Administration: Debt Proceeds Exceed VEPC Approved Cap by $4.6 Million, TIF District Owes State Education Fund $95,363, and City Owes TIF District $259,331

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Mission Statement

The mission of the Auditor's Office is to hold State government accountable by evaluating whether taxpayer funds are being used effectively and identifying strategies to eliminate waste, fraud, and abuse.

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Dear Colleagues,

Municipalities with a tax increment financing (TIF) district incur debt to finance infrastructure improvements and earmark a portion of incremental education and municipal property tax revenues (i.e., tax increment) from the district to repay the debt, rather than send the education property tax revenues to the State's Education Fund.

The City of Burlington (the "City") has two TIF Districts. This is the first audit of the City's Downtown TIF District. We are required by State law to perform this audit. The Downtown TIF district was created in June 2011 to finance upgrades to street infrastructure, repairs to an existing parking garage, brownfield remediation, and utility upgrades.

The audit's objectives were to determine (1) whether the City of Burlington, for the period from fiscal year (FY) 2012 to FY2023, obtained required authorizations for TIF district debt and used the debt to finance eligible improvement projects and related costs and (2) whether the City of Burlington (a) retained the appropriate amount of education and municipal tax increment in the Downtown TIF Fund and remitted the balance to the State Education Fund, as required for FY2017 – FY2023; and (b) used the tax increment for allowed purposes. Key findings include:

- The City received $40,525,865 proceeds from debt issued to pay for improvements, which is $4,605,865 more than the amount VEPC approved for TIF-funded improvements in the TIF Financing Plan.
- From FY2017 to FY2023, the City funded $7,868,649 of various improvement projects with debt issued during this period. We tested $6,008,407 (76 percent) of the costs and concluded they were for eligible TIF district infrastructure improvements.
- The City failed to consistently contribute the Champlain College development fee into the Downtown TIF Fund, resulting in a total omission of $1,040,000. To correct the omission, VEPC has reduced the percent of education tax increment that the City may keep from 75 percent to 69 percent for the remaining 13 years of the tax increment retention period.
- There were several errors in the original taxable value (OTV) used to calculate education tax increment, which meant the City kept $95,363 of education tax increment in the Downtown TIF Fund that should have been sent to the Education Fund and $1,957 that should be transferred to the City's General Fund.
- OTV and other errors resulted in the City falling short of allocating the correct amount of municipal tax increment to the Downtown TIF Fund. As a result, the City's General Fund owes $259,331 to the Downtown TIF Fund.
- From FY2017 to FY2023, the City used tax increment for allowable purposes, specifically, $2,767,823 for TIF debt payments and $714,262 for related costs.
- The City erroneously moved $106,388 of tax increment from the Downtown TIF Fund to another City fund, the "Great Streets Fund," to pay for St. Paul Street improvements. On the other hand, the City used resources in the Traffic Fund instead of tax increment in the Downtown TIF Fund to repay a $134,653

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interfund loan which requires correction as well.

Our recommendations to the City include that the City's General Fund repay the Downtown TIF Fund $259,331 and remit $95,363 owed to the State Education Fund. We also recommended Vermont Economic Progress Council (VEPC) determine an appropriate remedy for the City's failure to adhere to the VEPC-approved District Finance Plan, including the cap on TIF-funded improvements.

I would like to thank City of Burlington management and staff for their cooperation and professionalism throughout the course of this audit.

Sincerely,

Doug Hoffer

DOUGLAS R. HOFFER
State Auditor

ADDRESSEES

The Honorable Jill Krowinski
Speaker of the House of Representatives

The Honorable Philip Baruth
President Pro Tempore of the Senate

The Honorable Phil Scott
Governor

Ms. Kristin Clouser
Secretary, Agency of Administration

Mr. Adam Greshin
Commissioner, Department of Finance and Management

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Mayor, City of Burlington

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Chief Administrative Officer, City of Burlington

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Highlights

Tax increment financing (TIF) is a tool municipalities can use to finance public infrastructure such as streets, sidewalks, and storm water management systems. In Vermont, establishing a TIF district allows a municipality to designate an area for such improvements, incur debt to finance the area's public infrastructure, and retain a portion of the area's growth (or "increment") in property tax revenues to pay back the debt. The incremental property tax revenues used to repay the debt include municipal property taxes (municipal tax increment) and statewide education property taxes (education tax increment). Thus, in a TIF district, a portion of state education property tax revenue is kept by the municipality to pay for infrastructure and debt. Normally these funds would be sent to the State's Education Fund to pay for public education. According to the Joint Fiscal Office 2022 TIF report, "Because the Education Fund is a system where all property taxpayers share the burden of school spending, if there is a diversion of property tax growth to fund development, this must be made up by taxpayers in non-TIF areas of the State."

The City of Burlington (the "City") established its Downtown TIF district in June 2011, in order to finance upgrades to street infrastructure, repairs to an existing parking garage, brownfield remediation, and utility upgrades.[1] We performed this first audit of the Downtown TIF District as required by the Legislature. The audit's objectives were to determine (1) whether the City of Burlington for the period from FY2012 to FY2023, obtained required authorizations for TIF district debt and used the debt to finance eligible improvement projects and related costs and (2) whether the City of Burlington (a) retained the appropriate amount of education and municipal tax increment in the Downtown TIF Fund and remitted the balance to the State Education Fund, as required for FY2017 – FY2023; and (b) used the tax increment for allowed purposes.

Objective 1 Finding

In November 2021, per authority specified in statute, the Vermont Economic Progress Council (VEPC) approved Burlington's Substantial Change Request (SCR) which revised the TIF Financing Plan, authorizing up to $35,920,000 of TIF-funded improvements for the Downtown TIF District.[2] However, the City received proceeds totaling $40,525,865 from debt issued to pay for improvements, which is $4,605,865 above the amount VEPC had approved in the TIF Financing Plan. This occurred because investors who purchased the City's general obligation (GO) bonds paid more than the face value of the bonds, a "premium" that affects the total

1 This is the second TIF district created by the City. The first TIF district, known as Waterfront TIF, was created in 1996.

2 24 V.S.A. §1894(d)

amount of interest the City must pay.[3] Because the City is limited to the amount of TIF-funded improvements in the VEPC-approved District Finance Plan, the $4,605,865 of proceeds accumulated above this limit do not appear to be able to be legally used for TIF improvements or if used, the associated amount of debt service on the GO bonds may not be paid with tax increment.

Municipal bond pricing is complex as interest rates, length of repayment period, call date, and other bond terms impact the fair value (i.e., price) of a bond and thus, the proceeds an issuer will receive upon issuing bonds. In addition, premium prices increase overall bond debt service costs. According to City legal counsel, it has been fairly customary for municipal issuers "to issue bonds with a four or five percent coupon rate in exchange for a premium in addition to the principal amount of bonds being issued." This may be true for municipal borrowing for non-TIF projects, but under the tax increment financing program, the amount of proceeds from debt issuances that may be used to pay for improvements is constrained by the amount in the TIF Financing Plan approved by VEPC. The City's external legal counsel also explained that by issuing the GO bonds at a premium, "the City was able to ensure sufficient proceeds to cover its capital costs for the Downtown TIF District." However, **Burlington does not have unilateral authority to determine the amount of TIF funding that may be used to pay for TIF district improvements. Otherwise, the City would pass along the burden of increased borrowing costs to the State Education Fund without being subject to VEPC's oversight**.

It is not clear that a similar constraint applies to the municipal voter authorization for principal borrowing up to $35,920,000. The City's legislative body has autonomy to set bond terms such as the repayment period and interest rates for financing improvements for the TIF district according to statute.[4] The City disclosed specific information, such as anticipated repayment period for debt issuances, in advance of public votes held in 2015 and 2022 to authorize borrowing as required by TIF Rule.[5] The City did not provide information about anticipated premiums but neither statute nor the TIF Rule explicitly address disclosure of premiums. Since premiums indicate higher debt service cost for bonds (e.g., principal and interest payments), the omission of this information from the informational notice raises concerns regarding the public's ability to meaningfully understand the proposed debt before it was approved and could result in diversion of a greater amount of education tax increment from the State Education to cover the higher costs. **Specifically, in the 2022 Public Information Notice, the City disclosed estimated interest cost of $4,000,000 but the actual interest cost for the premium GO bond issued in August 2022 is $11,844,433.**

From FY2017 to FY2023, the City funded $7,868,649 of various improvement projects, such as the reconstruction of a portion of Saint Paul Street, with debt issued during this period. We tested $6,008,407 (76 percent) of the costs and

3 The face value is the bond principal that must be paid at maturity.

4 24 V.S.A. §1898(d)

5 TIF Rule Section 1003.2.2.

concluded they were for eligible TIF district infrastructure improvements. The improvements were consistent with those approved by VEPC and disclosed to municipal voters in advance of public votes to authorize borrowing. As of June 30, 2023, approximately $32.7 million of proceeds from the GO bond issued in August 2022 had not yet been used for improvement projects.

Objective 2(a) Finding

From FY2017 to FY2023, the City kept $8,556,857 of incremental property tax revenue (‘tax increment”) in its Downtown TIF Fund to pay for TIF district debt and related costs. However, there were several errors in the original taxable value (OTV) used to calculate education tax increment, which meant the City kept $95,363 of education tax increment in the Downtown TIF Fund that should have been sent to the Education Fund and $1,957 that should be sent to the City’s General Fund. While the City’ s payments to the Burlington school district and the State Education Fund were the amounts indicated to them by the Agency of Education, the Agency’s amounts were based on incomplete and inaccurate data provided by the City. In addition, OTV and other errors resulted in the City falling short of allocating the correct amount of municipal tax increment to the Downtown TIF Fund. As a result, the City’s General Fund owes $259,331 to the Downtown TIF Fund.

Objective 2(b) Finding

From FY2017 to FY2023, the City used tax increment for allowable purposes, specifically, $2,767,823 for TIF debt payments and $714,262 for related costs. **However, the City erroneously moved $106,388 of tax increment from the Downtown TIF Fund to another City fund, the “Great Streets Fund,” to pay for St. Paul Street improvements.** City staff indicated this wasn’t authorized by the City Council and plan to return the tax increment to the Downtown TIF Fund. On the other hand, the City used resources in the Traffic Fund instead of tax increment in the Downtown TIF Fund to repay a $134,653 interfund loan which requires correction as well.

As of FY2023, the adjusted Downtown TIF Fund balance is $5,102,129. This amount is available to cover future debt payments and related costs.

Recommendations

We made several recommendations, including that VEPC determine an appropriate remedy for the City’s failure to adhere to the cap on TIF-funded improvements and that the City pay $95,363 to the State Education Fund and correct errors in the education and municipal OTV.

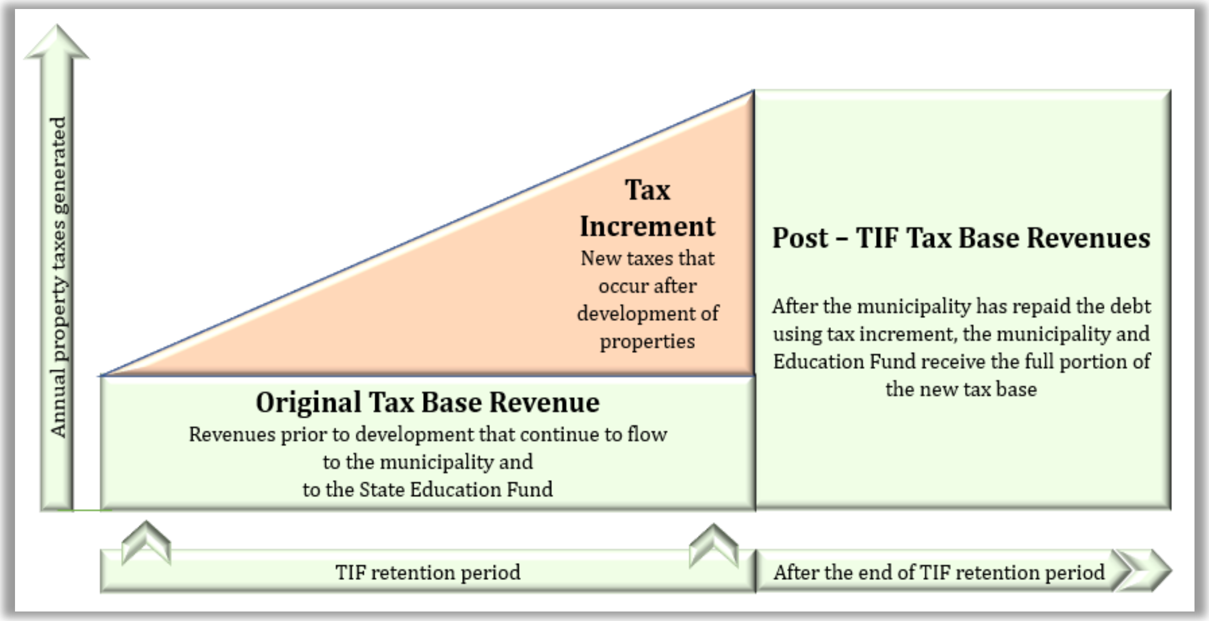
Background

The purpose of a TIF district is to fund public infrastructure and stimulate economic development. A municipality designates a geographical area where it wants to encourage private sector development, and where the municipality asserts public infrastructure improvements are needed for that development. The municipality incurs debt to finance the needed public infrastructure improvements in the TIF district. The combination of both public and private investment is expected to increase property values, generating property tax revenue. The expected growth in property tax revenues (i.e., incremental property tax revenue) in the designated area is used to pay debt incurred to finance the cost of improvements.

