

March 8, 2016

Request to the Joint Fiscal Committee re: the request by the Chittenden Unit for Special Investigations (CUSI) to be allowed to extend their deadline for submitting a comprehensive plan to bring their State of Vermont leased space located at 50 Cherry St. up to FMV. (See Attachment A)

In accordance with the plan laid out in the lease entered into by the SOV and CUSI dated July 27, 2015, CUSI was allowed to continue paying \$1,000.00 per year in rent for FY 16. In return, CUSI was to submit a plan to the Commissioner of BGS outlining how they planned to go about bringing their rental amount into line with the FMV for the Burlington area. (Below is the report that BGS Property Management Specialist Allen Palmer submitted to the JFC on August