A portion of incremental education property tax revenue may be diverted from the State Education Fund and retained by the municipality for up to 20 years, while incremental municipal property tax revenue must be kept for the period authorized by the municipal legislative body, beginning the year in which the first debt obligation is incurred. Taxing authorities, like the municipality and the State (i.e., the Education Fund), continue to receive property tax revenue on the original taxable value (OTV) of all the properties located within the TIF district throughout the 20-year period.

Exhibit 1 below shows the basic TIF model, including the anticipated tax increment.

Exhibit 1: Basic TIF Model[a]



a Based on the figure presented in "An Examination of the State of Vermont Tax Increment Financing Program" January 24, 2018, Vermont Legislative Joint Fiscal Office

The Legislature's non-partisan Joint Fiscal Office (JFO) is required by law to periodically assess the fiscal impact of TIF, if any, on the Education Fund. JFO's 2022 report indicated that the fiscal impact of TIF hinges upon the strength of the "but-for" condition which is assessed when a municipality applies for a TIF district. According to JFO, all Vermont TIF district applications rely on the premise that the baseline property value growth of the parcels in the district would be flat for 20 years if not for the use of TIF (e.g., the "but-for"). JFO noted that if the "but-for" condition is correct, then TIF would never be a fiscal cost to the State or the municipality.

To understand the potential fiscal impacts of TIF, JFO modeled a hypothetical construct. The model shows the cost of TIF if the parcels in the district simply grew at their historical average, rather than assuming they would not grow for 20 years after creation, as is the construct when calculating tax increment under TIF.

"[O]ne significant result of this exercise was the discovery that no TIF district experienced zero or negative growth in their pre-TIF eras. In some districts, the growth prior to TIF creation was 5% per year or more (Hartford, Burlington Downtown)…If data shows the parcels in a TIF district were growing in the years prior to TIF, it seems unreasonable to assume they would suddenly stop growing… JFO concludes that the theoretical assumptions upon which tax increment calculations are based in current TIF districts are flawed…"

Having challenged the no-growth assumption underlying the "but-for" analysis, JFO estimated that if the existing 10 TIF districts were to grow at their historical average, they will cost the Education Fund between $5.5 and $7.5 million annually over the next five years and will cost municipalities $3 to $5 million each year.

TIF District Authorization and Oversight

The Legislature designated VEPC as the State body responsible for approving or disapproving a TIF district when a municipality applies for one. Since 2006, to use incremental education property tax to finance TIF district improvements, municipalities are required to seek VEPC's authorization of a TIF district plan and a district finance plan.[6]

VEPC's approval is also required before the municipality seeks a public vote to pledge the credit of the municipality (i.e., issue debt).

TIF District Debt and Tax Increment

Upon VEPC's authorization and municipal voter approval to incur debt to build public infrastructure improvements and pay for related costs, a municipality may issue debt for up to ten years from the creation date of the district (e.g., the debt period). For the purposes of this report, the phrase "TIF district debt" refers exclusively to debt that will be repaid with tax increment.

Tax increment may be used to pay TIF district debt and to directly pay for improvements and related costs. The use of tax increment to directly pay for improvements is limited to the ten-year debt period. The term "improvements" is defined in statute as the installation, new construction, or reconstruction of infrastructure that will serve a public purpose and fulfill the purpose of the district. According to TIF Rule 704, improvements may include, but are not limited to: transportation (e.g., public roads, parking lots, garages, streetscapes, and sidewalks), land and property acquisition, property demolition, site preparation, and utilities, such as wastewater, storm water, water dispersal and collection systems.

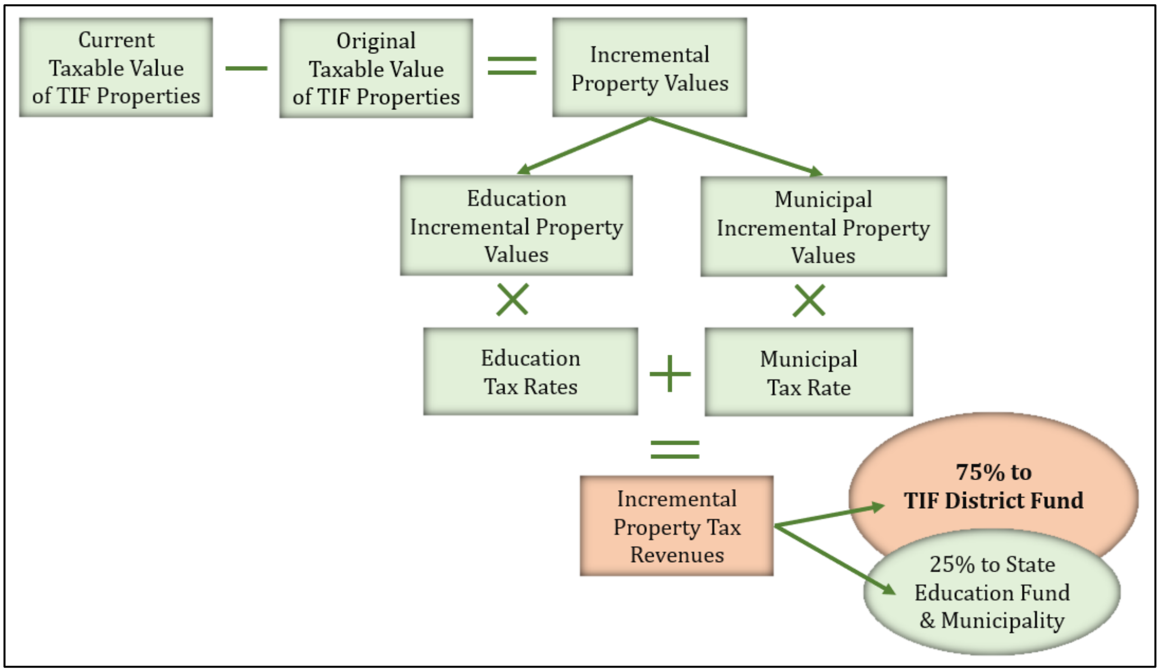
Related costs are defined as expenses incurred and paid by the municipality, exclusive of the actual cost of constructing and financing improvements, that are directly related to the creation and

6 32 V.S.A. §5404a(f)

implementation of the TIF district.[7] Municipalities with TIF districts approved by VEPC are authorized to retain 75 percent of the state education tax increment and are required to allocate at least the same proportion of municipal tax increment for repayment of TIF district financing.[8]

Exhibit 2 illustrates the calculation of incremental property tax revenue.

Exhibit 2: Calculation of Incremental Property Tax Revenue



TIF Districts and Statewide Education Funding

Education funding is statewide and accounts for all the education taxes collected and spent in communities across the State. Municipalities, acting as agents of the State, collect state education property taxes and pay local schools the education property tax liability determined by the Agency of Education (AOE). As a result, payments from municipalities to local schools are in effect payments to the Education Fund.

[7] 24 V.S.A. §1891(6) and TIF Rule Section 300.

[8] In accordance with changes enacted by 24 V.S.A. §1894(b) and (c), TIF districts, approved by VEPC in FY2018 forward, may retain 70 percent of the education tax increment and are required to allocate 85 percent of the municipal tax increment to repay TIF district debt. A municipality may retain more than 85 percent of the municipal tax increment in the TIF district.

Municipalities are statutorily required to provide the Vermont Department of Taxes (VDT) with grand list data. The grand list data forms the basis for the collection of property taxes for all municipalities in Vermont and includes the owner's name and assessed value for all real estate parcels, all taxable personal estates, and tax-exempt properties. VDT uses this data to determine the taxable education property value, which for municipalities with TIF districts excludes 75 percent of the incremental education property value of the TIF district, as allowed. Conversely, 25 percent of the education tax increment is included in the amount of education property taxes owed to a local school district or to the Education Fund, per the AOE calculation.

New England Municipal Resource Center (NEMRC®), the grand list software program used by municipalities, includes a TIF Module, which is used to account for TIF district properties and to perform the tax increment calculation.

Accuracy of the automated tax increment calculation directly or indirectly depends on the completeness and accuracy of the numerous information components, including:

- Property assessment values, listed on the grand list of the municipality,
- Certified TIF OTV,
- State Education Property Tax Rates,
- Municipal Property Tax Rate, including local agreement components.

Objective 1: Bond Financing Structure Yielded Proceeds $4.6 Million Higher than VEPC Cap for TIF-funded Improvements and Added Significantly Higher Interest Costs; To Date, Debt Used to Pay for Eligible Improvements

The City received $40,525,865 of proceeds from various debt issuances even though VEPC's approval of the City's TIF Financing Plan seems to have capped TIF-funding for improvements at $35,920,000. The City's selection of bond terms, such as repayment period and interest rate, produced premium prices (e.g., investors paid more than the face value of the bonds) which resulted in aggregate proceeds $4,605,865 above the VEPC cap. This increased debt service costs substantially. However, it's not within the City's sole authority to structure its bond terms to generate a result that significantly deviates from the approved plan. Rather, substantial changes require VEPC's approval. Absent VEPC's approval for a higher amount of TIF-funded improvements, it appears the City may not use the excess proceeds to pay for an additional $4,605.865 of TIF improvements or if used, the debt service on the GO bonds associated with the amount in excess of the approved cap may not be repaid with tax increment. **Otherwise, the City will have passed along the burden of increased borrowing costs to the State Education Fund without being subject to VEPC's oversight.**

Similarly, voters authorized up to $35,920,000 in principal borrowing and direct use of tax increment to pay for improvements. Although voter authorization is required for each instance of borrowing for TIF district improvements, statute and the TIF Rule afford municipal legislative bodies discretion to select bond terms and do not explicitly address premiums.[9] As a result, it's not clear whether issuing GO bonds at a premium means the City exceeded the authority granted by municipal voters. As required, the City informed voters about interest cost, disclosing an estimated $4 million for the remaining debt to be issued. **However, the actual interest is almost $12 million for the $30,120,000 GO bond issued in August 2022.** This difference raises concerns regarding the public's ability to meaningfully understand the proposed debt before it was approved and ignores VEPC's approval of a TIF Financing Plan with different terms. Because education funding is a state-wide system where all property taxpayers share the burden of school spending, the diversion of additional tax increment to Burlington to cover the increased cost will be made up by taxpayers in non-TIF areas of the State.

Through FY2023, the City had only used $7.9 million of the proceeds accumulated for TIF district improvements. Based on our examination of 76 percent of the $7.9 million of infrastructure improvements, we concluded these TIF district infrastructure improvements were eligible costs. The City also set aside $106,388 of tax increment to pay for the Great Streets – St. Paul Street improvements. However, City staff noted that setting aside tax increment was not authorized by the City Council and have acknowledged that $106,388 must be returned to the Downtown TIF Fund.

9 24 V.S.A. §1898(d) and TIF Rule Section 804.

City Poised to Exceed TIF-funded Improvements Detailed in Approved TIF Financing Plan

VEPC's approval of the TIF Financing Plan is required by statute prior to a public vote to authorize municipal borrowing and tax increment may only be used for payment of TIF district financing and related costs approved by the municipal voters.[10] In November 2021, via the SCR process, the Vermont Economic Progress Council (VEPC) approved the City's revised TIF Financing Plan. The revised TIF Financing Plan detailed $35,920,000 of TIF-funded public infrastructure improvements for the Downtown TIF district and specified that interest costs for the last planned debt issuance was estimated at $4 million. However, the City issued GO bonds and interfund loans generating $40,525,865 for Downtown TIF District improvements, exceeding the amount specified in the VEPC approved TIF Financing plan by $4,605,865, and interest cost for the last debt issuance was $11,844,443, significantly above the estimate disclosed.

The excess occurred because the City's GO bond issuances generated premiums as purchasers were willing to pay more than the face value of the bonds. For example, a bond's face value is $5,000 but an investor pays $6,000 for the bond because the interest rate is higher than the prevailing market interest rate. The additional $1,000 is the premium. See Exhibit 3 for information about the City's financing, including premium as a percent of bond principal, compared to the amount approved by VEPC.

10 24 V.S.A. §1894(d) and TIF Rule 714.

Exhibit 3: Financing, including Premium, Compared to VEPC Approved Amount

Debt Type	Debt Principal[a]	Net Premium[b]	Total TIF Funding for Improvements	Premium as Percent of Principal
Interfund Loan 2016[c]	$134,653	-	$134,653	-
Interfund Loan 2018	250,000	-	250,000	-
GO Bond Series 2017D	3,400,000	506,701	3,906,701	15%
GO Bond Series 2018D	1,570,000	167,540	1,737,540	11%
GO Bond Series 2022B	30,120,000	4,376,971	34,496,971	15%
TOTALS	**$35,474,653**	**$5,051,212**	**$40,525,865**	
VEPC approved amount	35,920,000	-	35,920,000	
Over (Under) VEPC Limit	**($445,347)**	**$5,051,212**	**$4,605,865**	

a The exhibit does not include $106,388 of tax increment set aside for direct payment of project costs as City staff indicated this amount would be returned to the Downtown TIF Fund.
b Premium is net of $321,152 underwriter's discount (e.g., fees).
c The 2016 interfund loan was $200,000, but the City only used $134,653 for TIF district improvements. Thus, only the portion used is presented in the exhibit.

According to the Municipal Securities Rulemaking Board (MSRB), premiums are generally treated as proceeds of the bond issuance. In response to questions we posed regarding use of the premium proceeds, the City's legal counsel stated "since the bonds are issued for the purpose of financing improvements to a TIF district …. the premium, like the principal amount of the bonds issued, should be used for the same purpose." Legal counsel also noted the City expected to spend the aggregate bond proceeds for the same purpose as the principal proceeds (i.e., improvements authorized in the 2015 and 2022 public votes). Given that the premiums are treated as proceeds of the bonds and should be used for the same purposes as the principal proceeds, the premiums are a component of TIF-funding for the Downtown TIF District improvements.

Bond Premiums Increase Cost of Debt

Municipal bond financing is complex. Interest rates, length of repayment period, call date, and other bond terms impact the fair value (i.e., price) of a bond and thus, the proceeds an issuer will receive upon issuing bonds.[11] According to the MSRB, premium bonds have a coupon rate (e.g., interest rate) that is higher than the prevailing market interest rate. Thus, a premium bond has higher interest costs. Further, an October 2021 article in the Government Finance Review Journal noted that a bond that sells at a high premium

11 Call date is the day on which a bond issuer has the right to redeem a callable bond prior to the stated maturity date.

suggests the issuer could have raised the same amount of principal but with less debt service. In other words, if the City had structured the bonds with different terms, such as a lower interest rate, it's likely the premium received would be lower and debt service (principal plus interest) would be less.

City Neglected to Seek VEPC Approval

The City's legal counsel explained that it has been fairly customary for municipal issuers "to issue bonds with a four or five percent coupon rate in exchange for a premium in addition to the principal amount of bonds being issued." This may be the case for municipal borrowing for non-TIF capital projects. However, the TIF district program has specific requirements and limitations regarding TIF-funding for TIF district improvements.[12]

Under the TIF district program, VEPC approves a municipality's TIF Financing Plan, also known as the District Finance Plan, which includes details of the total cost of improvements that will be TIF-funded, the total planned debt, and estimated interest costs for the debt. It serves as the basis for implementing the district and is a source document for monitoring and auditing TIF districts. The TIF Rule definition of District Finance Plan indicates it includes finance instruments and tools and finance structures and terms but does not explicitly reference premiums. TIF Rule Section 603 requires that the District Finance Plan be submitted to VEPC on a form prescribed by VEPC. VEPC's required forms include the TIF District Data Workbook which contains tabs for disclosure of total cost of improvements that will be TIF-funded and information about anticipated borrowing and estimated interest costs.

The City's legal counsel noted that "issuance of the bonds at a premium allowed the City to capture its capital needs more accurately and that by issuing the Series 2017D, Series 2018D, and Series 2022B bonds at a premium, the City was able to ensure sufficient proceeds to cover its capital costs for the Downtown TIF District."

However, it is not in the City's sole purview to determine the total amount of infrastructure improvement costs that may be TIF-funded. Rather, departures from the District Finance Plan that meet the definition of a "substantial change" must be submitted to VEPC for consideration and approval. Substantial changes include amendments to an approved District Finance Plan which may result in a significant impact with respect to any of the approval criteria assessed by VEPC

[12] Title 24, Chapter 53, Subchapter 5. Statewide Tax Increment Financing (§§1891-1901).

such as TIF District financial viability. Given that the City believed the costs of improvements were increasing and additional debt proceeds of $4.6 million were needed to cover increases, the City should have submitted an SCR to VEPC, including an updated District Finance Plan, to request approval for a higher amount of TIF-funded improvements. Instead, the City unilaterally decided to structure its bond terms to yield proceeds needed to cover increased costs without having the impact of the premium assessed by VEPC. Because the City is limited to the amount of TIF-funded improvements in the VEPC-approved District Finance Plan, the $4,605,865 of proceeds accumulated above this limit do not appear to be able to be legally used for TIF improvements or if used, the associated amount of debt service on the GO bonds may not be paid with tax increment.

Further, the 2021 District Finance Plan approved by VEPC indicated that the remaining debt to be issued had estimated interest costs of $4 million. By August 2022, the City had issued its last $30,120,000 premium GO bonds with interest cost of $11,844,433, almost triple the interest disclosed to VEPC in October 2021. This is significantly higher than disclosed in the District Finance Plan and is another indicator that the City should have submitted a substantial change request to VEPC. In failing to request VEPC's approval, the City bypassed a control on limiting increased costs of debt service being borne by the State Education Fund, which ultimately could result in diversion of more education tax increment from the Education Fund.

The City submitted an SCR to VEPC in June 2023 addressing, among other things, the statutory requirement to consider adjustment of the equal share percentage (e.g., the percent of tax increment that may be kept). VEPC flagged the bond premium as a matter that required resolution, but VEPC determined to postpone consideration.

VEPC required that the City submit supplemental information within 90 days of the release of the State audit. In particular, the City must submit a complete Financing Plan, including all information regarding bond premiums and how they will be used, increased project costs, and any other additional details which may be revealed through the audit of the TIF District.

Unclear Whether Voter Authorized Principal Borrowing Represents Ceiling on TIF-funded Improvements

In public votes held in 2015 and 2022, municipal voters authorized up to $35,920,000 in principal borrowing and direct use of tax increment to pay for improvements. Even though voter authorization is required for each instance of borrowing for TIF district improvements,[13] statute and TIF Rule afford municipal legislative bodies discretion to select bond terms and do not explicitly address premiums.[14] As a result, because the legislative body had authority to set the bond terms, it's not clear whether issuing GO bonds at a premium means the City exceeded the authority granted by municipal voters.

The City was required to disclose its decisions about the terms of debt, including interest cost and repayment period, in a Public Information Notice in advance of the public vote.[15] Statute and the TIF Rules do not explicitly address disclosure of anticipated premiums in the Public Informational Notice.

The City failed to disclose interest to municipal voters in advance of the 2015 public vote but disclosed all other required information. Prior to the public vote, the City informed voters that interest would reflect the current market conditions but did not provide an estimated interest cost or range of interest rates for the bonds.

As required, the City informed voters about interest cost prior to the March 2022 public vote, disclosing an estimated $4 million for the remaining debt to be issued. However, the actual interest is almost $12 million for the $30,120,000 GO bond issued in August 2022. The City disclosed all other required information.

Actual Interest Cost Much Higher than Disclosed to City Voters in
Actual interest for the final GO bond is $11,844,433, almost triple the amount disclosed to voters in advance of a public vote to approve borrowing. As education funding is state-wide, the diversion of additional tax increment from the Education Fund to cover the increased cost will be borne by taxpayers in non-TIF areas of the State.

The City believes its 2015 disclosures were adequate and per the city's legal counsel, materials submitted to voters in advance of both public votes informed voters that City Council would have the power to determine how to sell and issue bonds or notes, the term of repayment would not exceed 20 years, and interest rate would be determined based upon market conditions at the time the debt was incurred.

However, in both instances, it's not clear the voters had sufficient information to understand the cost of the bonds. In particular, the almost $8 million increase from estimated interest costs disclosed

13 24 V.S.A. 1894(h).

14 24 V.S.A. 1898(d) and TIF Rule Section 804.

15 TIF Rule 1003.2.2.

raises concerns about the public's ability to meaningfully understand the proposed debt before it was approved and as noted above ignores that VEPC approved a District Finance Plan with different terms. It could result in diversion of a greater amount of education tax increment from the State Education Fund to cover the higher costs. Because education funding is a state-wide system where all property taxpayers share the burden of school spending, the diversion of additional tax increment to Burlington to cover the increased cost will be made up by taxpayers in non-TIF areas of the State.

City Financed Eligible Public Improvement Costs from FY2017 - FY2023

We examined $6,008,406 of infrastructure improvements financed with TIF district debt from FY2017 to FY2023 (76 percent of $7.9 million of TIF financed costs) and concluded these were eligible TIF district infrastructure improvement costs. Specifically, the costs we tested (1) align with the descriptions of improvements described in the 2014 Phase 1 Filing and the City's subsequent substantial change requests approved by VEPC and (2) are consistent with those disclosed in public notices provided to municipal voters in advance of public votes that authorized the City of Burlington to incur TIF district debt. Finally, the improvements included repairs to a public parking garage, brownfield remediation, and reconstruction of city streets. See Exhibit 4 for total TIF-funded improvement costs and the amount we tested by project.

Exhibit 4: Improvement Costs and Amounts Tested FY2017 – FY2023

Improvement Projects[a]	Improvement Costs	Costs Tested	Percent Tested
Great Streets – St. Paul St.	$4,539,113	$3,523,164	78%
Great Streets – Main St.	2,687,044	1,842,751	69%
Brown's Court	507,839	507,839	100%
Marketplace Garage	134,653	134,653	100%
	$7,868,649	**$6,008,407**	**76%**

[a] Appendix III contains a list of improvement projects and descriptions.

According to the City's records, $32.7 million of the debt proceeds from the Series 2022B GO bond had not yet been used to pay for improvement projects. Based on the City's 2021 SCR and information provided to municipal voters prior to the public vote in 2022, the remaining debt proceeds are meant to pay for the Great Streets/Main

St. and Ravine Sewer projects, which are expected to be completed in 2026.

The success in ensuring only eligible improvement costs were financed with TIF is an improvement on past management of such costs for the City's other TIF, the Waterfront TIF District, and is the result of processes implemented to track improvement costs and funding sources and to assess which costs could be paid for with proceeds of TIF debt issuances. For example, fund accounts were established in the general ledger to record improvement costs and funding sources by project. In addition, the project manager maintained an Excel spreadsheet to track improvement costs and the funding source used to pay for the improvements. The City also adhered to the guidelines in its purchasing manual. In 2022, the City worked with MuniCap Consultants to develop the TIF Construction Cost Procedures to further strengthen its processes related to ensuring TIF debt is used to pay for eligible improvement costs.

Return of Tax Increment to Downtown TIF Fund and Other Record Keeping Clean-up

Two transactions in the City's general ledger system need to be corrected as one does not reflect the City's appropriate use of TIF debt proceeds and the other was not authorized.

According to the City's accounting records, $249,021 from the Series 2017D GO bond proceeds was recorded in the Community and Economic Development (CEDO) General Fund in 2018. However, these bond proceeds were meant to pay for the Brown's Court remediation costs which were recorded in a different City fund; the Great Streets – Saint Paul Street project fund. Recording GO bond proceeds in the CEDO Fund implies that the proceeds were used for CEDO expenses rather than eligible improvement costs. To ensure that the City's records reflect the City's intended and appropriate use of TIF debt proceeds, the City's general ledger records should be adjusted to reflect $249,021 in the Great Streets Fund (i.e., Fund 711) where the improvement costs reside.

In June 2018, the City moved $106,388 from the Downtown TIF Fund to the City's Great Streets Fund to cover costs for the St. Paul Street project. We requested evidence that this was a valid use of tax increment. City staff explained that setting aside tax increment to pay for the St. Paul Street project was not authorized by the City Council and have acknowledged that $106,388 must be returned to the

Downtown TIF Fund. It's not clear why the tax increment was set aside for this project although it may be due to the error in recording a portion of the 2017D GO bond proceeds in the CEDO General Fund rather than the Great Streets Fund. The failure to record the bond proceeds in the correct project fund may have led City staff to conclude that there was not a sufficient level of resources to pay for the St. Paul Street improvement costs.

Objective 2(a): TIF District Owes $95,363 to State Education Fund and City Owes $259,331 to TIF District

From FY2017 to FY2023 the City kept $8,556,857 in the Downtown TIF Fund, specifically $5,304,459 education tax increment and $3,252,397 municipal tax increment. However, there were several errors in the original taxable value (OTV) used to calculate education tax increment, which meant the City kept $95,363 of education tax increment that should have been sent to the Education Fund. In addition, OTV and other errors resulted in the City falling $259,331 short of allocating the correct amount of municipal tax increment to the Downtown TIF Fund. While the City' s payments to the Burlington school district and the State Education Fund were the amounts indicated to them by the Agency of Education, the Agency's calculation was based on incomplete and inaccurate data provided by the City. Because of the OTV and other errors, the Downtown TIF Fund owes the State Education Fund $95,363 and the City's General Fund $1,957. In addition, the City's General Fund owes $259,331 to the Downtown TIF Fund.

As part of the approval of the City's 2020 SCR, VEPC required the City to contribute an annual development fee, paid by Champlain College, to the Downtown TIF Fund. The City represented in its SCR that the fee had been contributed and was used to pay debt service. However, the City failed to do so consistently and omitted $1,040,000 from the Downtown TIF Fund. To correct the omission, VEPC voted to reduce the percent of education tax increment that the City may keep from 75 percent to 69 percent for the remaining 13 years of the tax increment retention period. Since the City did not contribute the fee as required, for the remainder of the TIF District, the City will retain less education tax increment than it otherwise would have been able to and

won't have the benefit of these funds when repaying TIF District debt.

Education Tax Increment Errors

From FY2017 to FY2023 the City kept $5,304,459 education tax increment in the Downtown TIF Fund, but the City made several errors that resulted in retention of incorrect education tax increment. The errors included parcel omissions from the TIF parcel listings, affecting both OTV and current values, and the use of incorrect OTV for four parcels that are in the TIF district. These errors resulted in the Downtown TIF Fund overpaying $56,280 to the State Education Fund; however, such overpayment was offset by the underpayment of $151,643 to the State Education Funds due to a tax misclassification of a property. Cumulatively, the City kept $95,363 of education tax increment in the Downtown TIF Fund that should have been sent to the State Education Fund. Thus, the Downtown TIF Fund owes this amount to the State Education Fund.

Exhibit 5 shows the impact and effect of the errors on education tax increment.

Exhibit 5: Education OTV Errors and Impact

Description of Error	Amount of OTV Error	Impact on Education Tax Increment Kept	Effect of Error
Omission from OTV and exclusions from annual values	5,273,715	$18,863	State Ed Fund owes Downtown TIF Fund
Omission from OTV due to tax status misclassification	2,822,200	($151,643)	Downtown TIF Fund owes State Education Fund
Use of incorrect OTV values	(696,359)	$37,417	State Education Fund owes Downtown TIF Fund
Total OTV Errors and Impact	**7,399,556**	**($95,363)**	**Downtown TIF Fund owes State Education Fund**

Parcels Were Omitted from the Education OTV and Excluded from TIF Education Current Values

The City omitted two parcels from the Downtown TIF District parcel listing submitted to VEPC with the 2011 TIF district application and the subsequent OTV certification. Maps of the Downtown TIF District filed with VEPC and the Vermont Department of Taxes Property Valuation and Review (PVR) division consistently showed that these two parcels were within the boundaries of the TIF district, but the parcels weren't drawn on the maps. This may explain why the required OTV certification process, completed in 2019 by the City, VEPC, and PVR did not identify these omissions. Omission of these parcels resulted in the understatement of OTV by $5,273,715, as well as the omission of their respective current values. This adjustment is required for the education and municipal OTVs and should be effective at the same time as the certified OTV in FY2020.

Because the properties were omitted, the associated incremental value was not captured in the City's tax increment calculation.

Further, the exclusion of the properties also means the City did not take advantage of the 75 percent tax increment exemption from the education tax liability, which resulted in $18,863 paid to the State Education Fund when this amount should have been added to the Downtown TIF Fund.

Property Erroneously Treated as Exempt from Education Property Taxes When Downtown TIF Established and its Value Was Incorrectly Excluded from the Education OTV

The City excluded the education grand list value of 3 Cathedral Square from the education OTV at the time the Downtown TIF District was established in 2012 even though the property was taxable at that time.

The exclusion of the property was likely due to the City's long-standing local tax exemption agreement with the property owners which meant the City treated the property as exempt from municipal and education property taxes and did not bill the property owner for these taxes.[16] However, starting in FY2010, local tax exemptions such as the 3 Cathedral Square agreement were disallowed for the purposes of the State education grand list, meaning that municipalities were required to include locally exempted properties in the education grand list used by the Agency of Education to calculate the education tax liability of the municipality. Thus, at the time the Downtown TIF District was established in 2011, this property was taxable for purposes of state education property taxes, so its assessed value of $2,822,200 should have been included in the OTV.

According to PVR, this is a rare instance of property tax status misalignment where the same property is locally treated as tax exempt but is considered taxable state-wide. Such misalignment, in the case of Burlington, caused an omission of the property value from OTV, inaccurate tax increment calculation and omission of the partial value

[16] For some locally voted exemptions, municipalities must set a local agreement rate to raise foregone education property taxes. The local agreement rate is billed to all other property owners.

from the education grand list exemption. PVR and VEPC should pay extra attention to locally voted tax-exempt properties when certifying TIF district original taxable values and monitoring tax increment calculations.

Commencing in FY2020 the local exemption expired, and the property was taxable for municipal and education purposes. However, because the property was not included in OTV, the full current value was treated as incremental value in the City's calculation. As a result, the City kept $151,643 of education tax increment in the Downtown TIF Fund instead of remitting it to the State Education Fund.

Use of Municipal Taxable Values instead of Education Taxable Values

The City used incorrect taxable values for determining OTV of four parcels in the TIF district.

Per the requirements of Vermont TIF statute and the Adopted TIF Rule, OTV is determined by aggregating taxable values of TIF district parcels, and as a result, establishing a municipal OTV and education OTV.[17] For certain parcels, the education values differed due to the qualified housing exemption, reducing the education taxable value. [18] However, the City used the higher municipal taxable value. In total, the education grand list value of these four parcels should have been lower by $696,359.

Using an education OTV that was too high meant the City's calculation of education tax increment was too low and likewise the education tax increment exemption was too low. This resulted in $37,417 paid to the State Education Fund when it should have been added to the Downtown TIF Fund.

In addition to the adjustments due to the OTV errors described above, the City did not timely adjust the current value of a parcel used in its calculation of FY2022 education tax increment. The parcel's value was reduced because of an appeal, but the City used the higher pre-appeal value in the calculation. As a result, the City allocated $1,957 of education tax increment to the Downtown TIF Fund which should be returned to the City's General Fund.[19]

17 24 V.S.A. §1891(5) and TIF Rule Section 300.

18 Qualified rental units are entitled to an exemption on the education property tax grand list, based on a certificate of exemption obtained from the Vermont Housing Finance Agency upon the taxpayer's presentation of required information.

19 The City also overpaid the State Education Fund $652. According to 32 V.S.A. §5412, when reductions of property value result from appeals to PVR or due to court action, municipalities may submit a request to PVR to pursue repayment if certain required steps were followed. In this instance, the appeal was resolved by the City's Board of Tax Appeals and the City may not request repayment from the State.

Municipal Tax Increment Errors

From FY2017 to FY2023 the City kept $3,252,397 municipal tax increment in the Downtown TIF Fund. However, the City made several errors that resulted in retention of incorrect municipal tax increment. The errors included parcel omissions from the TIF parcel listings, affecting both OTV and current values, omission of the Downtown Improvement District (DID) tax rate from the municipal tax increment calculation and inaccuracies in the calculation of municipal tax increment associated with the 120 percent adjustment applied to commercial properties. Cumulatively, the errors resulted in the City falling $259,331 short of allocating the correct amount of municipal tax increment to the Downtown TIF Fund. Thus, the City's General Fund owes this amount to the Downtown TIF Fund.

Parcels Omitted from OTV and Excluded from Current Values

The omission of two parcels from the Downtown TIF District parcel listing submitted to VEPC with the 2011 TIF district application and the OTV certification affected municipal OTV. Omission of these parcels resulted in the understatement of municipal OTV by $5,273,715, as well as the omissions of their respective current values. This adjustment is required for the municipal OTV and should be effective at the same time as the certified OTV in FY2020.

Because the properties were omitted, the associated incremental value was not captured in the City's tax increment calculation. As a result, the City did not contribute an additional $12,049 of municipal tax increment to the Downtown TIF Fund between FY2020 and FY2023 and this amount is owed by the City's General Fund.

Calculation Errors

The City made additional errors in the calculation and reporting of its municipal tax increment. For the error corrections, it is important to track municipal tax increment, dividing it into two components: 75 percent which is required to be kept in the TIF district fund for debt repayment and certain related costs and 25 percent which may be added to the TIF district fund and used for costs such as personnel time or other departmental costs (also known as restricted related costs). Tracking the two components of municipal tax increment in these two buckets is necessary to see available fund balances for different expenditure categories.

Exhibit 6 shows total errors in municipal tax increment calculation and the effect on the two components of municipal tax increment.

Exhibit 6: Errors in FY2017 – FY2022 Calculation of Tax Increment and Their Effects

Description of Errors	Omitted from Municipal Tax Increment 75%	Omitted from Municipal Tax Increment 25%	Omitted Total Municipal Tax Increment
Omission of the DID tax rate	$80,455	$13,075	$93,530
Errors in 120 percent increment calculation	34,893	10,605	45,498
FY2020 error in amount recorded in the Downtown TIF Fund	12,081	97,316	109,397
Miscellaneous[a]	(857)	(289)	(1,143)
Amount General Fund Owes to Downtown TIF Fund	**$126,572**	**$120,710**	**$247,282**

a The City did not timely adjust the current value of a parcel in the FY2022 tax increment calculation. The parcel's value was reduced because of an appeal, but the City used the higher pre-appeal value in its calculation. As a result, the City allocated $1,143 of municipal tax increment to the Downtown TIF Fund which should be returned to the City's General Fund.

The City included 14 out of 15 municipal tax rates in its calculation of municipal tax increment from FY2017 to FY2022. The excluded municipal tax rate was the DID tax rate.[20] Such exclusion runs against the provisions of 24 V.S.A. §1896 and the Adopted TIF Rules. We made the same finding in our recent audit of the Waterfront TIF District. The inclusion of *all tax rates without exceptions* is also supported by the AGO's opinion, obtained during the Waterfront TIF audit. For the Downtown TIF, the exclusion of the DID tax rate means the City failed to add $93,530 of municipal tax increment to the Downtown TIF Fund. Thus, the City's General Fund owes this amount to the Downtown TIF Fund. The City included the DID tax rate in its FY2023 municipal tax increment calculation.

The City had inaccuracies in its calculation of tax increment associated with the 120 percent adjustment applied to commercial property assessed values. The errors included:

- Calculation of commercial adjustment on non-taxable properties,
- Calculation of commercial adjustment on residential properties that did not have any commercial portion,
- Calculation of commercial adjustment on the incorrect commercial portion of the property,
- Calculation of commercial adjustment on the incorrect current property values.

The effect of these errors totaled $45,498 and is owed by the General Fund to the Downtown TIF Fund. Per City staff, the errors were largely

20 The City municipal tax rates include general city, highway, police and fire, retirement, debt service, etc.

caused by the manual processes employed to incorporate the 120 percent adjustment in the tax increment calculation, numerous spreadsheet versions used for the calculation, and the use of information without secondary verification.

In accordance with requirements, starting in FY2017 after the first debt was incurred, the City kept 75 percent of municipal tax increment, the same rate as allowed for education tax increment. When the City filed a substantial change request with VEPC in 2020, the municipal tax increment retention rate was increased to 100 percent. However, the City kept just 72 percent of municipal tax increment in the Downtown TIF Fund according to the FY2020 audited financial statements. This was $109,397 lower than 100 percent of municipal tax increment and is owed by the General Fund to the Downtown TIF Fund. In subsequent years, the City kept 100 percent of the municipal tax increment and recorded it in the Downtown TIF Fund.

According to VEPC's 2021 monitoring report, City staff explained that the discrepancy occurred because the City's auditor was not provided with updated information prior to the conclusion of the FY2020 audit. City staff informed VEPC that procedures were being created to ensure this error does not occur in the future. Currently, the City personnel and MuniCap are developing procedures.

Remittances to the State Education Fund

We verified that the City paid the Burlington school district and the State Education Fund, in accordance with the Agency of Education's calculated education tax liability.

However, as noted above, due to the errors in the OTV and current values, the City underpaid the State Education Fund by $95,363 and kept this amount in the Downtown TIF Fund. Thus, it is the Downtown TIF Fund that owes $95,363 to the Education Fund.

Potential Tax Status and Valuation Adjustments

As a result of our review of the completeness and accuracy of OTV, we questioned the City's conclusion that the entirety of the Champlain College housing building developed at 194 St. Paul Street was exempt from property taxes after it was built in 2018. We also raised questions about the changes in assessed value and types of property tax exemptions granted to 3 Cathedral Square during the period

FY2012 to FY2023. The City was unable to provide documentary evidence to support the assessed values and resorted to contacting the former City assessor and requested documentation from the administrator of 3 Cathedral Square in order to support the current assessed value. To the extent TIF district properties tax status or assessed values are incorrect, the calculation of tax increment will be impacted, and incorrect amounts kept for debt repayment and related costs.

Champlain College Housing:

The City's determination to treat the building as tax exempt did not consider commercial office space elements. However, there are at least three commercial spaces in the building. See pictures of exterior of the ground floor in Exhibit 7.

Exhibit 7: Pictures of Businesses on the Ground Floor of the Champlain College Housing Building

The City has yet to contact Champlain College to obtain information pertinent to the commercial office space.

3 Cathedral Square:

Based on the City's property database and PVR records:

- The valuation of the property changed from $2,822,200 (FY2012 – FY2021), to $5,755,000 (2021 reappraisal), and to $1,603,900 (FY2022 – FY2023 post reappraisal).

- Information provided to PVR such as descriptions of the property ('Cathedral Square 80 Independent Living', '108 Residential Unit Elder Housing') and property tax exemption codes varied during the period from FY2012 to FY2023.

The City did not maintain records to substantiate the various iterations of assessed value, including support for the FY2012 value of $2,822,200, the 2021 reappraised value of $5,755,000, and the post-reappraisal appeal value of $1,603,900. At the City's request, staff at Cathedral Square provided a copy of the calculation prepared by Cathedral Square using the state-required valuation methodology for the post-reappraisal value. In absence of records, it is not clear whether the City reviewed the property owners' calculations and verified the calculation data inputs.

The City provided a partial explanation for the determination of assessed value from FY2012 – FY2021, noting that for several years the assessed value excluded 28 assisted living units. The property executives requested to qualify 28 out of 108 units as tax-exempt because they believed the 28 units met the State requirements to serve public or charitable purposes. In 2005 the City Council adopted a resolution for the tax exemption, citing the statutory exemption for public, pious, and charitable use property. Moreover, the property was listed as an 80-unit independent living facility, so the State had no visibility to understand that the City was treating a part of the property as exempt.

Given the variability in assessed value, property descriptions, and property tax exemptions over the last decade, we recommend the City (1) work with the owners of 3 Cathedral Square to obtain an accurate depiction of the types of units at 3 Cathedral Square and update its property records to reflect this information and (2) seek PVR's guidance with adhering to the state-required valuation methodology for affordable housing properties.

Additional Funding Source

In 2016, the City and Champlain College (CC) entered into a development agreement regarding the Brown's Court and Eagles Landing properties. According to the agreement, CC agreed to pay an annual development fee of $260,000 commencing July 1, 2017, and continuing annually for 20 years through and including July 1, 2036. Per the agreement, the purpose of the fee is to provide the City "with an additional source of funds from which to service the debt instruments used by the City to finance the cost of constructing the improvements and for other related costs associated with the City's administration of its Downtown Tax Increment Finance District."

In SCRs submitted to VEPC in 2020 and 2021, the City represented that the CC development fees would be deposited to the Downtown TIF Fund and used to pay debt service and related costs. VEPC's 2020 substantial change request approval letter required that the annual fee be deposited into the TIF Fund and that it be used for debt service and related costs. However, the City failed to direct the fee to the Downtown TIF Fund in all years. VEPC questioned the failure to deposit all annual development fees into the Downtown TIF Fund and required the City present a resolution.

The City submitted an SCR in June 2023 and proposed use of the Series 2022B GO bond premium to replace the fees that were not added to the Downtown TIF Fund. At an August 2023 meeting, VEPC concluded that $1,040,000 had not been deposited as required. Instead of accepting the City's proposal, VEPC reduced the education tax increment retention percentage from 75 percent to 69 percent beginning in FY2024 to recapture the fees that the City should have deposited into the Downtown TIF Fund. Because the City failed to contribute $1,040,000 of the CC fees to the Downtown TIF Fund, for the remainder of the TIF District the City will retain less education tax increment than it otherwise would have been able to and won't have the benefit of these funds when repaying TIF District debt. Going forward, the City should ensure that the annual fee is deposited to the Downtown TIF Fund for fiscal years FY2024 to FY2037 (another 14 years).

Objective 2(b): Audit Uncovered Errors in Use of Funds, but City to Make Corrections

From FY2017 to FY2023 the City used tax increment for allowed purposes including $2,767,823 for TIF debt payment and $714,262 to pay for related cost. However, debt payments are understated by $134,653 because the City did not use tax increment to repay the 2016 interfund loan that paid for improvements to a public parking garage. In addition, the City erroneously transferred $106,388 from the Downtown TIF Fund to another City fund, the "Great Streets Fund," to pay for St. Paul Street improvements. As this wasn't authorized by the City Council, City staff acknowledged the error and plan to return $106,388 to the Downtown TIF Fund.

Allowable and Ineligible Uses of Tax Increment

Vermont TIF statutes and TIF Rule allow tax increment to be used for 1) repayment of TIF debt that financed eligible improvements and related costs and 2) direct payment of improvements and related costs, as authorized.[21]

In public votes held in 2015 and 2022, municipal voters approved $10,000,000 and $25,920,000 of financing, respectively, for total of $35,920,000 of borrowing, plus $1,848,000 for related costs to be paid with tax increment.

From TIF district creation in FY2012 through FY2023, Downtown TIF district expenditures totaled $4,108,474. Except for the $106,388 of tax increment transferred to a project fund for direct payment of improvement costs, the City used tax increment from FY2017 to FY2023 for eligible purposes.

Exhibit 8 summarizes our assessment of allowed and ineligible uses of tax increment and additional funding sources.

[21] 24 V.S.A. §1894(b) & (c) and TIF Rule Section 704

Exhibit 8: Downtown TIF Allowable and Ineligible Uses FY2017 – FY2023

Sources of Funds	Champlain College Fee	Tax Increment		Total Funds Available
		Ed + Muni 75%	Muni 25%	
TIF Funds Received	**520,000**	**7,989,084**	**567,773**	**9,076,857**

Description of Uses	Eligible			Ineligible	Total Uses
Debt payments (principal & interest)	(520,000)	(2,767,823)			(3,287,823)
Improvement project costs				(106,388)	(106,388)
Professional consultants' costs		(231,031)			(231,031)
CEDO personnel costs			(356,819)		(356,820)
Department of Public Works personnel costs			(126,412)		(126,412)
Total Expenditures	**(520,000)**	**(2,998,854)**	**(483,231)**	**(106,388)**	**(4,108,474)**

The City used $714,262 municipal tax increment to pay for related costs, including $483,231 of staff costs for the Community and Economic Development Office (CEDO) and the Department of Public Works. Per the TIF Rule, the municipal increment that may be used for internal municipal operating costs such as personnel costs, known as "restricted" related costs, must be above and beyond the municipal increment committed to service the District's financing and unrestricted related costs.[22] In its 2020 substantial change request, the City notified VEPC that it planned to increase the allocation of municipal tax increment from the 75 percent required to 100 percent. Even though the City did not start retaining municipal tax increment above 75 percent until FY2021, cumulatively the City has retained enough to cover the restricted related personnel costs as of fiscal year-end 2023.

The first debt issued by the City was an interfund loan for repairs to a public parking garage. The $134,653 loan was repaid but rather than use tax increment to repay the loan, the City used resources in the City's Traffic Fund. Since the loan was for TIF district improvements, tax increment should have been used to repay the loan.

As noted under objective 1, the City erroneously transferred $106,388 of tax increment into a project fund to pay for improvement costs. These funds will be repaid to the Downtown TIF Fund.

22 TIF Rule Section 706

Components of Tax Increment

Based on our analyses and findings, the Downtown TIF Fund June 30, 2023, ending balance is comprised of the following:

Education Tax Increment	$3,168,655
Municipal Tax Increment	1,725,210
Municipal Tax Increment Restricted Related Costs	208,264
Total Downtown TIF Fund June 2023	$5,102,129

These amounts are available to cover future debt payments and related costs. However, the City has not consistently tracked the three components, noted above, but should because only a portion of municipal tax increment may be used for restricted related costs. Without tracking the components, the City did not have sufficient information to understand the extent to which municipal tax increment could be used to pay for restricted related costs. In addition, commencing in FY2024, the percent of education tax increment that may be kept will be reduced from 75 to 69 percent and it is important to establish the correct balance for each tax increment component as of the end of FY2023 to ensure that each component of tax increment is only used for eligible purposes.

Conclusions

The City's administration of the Downtown TIF District was mixed.

On one hand, the City seemingly did not recognize that structuring its GO bonds to generate premiums was inconsistent with the District Finance Plan approved by VEPC, both in terms of the level of improvement costs that would be TIF-funded and the cost of total debt service. The TIF Rules require departures from the approved District Finance Plan that meet the definition of a "substantial change" be submitted to VEPC for consideration and approval. A $4.6 million increase in TIF-funded improvements and almost triple the interest seem to be substantial. Because the City lacks VEPC approval, the $4.6 million above the limit established in the approved District Finance Plan does not appear to be able to be legally used for TIF improvements or if used, the associated amount of debt service on the GO bonds may not be paid with tax increment. In contrast, through FY2023, the City had appropriately used $7.9 million to pay for four eligible TIF district improvements.

During the same period, the City kept $8,556,857 education and municipal tax increment. However, several errors in the education OTV and education tax increment calculation caused the City to keep $95,363 of education tax increment that should have been sent to the Education Fund and $1,957 that should have been sent to the City's General Fund. These errors also resulted in the City falling $259,331 short of allocating the correct amount of municipal tax increment to the Downtown TIF Fund. Further, the City did not contribute $1,040,000 of the annual Champlain College development fees to the Downtown TIF Fund as required. VEPC took action to remedy this failure otherwise more tax increment would have been needed for debt repayment and more education tax increment would have been diverted from the Education Fund.

The City used tax increment for allowable purposes, specifically, $2,767,823 for TIF debt payments and $714,262 for related costs. However, TIF debt payments were $134,653 short, as the City used resources in the Traffic Fund, instead of the Downtown TIF Fund to repay the City's 2016 interfund loan. Lastly, $106,388 that was erroneously moved out of the TIF fund should be returned.

Recommendations

We make the recommendations in Exhibit 9 to the City of Burlington:

Exhibit 9: Recommendations and Related Issues

Recommendation	Report Pages	Issue
1. Record an adjustment to reflect the deposit of $249,021 of Series 2017D GO bond proceeds in the Great Streets Fund (i.e., Fund 711) instead of the CEDO General Fund.	16	$249,021 of the Series 2017D GO bond proceeds was recorded in the Community and Economic Development (CEDO) General Fund. To ensure that the City's records reflect the City's intended and appropriate use of TIF debt proceeds, the City's general ledger records should be adjusted to reflect $249,021 in the Great Streets Fund (i.e., Fund 711) where the improvement costs reside.
2. Return $106,388 to the Downtown TIF Fund from the Great Streets Fund (i.e., Fund 711).	16-17, 28	The City moved $106,388 from the Downtown TIF Fund to the City's Great Streets Fund to cover costs for the St. Paul Street project. City staff explained that setting aside tax increment to pay for the St. Paul Street project was not authorized by the City Council and have acknowledged that $106,388 must be returned to the Downtown TIF Fund.

Recommendation	Report Pages	Issue
3. Increase education OTV by $7,399,556 by adding the parcels that were omitted and adjusting the taxable value used for another four parcels.	18-20	Two parcels within the boundaries of the Downtown TIF District were omitted from the determination of OTV and their respective current values were also omitted from the education tax increment calculation. This caused the education OTV to be too low by $5,273,715. In addition, the misclassification of tax status of 3 Cathedral Square caused the education OTV to be too low by $2,822,200. Finally, the use of municipal assessed value instead of education assessment values caused the education OTV to be $696,359 higher than it should have been.
4. Remit $95,363 from the Downtown TIF Fund education tax increment to the State Education Fund and transfer $1,957 from the Downtown TIF Fund to the City's General Fund.	18-20	Due to the errors in the OTV and current values, the City underpaid the State Education Fund by $95,363 and kept this amount in the Downtown TIF Fund. Thus, it is the Downtown TIF Fund that owes $95,363 to the State Education Fund. In addition, the City did not timely adjust the current value of a parcel used in its calculation of FY2022 education tax increment. As a result, the City allocated $1,957 of education tax increment to the Downtown TIF Fund which should be returned to the City's General Fund.
5. Increase municipal OTV by $5,273,715 by adding two parcels that were omitted.	21	The omission of two parcels from the Downtown TIF District parcel listing submitted to VEPC with the 2011 TIF district application and the OTV certification meant the municipal OTV was too low.
6. Transfer $259,331 from the City General Fund to the Downtown TIF Fund municipal tax increment portion.	21-23	Two parcels were excluded from the municipal tax increment calculation, both OTV and current value. Thus, the City did not contribute $12,049 of municipal tax increment to the Downtown TIF Fund. An additional $247,282 is owed by the General Fund to the Downtown TIF Fund due to the omission of the DID tax rate, errors in 120 percent increment calculation, and an error in amount of tax increment recorded in the Downtown TIF Fund in FY2020.
7. Obtain information from Champlain College regarding commercial use of the Champlain College housing building [Eagles Landing] and treat the portion that is commercial as taxable property.	24	The City has been treating Champlain Housing building tax exempt, despite partial commercial use of the building.
8. Work with PVR to ensure the state-required valuation methodology is applied to 3 Cathedral Square and retain records to substantiate the data used for the City's calculation.	24-25	There has been considerable variability in assessed value, property descriptions, and property tax exemptions over the last decade for 3 Cathedral Square. The City did not maintain records to substantiate the various iterations of assessed value of 3 Cathedral Square and did not always provide information to the State that would have allowed the State to understand the portion of the property that was treated as tax-exempt.

Recommendation	Report Pages	Issue
9. Adjust general ledger records to reflect the payment of the 2016 interfund loan with Downtown TIF District tax increment instead of resources in the City's Traffic Fund.	28	The City used resources in the Traffic Fund to repay the interfund loan for repairs to a public parking garage. Since $134,653 of the loan was used for TIF district improvements, tax increment should have been used to repay the loan.
10. Implement a mechanism to track the three components of tax increment and the use of each.	29	The City has not consistently tracked the three components, but should because only a portion of municipal tax increment may be used for restricted related costs. Further, with the reduction of the percent of education tax increment that may be kept going forward, it is important for the City to establish the correct components now and maintain tracking in the future.

We make the recommendations in Exhibit 10 to VEPC:

Exhibit 10: Recommendations and Related Issues

Recommendation	Report Pages	Issue
1. Determine an appropriate remedy for the City's failure to adhere to the VEPC-approved District Finance Plan, including the cap on TIF-funded improvements.	12-13	Departures from the District Finance Plan that meet the definition of a "substantial change" must be submitted to VEPC for consideration and approval. Substantial changes include amendments to an approved District Finance Plan which may result in a significant impact with respect to any of the approval criteria assessed by VEPC such as TIF District financial viability. Given that the City believed the costs of improvements were increasing and additional debt proceeds of $4.6 million were needed to cover increases, the City should have submitted an SCR to VEPC, including an updated District Finance Plan, to request approval for a higher amount of TIF-funded improvements. Instead, the City unilaterally decided to structure its bond terms to yield proceeds needed to cover increased costs without having the impact of the premium assessed by VEPC.

Recommendation	Report Pages	Issue
2. Amend the TIF Rule to explicitly require disclosure of bond premiums and associated increased debt service in both District Finance Plans and public informational notices.	12-15	Municipalities are required to use the forms prescribed by VEPC for the District Plan and this includes disclosure of total cost of improvements to be TIF-funded. In addition, the definition of District Finance Plan in TIF Rule section 300 indicates it includes finance instruments and tools and finance structures and terms but does not explicitly reference premiums. TIF Rule Section 1003.2.2 requires disclosure of estimated interest but does not explicitly address disclosure of bond premium. Revising the TIF Rule to reference premiums as well could remind municipalities of their obligations to provide complete and meaningful information to VEPC and municipal voters.

Management's Comments and Our Evaluation

On December 22, 2023, the City's Chief Administrative Officer (CAO) provided written comments on a draft of this report. The CAO took issue with the title of the report and disagreed with our conclusion that the City's receipt of premium in addition to bond principal proceeds pushed the City $4.6 million above the limit VEPC approved for TIF-funded improvements. The CAO also acknowledged that the audit found some errors and indicated the City plans to address the associated recommendations. These comments are reprinted in Appendix IV. Our evaluation of these comments is in Appendix V. On January 10, 2024, the Chair of VEPC and the Executive Director of VEPC provided written comments on a draft of this report. These comments are reprinted in Appendix VI. The Chair and Executive Director agreed with the recommendations we made to VEPC.

For our first objective, we identified statutory provisions and TIF Rules relevant to the Downtown TIF District that address authorization and issuance of TIF District debt and allowable uses of TIF debt.

We interviewed City officials regarding policies and procedures relevant to authorizing, issuing, and tracking debt.

We prepared an authorized debt schedule by fiscal year which showed the amount of financing authorized by VEPC and municipal voters and for which improvement project. To assess whether VEPC's authorization was obtained and what was authorized, we reviewed various VEPC approval documents and the City's TIF application, 2014 Phase filing, the substantial change request in 2021 and 2023, including the District Financing Plan. To verify municipal voter authorization, we assessed whether Burlington adhered to required steps for warning public hearings, disclosed required information to municipal voters, and obtained municipal voter approval for each TIF debt.

We compiled an issued debt schedule to show the amount of debt issued, type of instrument and total interest cost and assessed whether debt was issued during the statutorily allowed period.

We prepared a debt payment schedule based on the general ledger detail that shows the annual debt service from FY2017 through FY2023 and corroborated the amount to the debt payment amount in the financial statements and to the debt amortization schedules contained in the debt documents for debt issued from FY2017 through FY2023.

We reviewed the interfund loans to determine that no interest was charged and whether the interfund loans were repaid with bond proceeds or tax increment.

We identified and documented the statutory provisions and TIF Rules applicable to the determination of eligible TIF improvements and related costs.

We compiled detailed project descriptions and prepared a schedule of authorized TIF project improvement and related costs (soft costs such as engineering and design) by reviewing Burlington's Downtown TIF District Plan, VEPC's Final Determination, approved phase filing, approved Substantial Change Requests, and minutes and other materials from public hearings.

We obtained and reviewed the City's general accounting policies and finance department procedures and interviewed City personnel regarding the system of policies, procedures, and controls in place to track improvement costs by improvement project and to monitor that TIF debt was used to pay for TIF improvements that were authorized by VEPC and municipal voters and met the definition of improvements in statute and TIF Rules.

We corroborated improvement costs tracked by project managers in spreadsheets to the improvement costs recorded in capital project funds.

We judgmentally selected a sample of costs for TIF improvements recorded in the general ledger capital project funds and paid for with TIF district debt from FY2017 through FY2023. Our selection of invoices was based on achieving at least 75 percent coverage of total improvement costs funded with TIF debt. We prepared a schedule to be used for conducting further detailed testing which included vendor, date cost incurred, invoice and description of cost.

In order to establish sufficient and appropriate audit evidence, we requested City personnel provide invoices, contracts, requests for proposals, bids, work orders, emails, etc. and used that information to evaluate the nature, type, purpose, and correct TIF proportion of costs.

We assessed whether selected costs met the requirements in statute and TIF Rule for improvements and related costs (engineering and design costs) and used this information to evaluate the nature, type, purpose and correct TIF proportion of the cost.

We assessed whether the City followed its procurement, contracting, and payment processes when determining whether costs could be funded with TIF debt.

For our second objective, we identified the statutory provisions and TIF Rules relevant to the calculation and retention of tax increment by the Downtown TIF district.

We interviewed City officials regarding policies, procedures and internal controls over monitoring the grand list and properties in the TIF district and calculating tax increment.

We reviewed the values of the Downtown TIF district list of properties, compiled in the TIF district creation as of April 1, 2011, and the certified OTV in 2017/2019.

We reviewed completeness and accuracy of the education and municipal tax rates used by the City in their calculation of tax increment.

We recalculated Downtown TIF's education and municipal tax increment for every period since FY2017 and compared the results with the amounts calculated and reported by the City for its Downtown TIF Fund.

We reviewed amounts paid to the Education Fund by the City and compared those to the amount of education tax liability calculated by the Agency of Education.

We traced tax increment according to the City's calculation to the general ledger and the City's Annual Financial Statements and identified Education Fund payments using the City's general ledger and Form 411.

To assess the reliability of the current values in the TIF Parcel Value Report, we interviewed City officials to understand how the City's Grand List is maintained and the source of data in the grand list. We also discussed how changes in property values were identified and adjusted in the grand list to ensure completeness and accuracy of properties in the TIF district.

We performed data testing to verify that all TIF district parcels were included in the tax increment calculation for all periods for both education and municipal parcels. We obtained advice from the PVR regarding property tax status where it was necessary.

To assess whether the City paid the required portion of education tax increment to the State Education Fund, we obtained property value data, including education list value, submitted to PVR by Burlington for the period from FY2017 through FY2023. We determined whether the reported amount of the TIF exemption for homestead and non-homestead properties was equal to 75 percent of the incremental property value in the TIF district. We assessed whether the TIF exemption was excluded from the education list value and compared the education list value per the data submitted by the City to the education list value used by the Agency of Education to calculate Burlington's education tax liability.

We identified the statutory provisions and TIF Rules that address the criteria applicable to determining the eligibility of TIF related costs for tax increment financing.

We interviewed City officials about policies, procedures, and internal controls in place for authorization and use of tax increment to pay related costs.

We selected a non-statistical sample of related cost payments, generally based on the high value items, from the general ledger TIF account detailed transaction records from FY2017 through FY2023. We evaluated whether the costs were within limits authorized by municipal voters and whether these expenditures were approved by the City Council. We reviewed documentary evidence provided by the City to determine whether the costs met the definition of related costs, per the TIF statutes and TIF Rules. We also assessed whether the documentary evidence demonstrated that City officials had adhered to the necessary approval procedures.

We also identified other uses of tax increment and assessed whether the uses were allowed by TIF statutes and TIF Rules and whether the use was within the limits authorized by municipal voters.

We conducted this performance audit in accordance with generally accepted government auditing standards, which 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II
Abbreviations

AOE	Agency of Education
CEDO	Community and Economic Development Office
DID	Downtown Improvement District
FY	Fiscal Year
GO	General Obligation
JFO	Joint Fiscal Office
MSRB	Municipal Securities Rulemaking Board
NEMRC	New England Municipal Resource Center
OTV	Original Taxable Value
PVR	Property Valuation and Review
SAO	State Auditor's Office
SCR	Substantial Change Request
TIF	Tax Increment Financing
VEPC	Vermont Economic Progress Council
V.S.A.	Vermont Statutes Annotated

Appendix III
Improvement Project Descriptions

The following is a list of Downtown TIF improvement projects with descriptions.

Exhibit 10. Downtown TIF Improvement Projects

Project	Description of Improvements
Church Street Marketplace Garage	Repairs include concrete crack and spall repair, sealants, sealers, coatings, drainage systems, electrical system repairs, storefront systems, and elevator retrofit.
Brown’s Court	Brownfield remediation, soil analysis, removal and disposal of such soils, together with "urban fill" material at an approved facility
Great Streets-St. Paul	Streetscape upgrades: (two blocks between Main Street and Maple Street) to include streetscape, stormwater, utility, lighting, and transportation upgrades.
Great Streets-Main Street	Total reconstruction and improvements from Battery Street to South Union Street including underground water/wastewater/stormwater infrastructure to the surface streetscape, transportation infrastructure, gardens, seating, art, and lighting.
Ravine Sewer	Relocation and upgrading the portion of the so-called "ravine sewer" from its present location crossing mid-block from College Street to Main Street in the block between South Union and South Winooski Avenue.
Great Streets-Main St. Stormwater	To address storm water runoff from City Hall Park and create infrastructure within the park to detain runoff water and provide infiltration.

Appendix IV
Reprint of Management's Comments

The following is a reprint of management's response to a draft of this report. The City provided five attachments which we reviewed and considered as part of this audit. We are including one of these attachments, a legal memo the City obtained as part of their response. Our evaluation of these comments is contained in Appendix V.

OFFICE OF THE CLERK/TREASURER
City of Burlington

City Hall, Room 20, 149 Church Street, Burlington, VT 05401
Voice (802) 865-7000; Fax (802) 865-7014; Deaf/Hard of Hearing 711

December 22, 2023

Mr. Douglas Hoffer
Vermont State Auditor
132 State St.
Montpelier, VT 05633

Re: City of Burlington Management Comments for the SAO's Draft Audit Report on the Downtown TIF District

Dear Mr. Hoffer,

The City of Burlington thanks the Vermont State Auditor for its thorough audit of the Downtown TIF District and productive collaboration throughout.

See our comment 1 on page 50.

Unfortunately, we strongly disagree with the wording of your headline that the City committed a "misstep" by securing $4.6 million of bond proceeds and its assertion that in doing so the City "exceed[ed]" a VEPC approved cap. This wording implies unfairly a clear violation of a TIF regulation or statute by the City when no so such clear violation occurred. To the contrary, the draft Report is raising a new and untested concern that is disputed by the bond counsel for the transaction who opined both at the time of bonding and now that the City acted prudently, within its statutory authority and within well-accepted industry practices. Accordingly, the headline words "misstep" and "Exceed VEPC Approved Cap" should be removed from the report headline and the report should be reframed not as a critique of Burlington's acceptance of financing that included bond premiums, but as a forward-looking recommendation that the legislature or VEPC consider clarifying municipal authority to utilize bond premiums when securing TIF debt.

See our comment 2 on page 50.

Further, we believe the draft report is unbalanced in that it raises potential concerns about the cost of bond premiums without discussion or acknowledgement of the practice's benefits to the City and to the Education Fund. The City is utilizing the bond premiums to implement public infrastructure improvements that it has been planning for twelve years to improve its Main Street and stimulate taxable private development. Voters have supported this work at the ballot box and the City's legislative body has approved it on numerous occasions. VEPC has ruled it will grow the City and the State's property tax base. The use of bond proceeds is helping the City accomplish these worthy City and State goals amidst a climate of historic, pandemic-related construction cost and interest-rate inflation.

We appreciate that the Audit Report highlighted many of the improvements the City has made since the Waterfront TIF Audit was completed, including the tracking of TIF project budgets and eligible expenses as well as new procedures the City established to ensure consistency and accuracy. The City is proud of these improvements and continues to work with its partners to provide maximum value to the taxpayers.

The City acknowledges that this Audit Report found some errors in bookkeeping, increment calculation, and parcel valuation. The City confirmed many of these with the State Auditor's team during the course of the audit, and plans to incorporate the associated recommendations, some in partnership with the Vermont Economic Progress Council (VEPC) and the Division of Property Valuation and Review (PVR). To-date, the City has already worked with MuniCap to incorporate new procedures, specific to increment calculation that will improve the accuracy of the data used and resulting increment value (see attached).

Objective 1 Finding Response

The City acknowledges the audit took issue with the premiums resulting from the issuance of bonds in support of TIF improvement projects. Specifically, the increase in available proceeds for TIF improvements overall ($4.6M), as well as the increase in interest cost for the General Obligation Series 2022B Bonds as compared to the interest projected in the VEPC-approved District financing plan from 2021 ($11.8M vs $4.0M). The City would like to respond to these findings specifically.

1. Increase in TIF-eligible Proceeds:
   a. 24 V.S.A. § 1898, the general statute authorizing the issuance of financing for TIF improvements expressly provides that bonds issued for any particular TIF district shall be "sold at not less than par." Given this plain and clear language in the statute, it is the City's understanding that bonds may be issued at or above par amount (i.e. a premium). This makes sense given the legislative purpose of the TIF Statute is to fund public improvements to stimulate economic development, improve and broaden the tax base, and enhance the general economic vitality of the issuing municipality and the region and the State. Moreover, Charter 53 of Title 24, the general statute for municipal financing of capital assets, provides that the legislative body of the municipality sets the terms and interest rates for its bonds.

See our comment 3 on page 50.

   b. While the report attempts to make a distinction between the City's general obligation and TIF bonds, the City does not think that is a fair characterization as the City's TIF bonds are a full faith and credit obligation. The TIF Statute provides that if the TIF increment was ever insufficient, the City remains liable. Moreover, the City followed its general and customary practices for the TIF Bonds in the same manner as its non-TIF Bonds in order to finance capital assets with the best and most favorable terms available under then current market conditions.

See our comment 4 on page 50.

   c. Please see an additional memo from the City's Bond Counsel attached.
   d. As a matter of routine procedure, six months ago the City submitted a Substantial Change Request to VEPC. It provided information on the Series 2022B Bonds including the interest rate and premium. (See attached proposed financing plan, especially tables labeled "Series 2022B" and "Cash Flow").

See our comment 5 on page 51.

   e. Additionally, Council approval of the use of the premiums from the Series 2022B Bonds on Great Street Main Street project costs is contingent on the final approval of the revised District Financing Plan by VEPC.

See our comment 6 on page 51.

See our comment 7 on page 51.

2. Increase in Interest Associated with Bond Financing:
   a. Please see an additional memo from the City's Bond Counsel regarding the interest rates and impact of market conditions on bond terms attached.
   b. When the City's TIF Advisor, David White, was preparing the financing plan for the City's Substantial Change Request in November 2021, the Vermont Municipal Bond Bank (VMBB) provided a $26.5M projection (attached) with rates as of 10/4/2021 with a Net Interest Cost of 1.93%. These rates were used for the final projection included in the November 2021 financing plan with an amortization schedule for $30.5M, and total interest of ~$4M.
   c. After the City received voter approval in March 2022, VMBB provided an updated projection with rates as of 5/18/2022 (attached), less than six months after the original showing a Net Interest Cost of 3.72%. This amortization shows that interest projections significantly increased by ~$5.4M (to ~$9.4M). This projection was for financing of $30.5M, and did not include consideration of premiums. This shows the incredibly volatile market in which the City sought financing and how quickly interest rates were rising.
   d. The Series 2022B Bonds were issued three months later in August 2022. The final amortization schedule with an interest rate of 5.0% only increased interest by ~$2.4M beyond the VMBB's May projections.
   e. During the three-month period following VMBB's May 2022 projection, the Federal Reserve raised the target Federal Funds rate by 150 basis points. In this rapidly increasing rate environment, the City needed to move quickly to lock in financing before rates went any higher. Indeed, in the three months following the August 2022 debt issuance, the Federal Reserve raised the target Federal Funds rate another 200 basis points. By moving quickly, the City likely saved taxpayers several million dollars of additional interest cost and had the City not acted, could have put the entire project at risk.
   f. VEPC requires TIF applications to be submitted approximately two months prior to being reviewed at a VEPC meeting. Simple applications are sometimes approved in a single meeting, but frequently consideration requires two or more meetings. Accordingly, a request to VEPC needs a minimum of two months of lead time and perhaps longer. Such a delay would have led to higher financing costs threatening the project.
   g. The City is confident that it had all the necessary authority to proceed with the financing without returning to VEPC. Never in the City's experience or in the experience of the City's TIF Advisor, has VEPC asked for review of final terms of TIF financing. There is nothing in statute or rule requiring such review. VEPC must authorize the maximum TIF debt, but all parties understand that the actual terms of the financing may vary from the projections based on market conditions at the time the debt is issued. It is the City's responsibility to create as much value as possible in the TIF District, and moving quickly to issue financing is consistent with that goal. Requiring the City to return to VEPC for a review of final terms of TIF financing

See our comment 8 on page 52.

would not be in the best interest of taxpayers and jeopardized the viability of the very project itself.

h. When the City issued each of its Downtown TIF Bonds, each series was issued and sold along with other City general obligation bonds. By combining the offerings of these bonds in a single transaction, the City saved transaction costs, such as rating agency fees, bond counsel fees and financial advisor fees. Through the City's improved practices related to financing, its credit rating improved from A2 in 2017 to Aa3, resulting in interest savings for the City. Both of these practices provided cost savings to both the State's Education Fund and the City's General Fund (see attached memo from Bond Counsel).

i. As noted in the attached memo from the City's Bond Counsel, the State of Vermont's recent bond issues in 2021 and 2021 were sold with a premium. The VMBB issues bonds at a premium, including bonds issued for other Vermont TIF Districts.

Additional Comments & Notes

1. Request for Additional Recommendation –
The City is requesting that an additional recommendation be added to Exhibit 10, Page 32. The Audit Report states on Page 20, "PVR and VEPC should pay extra attention to a locally voted tax exempt properties when certifying TIF District original taxable values and monitoring tax increment calculations."

See our comment 9 on page 52.

The additional recommendation would reflect this comment, and focus on VEPC and PVR working to implement improvements to the overall OTV review and certification process. This should include a collaboration where the municipality, VEPC, and PVR meet to complete a thorough review of all parcels within a proposed District. The review should include, but not be limited to, a review of all parcels within a proposed District and a review of all parcels with any type of value exemption for statutory compliance as well as all parcels housed by "container parcels" (i.e.: condominiums) to ensure the inclusion of all "un-landed" parcels. A revised process would ensure accuracy and completeness of the OTV before certification, as well as future increment calculations.

2. City Disagrees with SAO's Description of City's 2022 Financing Strategy –

The State Auditor described the City's strategy to finalize bond terms in 2022 in the following manner (also found on Page 13 and again in Exhibit 10 on Page 32):

See our comment 10 on page 52.

"Instead, the City unilaterally decided to structure its bond terms to yield proceeds needed to cover increased costs without having the impact of the premium assessed by VEPC."

The City disagrees with the State Auditor's statement as it does not accurately reflect the City's intent at the time the financial terms were agreed to. As described above, the City believes it was acting responsibly in the best interests of taxpayers and had full authority to proceed as it did.

The City appreciates this opportunity to comment on the Draft Report. We remain committed to continuing the work we have begun to improve our administration of the Downtown and Waterfront TIF Districts.

Best regards,

Katherine Schad
Chief Administrative Officer

Enc: **Attachment 1:** Increment Calculation Procedure; **Attachment 2:** Memo from City's Bond Counsel; **Attachment 3:** June 2023 Proposed Financing Plan; **Attachment 4:** 10/4/2021 VMBB Bond Projections; **Attachment 5:** 5/18/2022 VMBB Bond Projections

Attachment 2: Memo from City's Bond Counsel

PAUL FRANK + COLLINS ATTORNEYS

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MEMORANDUM

To: Katherine Schad
Chief Administrative Officer
City of Burlington

From: Thomas Melloni
Kathy Zhou
Paul Frank + Collins P.C.

Date: December 19, 2023

Re: City of Burlington - Downtown Tax Increment Financing District

Introduction

This memorandum addresses the City of Burlington (the "City") and its Downtown Tax Increment Financing District ("Downtown TIF District") and the draft report of the Vermont State Auditor ("State Auditor") with respect to issuance of the City's General Obligation Downtown Tax Increment Financing District Bonds (the "TIF Bonds").

Specifically, the draft report of the State Auditor questioned whether issuance of bonds at a premium are permitted.

The creation, implementation, administration, and operation of TIF districts in Vermont is primarily governed by the statutes located at 32 V.S.A. § 5404a, Title 24, Chapter 53, Subchapter 5 (the "TIF Statute") and the Tax Increment Financing Districts Adopted Rule, adopted by the Vermont Economic Progress Council (VEPC) on May 6, 2015 (the "TIF Rule").

The TIF Statute and TIF Rule provide that bonds may be used to finance improvements with a TIF district and may be issued at "**not less than par**." Accordingly, given such express authority, and in light of the overall purpose of the TIF Statute, it is our view that the City was legally permitted to issue the TIF Bonds at a premium to finance improvements that serve the Downtown TIF District.

Background

The City issued its TIF Bonds in several series. The City received voter authorization on two occasions for indebtedness to finance improvements that serve a public purpose and fulfill the purpose of its Downtown TIF District as provided under applicable law.

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MEMORANDUM
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The first voter authorization occurred at the annual meeting of the City held on March 3, 2015 (the "2015 Voter Authorization") when the voters approved issuance of bonds or notes in a principal amount not to exceed $10,000,000 for improvements to the Downtown TIF District.

The second voter authorization was at the annual meeting of the City held on March 1, 2022 (the "2022 Voter Authorization") when the City voters authorized pledging of the credit of the City for bonds or notes in a principal amount not to exceed $25,920,000 for funding one or more public improvements serving the Downtown TIF District and related costs. The ballot items and the related warning and public notice described the projects that serve the Downtown TIF District and for which debt was to be incurred.

As part of the public notices published prior to each vote, the City provided estimates of costs for the improvements intended to be financed by the voter authorized indebtedness. The public notices described these project costs as estimates and did not designate them as a "not to exceed" limit to the amount of indebtedness that the City could issue. In particular, the public notice preceding the March 1, 2022 annual meeting further informed voters that due to inflation, the actual costs would likely be higher than what was currently budgeted. Interest rates were indicated as being determined based upon market conditions at the time of issuance.

Bond Issuances

The following TIF Bonds were issued to finance improvements with respect to the Downtown TIF District:

- Series 2017D issued December 20, 2017 in the original principal amount of $3,400,000;
- Series 2018D issued November 28, 2018 in the original principal amount of $1,570,000; and
- Series 2022B issued August 31, 2022 in the original principal amount of $30,120,000.

The total voter authorization received from both the 2015 Voter Authorization and the 2022 Voter Authorization was for indebtedness in a principal amount of up to $35,920,000.

In the ballot questions presented to the voters, the voters approved an aggregate principal amount of bonds or notes. The notices issued prior to the meetings informed the voters that, upon voter approval, the City Council would have the power to determine how to sell and issue the bonds or notes, whether in competitive sale, a negotiated sale or through the Vermont Bond Bank. Voters were informed that the terms of repayment would not exceed twenty years and the interest rate of any bonds or notes would be determined based upon market condition at the time such debt was incurred. Each bond issuance was approved by resolutions of the City Council adopted at public meetings.

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At the time that the City published the public notices, the City did not indicate a maximum interest rate or the specific manner of sale of the proposed indebtedness other than describing the City's historical process for selling its bonds either through a negotiated offering or through a competitive bid process, all of which would need to be subsequently authorized by the City Council.

In each issuance, the TIF Bonds were issued and sold along with other City of Burlington general obligation bonds. By combining the offerings of these bonds in a single transaction, the City saved transaction costs, such as rating agency fees, bond counsel fees and financial advisor fees, thereby benefitting the State's Education Fund and the City's General Fund. This has been the City's historic practice. It is our understanding that, by aggregation of several bond issue into a single offering, investor demand is greater, thereby providing better terms for the City than if a smaller bond size was offered.

The Series 2017D Bonds and the Series 2018D Bonds were issued through negotiated sales with selected underwriting firms. At the time the Series 2017D and 2018D bond issuances, the City's credit rating was Moody's "A2." The Series 2022B Bonds were sold in a competitive bid process of sale. The City's credit rating at that time was Moody's "Aa3." Through steps undertaken by the City Administration and City Council the City's credit rating improved from A2 in 2017 to Aa3 in 2022, resulting in significant interest savings to the City. The State Auditor's draft report makes no mention of the interest rate savings and cost reductions the City achieved through the historic practice of aggregating several bond issues into one financing or the City's efforts and work on improvement of its credit rating.

Market Conditions – Premium Bonds

During a historic low interest rate environment, investors typically seek a higher interest rate or coupon rate for their bonds. This is particularly important when financial markets indicate a movement to higher interest rates. This was the general market between 2017 and 2022 – the time frames for the issuance of the TIF Bonds. In a rising interest rate environment, the principal value of a bond can decrease significantly if its stated coupon rate is below the then current market rate. Over the last several years with the low interest rate environment, it was fairly customary in the municipal market for issuers, not only the City of Burlington, to issue bonds with a 4 or 5 % coupon rate in exchange for a premium in addition to the principal amount of bonds being issued. The State of Vermont recent bond issues in 2021 and 2023 were sold with a premium. The Vermont Bond Bank, including bonds issued for other Vermont TIF Districts, issues bonds at a premium[1].

Given the nature of the municipal capital markets, the City was often required to act quickly to secure favorable interest rates for its bonds, including the TIF Bonds. For example, the Federal Funds rate as set by the Federal Reserve increased by 1.25% between the March 2015 bond vote and issuance of TIF Bonds in December 2017 and increased another .75% when the City issued the 2018 Series of TIF Bonds. In January 2022, when the public notice for the 2022 Vote was

[1] For the Bond Bank, such premium was used to pay costs of issuance as well as funding the loans to local government issuers. As the Bond Bank sold at an interest rate that created premium, its overall costs of financing were embedded in the rate charged to local government issuers.

MEMORANDUM
Katherine Schad, Chief Administrative Officer
December 19, 2023
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issued, the Federal Funds target rate was 0.0 to 0.25%. At the time the TIF Bond was issued in August 2022, the Federal Funds target increased to 2.5%. Over the following two to three month period, the Federal Funds Rate was raised another 2.0%. While these are short term rates, it shows that any delay in issuing the TIF Bonds would have likely increased the overall costs to the City in interest.

Over the last ten years, the City has issued its general obligation bonds at premium. As identified above, the premium bonds were commonplace in the market. The State Auditor draft report attempts to make a distinction between the City's general obligation bonds and the TIF Bonds. That is not a fair characterization as the TIF Statute provide that if the TIF increment was ever insufficient, the City remains liable. The City's TIF Bonds are a full faith and credit obligation. Moreover, the City followed its general and customary practices for the TIF Bonds in the same manner as its non-TIF Bonds in order to finance capital assets with the best and most favorable terms available under then current market conditions.

PFM, the City's municipal advisor reported that in the case of the Series 2022 TIF Bonds, the interest rate scales, coupons, reoffering yields and underwriting compensation received for the Series 2022 TIF Bonds are fair and favorable to the City. PFM stated that the final all-in true interest cost of 2.9262% for the Series 2022B Bonds was favorable to the City in light of prevailing market conditions.

Analysis.

24 V.S.A. § 1898, the general statute authorizing the issuance or incurrence of financing for TIF improvements expressly provides that bonds issued for any particular TIF district shall be "sold at not less than par." Given this plan and clear language in the statute, bonds may be issued at or above par amount (*i.e.* a premium). This makes sense given the legislative purpose of the TIF Statute is to fund public improvements to stimulate economic development, improve and broaden the tax base, and enhance the general economic vitality of the issuing municipality and the region and the State. Moreover, Charter 53 of Title 24, the general statute for municipal financing of capital assets, provides that the legislative body of the municipality sets the terms and interest rates for its bonds. The general tenor of the TIF Statute provides the legislative body of the municipality with authority and significant flexibility in funding TIF development projects. This makes sense given the legislature's stated purpose of the TIF Statute of promoting economic development, economic vitality and job creation.

For example, such flexibility is contained in Section 1898(d) of the TIF Statute which states that bonds issued for financing improvements within the TIF district "shall be authorized by resolution or ordinance of the local governing body and may be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in registered form, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium or payment, at such place or places, and be subject to such terms of redemption, such other characteristics, as may be provided by such resolution." Considering the requirement that bonds shall not be sold less than par means premium bonds are permitted. Neither the TIF Statute nor the TIF Rule impose any limit on the interest rate. While the issuance of premium bonds may result in a higher interest rate for the bonds, determining the interest rates of bonds issued for TIF district improvements is within the authority of a municipality's legislative body.

Under the 2015 and 2022 Voter Authorizations, the City's voters approved the issuance of bonds in a total principal amount not to exceed a particular amount. The City was not required by the TIF Statute or TIF Rule to specify a maximum interest rate in the ballot question or the warning. General state law on indebtedness provides that unless a maximum interest rate is submitted to the voters by the municipality, the interest rate is to be approved by the legislative body. *See* 24 V.S.A. § 1759(a)(1). As voters were not required to approve a maximum interest rate, it was within the authority of the City, through its City Council, to determine the interest rate at which to sell the TIF Bonds.

Furthermore, under the TIF Statute, indebtedness may be retired over any period authorized by the legislative body. Again, this shows the legislative intent to provide flexibility in structuring TIF related financing as general law for municipal bonds requires principal payments in equal or diminishing amounts over a period not to exceed 20 years. Under the TIF Statute, a legislative body could defer principal payments until at or near maturity (i.e., a balloon payment). Accordingly, if a municipality selects a longer period within which to repay the bonded debt, it will, over the longer life of the debt, pay more in interest. That is permissible under the TIF Statute. The City, however, in issuing its TIF Bonds, selected a shorter period of time within which to pay its bonded TIF indebtedness, which was less than the twenty years indicated in its public notices. Principal payments started in the year after bond issuance. I think this is important in showing how the City works diligently with its advisors to manage its debt issuance to provide for the lowest cost of capital reasonably available in the market. This was not noted in the State Auditor draft report. Moreover, the City has the right under certain terms to refinance its TIF Bonds and thereby reduce overall debt service. This is a valuable tool for the City to potentially reduce total borrowing costs. Other TIF Districts that go through the Vermont Bond Bank pool program do not have that option.

The TIF Statute does not limit the use of tax increment to repay debt service on the TIF Bonds, whether issued at par or at a premium. As noted above, the TIF Statute explicitly allows bonds to be issued above par. Amounts of tax increment that exceed the amounts needed to pay for the financing of improvements may be retained and used for financing payments or even prepayment of the principal and interest on the financing. *See* 24 V.S.A. § 1900. Financing is defined as the debt incurred, including principal, interest and any fees or charges related directly to that debt. The tax increment may be used to repay the financing whatever the debt is incurred and issued with a premium or whether it is issued at par, and whether it is issued for a short term or for a longer term. *See* 24 V.S.A. § 1894(2) and 24 V.S.A. § 1898(d). This makes sense particularly when viewed in light of the purpose behind the TIF Statute – to fund public infrastructure and stimulate economic development, thereby increasing property values and generating property tax revenue.

Appendix V
SAO Evaluation of Management's Comments

In accordance with generally accepted government auditing standards, the following tables contain our evaluation of management's comments.

Comment #	Management's Response	SAO Evaluation
1	*The City disagrees with the wording of the headline "that the City committed a 'misstep' by securing $4.6 million of bond proceeds and its assertion that in doing so the City 'exceed[ed]' a VEPC approved cap. This wording implies unfairly a clear violation of a TIF regulation or statute by the city when no so [sic] such clear violation occurred."*	We used "missteps" in our report title as the City made several mistakes in its administration of the TIF district. For example, the City: • Raised $40,525,865 from debt issued to pay for TIF improvements, which is $4,605,865 more than the amount in the VEPC-approved District Finance Plan. The City did not seek or receive VEPC authorization for the increase. • Kept $95,363 that should have been sent to the Education Fund and fell $295,331 short of allocating the correct amount of municipal tax increment to the Downtown TIF Fund. • Represented in SCRs in 2020 and 2021 that a development fee paid by Champlain College would be deposited to the Downtown TIF Fund but failed to deposit $1,040,00 of fees.

2	*The City believes "the draft report is unbalanced in that it raises potential concerns about the cost of bond premiums without discussion or acknowledgement of the practice's benefits to the City and to the Education Fund."*	We highlighted the City's failure to seek VEPC approval for a higher amount of TIF-fund improvements. Because of this failure, VEPC did not have the opportunity to compare the very benefits touted by the City to the increased costs to the Education Fund. Instead, the City bypassed this control on limiting increased costs of debt service being borne by the State Education Fund.

3	*The City understands that bonds "may be issued at or above par amount (i.e. a premium)," as 24 V.S.A. §1898 "provides that bonds used for any particular TIF district 'shall be sold at not less than par.'" The City also cited the general statute for municipal financing which "provides that the legislative body of the municipality sets the terms and interest rates for its bonds."*	We agree that bonds may be issued at a premium and we acknowledged that 24 V.S.A. §1898(d) and TIF Rule Section 804 provide that municipal legislative bodies have authority to set terms and interest rates for bonds. However, this authority is limited by the maximum TIF-funded improvements approved by VEPC. Thus, bond terms selected by a municipal legislative body cannot generate debt proceeds (principal and premium) to pay for TIF improvements that exceed the amount authorized by VEPC. Had the City structured its bonds so that principal and premium proceeds were equal to or less than $35,920,000, the City would not have exceeded the amount of TIF-funded improvements approved by VEPC.

4	*The City stated that "the report attempts to make a distinction between the City's general obligation and TIF bonds, [and] the City does not think that is a fair characterization as the City's TIF bonds are a full faith and credit obligation."*	Regardless of the City's repayment obligations, there are clear distinctions between general obligation (GO) bonds issued for TIF district improvements and those issued for capital improvements outside of a TIF district. Namely, the requirement for VEPC approval of TIF District Finance Plans, including GO bonds, and the use of education tax increment to repay GO bonds issued to pay for TIF district improvements.

Comment #	Management's Response	SAO Evaluation
5	*According to the City, "six months ago the City submitted a Substantial Change Request to VEPC. It provided information on the Series 2022B bonds including the interest rate and premium."*	The City submitted a SCR in June 2023, for two purposes 1) to respond to VEPC's requirement that the City propose a resolution to its failure to deposit the annual Champlain College development fee to the Downtown TIF Fund and 2) to request that VEPC also include a review of the revised Financing Plan as part of the statutory requirement for adjustment of the equal share percentage. The City provided a debt amortization table for the Series 2022B bonds, which shows principal and interest payments over the life of the bonds, but the District Finance Plan submitted with the SCR was not revised to include a request for an increase in VEPC-authorized TIF-funded improvements. Further, the memo accompanying the SCR claimed that the City "had negotiated a bond premium that does not need to be repaid." This is a misleading characterization of the impact of bond premiums as the MSRB notes that premium bonds have a coupon rate (e.g., interest rate) that is higher than the prevailing market interest rate and an article in the Government Finance Officers Association magazine explains that a bond that sells at a high premium suggests the issuer could have raised the same amount of principal but with less debt service.

6	*The City notes that City Council approval of the use of the premiums from the Series 2022B Bonds is contingent on the final approval of the revised District Finance Plan by VEPC.*	This may be the case, but the District Finance Plan submitted to VEPC in June 2023 did not include the premium in the amount of TIF-funded improvements. In fact, the amount of TIF-funded improvements disclosed in the District Finance Plan decreased slightly to $35.7 million from the $35.9 million approved by VEPC in November 2021.

7	*The City described volatility in interest rates and the timeline for submissions to VEPC and asserted that delays related to VEPC's timeline would have led to higher financing costs.*	The requirement to obtain VEPC approval for substantial changes to a District Finance Plan exists regardless of interest rate volatility. Further, municipalities balance multiple uncertainties with TIF districts including capital construction costs, debt financing costs, and the value and timeline for private real estate development. In fact, the January 2022 JFO TIF district report noted that "at the moment, the risks to TIF districts, are on balance, tilted towards the negative. The costs and availability of construction are likely to put strain on towns and their infrastructure plans."

Comment #	Management's Response	SAO Evaluation
8	*The City believed it had the necessary authority to proceed with financing without returning to VEPC and stated that there is nothing in statute or rule requiring VEPC's review of the final terms of TIF financing.*	We did not indicate that VEPC must review final terms of financing. Rather, we concluded that the City generated $40,525,865 of debt proceeds to pay for TIF improvements, which is $4,605,865 above the amount in the VEPC-approved District Finance Plan, and interest for the last debt issued was $11,844,433, almost triple the interest disclosed to VEPC in the District Finance Plan.
9	*The City requested that we add a recommendation that focuses on VEPC and PVR working to implement improvements to the overall OTV review and certification process, including "a review of all parcels within a proposed District and a review of all parcels with any type of value exemption for statutory compliance…"*	By statute and TIF Rule, municipalities have responsibility for ensuring the accuracy of the original taxable value. Nevertheless, because VEPC and PVR have some oversight of OTV via the certification process described in TIF Rule Section 902, we will send a separate communication to VEPC and PVR, apprising them of the issues that we noted during the audit related to parcels with value exemptions and parcels that were excluded from the TIF district parcel listing.
10	*The City disagreed with our use of the term "unilaterally" to describe the City's decision to structure its bond terms as "it does not accurately reflect the City's intent at the time the financial terms were agreed to" and the City believed it was acting responsibly in the best interest of taxpayers and had full authority to proceed as it did.*	It is not in the City's sole purview to determine the total amount of infrastructure improvement costs that may be TIF-funded. The City made decisions about structuring its bond terms that resulted in more debt proceeds to pay for TIF improvements than authorized by VEPC. The City failed to advise VEPC as required of increased costs of TIF improvement and debt service. Thus, the City acted unilaterally.

Appendix VI
Reprint of VEPC's Comments

The following is a reprint of VEPC's response to a draft of this report.

Vermont Economic Progress Council
Agency of Commerce and Community Development
6th Floor, Deane C. Davis State Office Building
1 National Life Drive, Montpelier, VT 05620-0501

January 10, 2024

Mr. Douglas R. Hoffer, State Auditor
Ms. Tanya Morehouse, Chief Auditor
Vermont State Auditor's Office
132 State Street
Montpelier, VT 05633-5101

Dear Mr Hoffer and Ms. Morehouse:

The Vermont Economic Progress Council (VEPC) thanks you and your office for the opportunity to provide comments on the Burlington Downtown TIF District Audit. Specifically, the SAO asked for our comments regarding SAO recommendations to VEPC. We concur with both recommendations and provide comments below:

1.Determine an appropriate remedy for the City's failure to adhere to the VEPC-approved District Finance Plan, including the cap on TIF-funded improvements.

On August 31, 2023, VEPC unanimously passed two motions addressing the City's failure to adhere to the VEPC approved District Finance Plan. VEPC resolved the $1,040,000 Champlain College Development Fee, which should have been deposited into the TIF fund from fiscal year 2018 through 2021 per VEPC's approval of the 2020 Substantial Change Request, by adjusting the share of Education Tax increment downward from 75% to 69% beginning with the 2024 fiscal year. VEPC postponed a Substantial Change Request and Adjustment Equal Share Review submitted by the City of Burlington for the Downtown TIF District pending the receipt of supplemental information from the City, that being a complete Financing Plan which includes all information regarding bond premiums and how they will be used, increased project costs, and any other additional details which may be revealed through the current State audit of the TIF District. Such supplemental information and complete requests shall be submitted to VEPC staff by the City of Burlington within 90 days of the release of the State audit and in accordance with the VEPC monthly meeting deadlines. The City was notified that action by the Council upon receipt of the supplemental information may include further adjustment to the share of the education tax increment.

VERMONT

"Improving the economic vitality of Vermont and supporting a sustainable future for our citizens."

2. Amend the TIF Rule to explicitly require disclosure of bond premiums and associated increased debt service in both District Finance Plans and public informational notices.

VEPC agrees to make the proposed amendments consistent with this recommendation, subject to the rules relating to the ICAR and LCAR process.

We appreciate your staff's professionalism throughout this audit process and their diligence in auditing the Burlington Downtown TIF District.

Sincerely,

John Russell

John Russell	Jessica Smith Hartleben
Chair	Executive Director
Vermont Economic Progress Council	Vermont Economic Progress Council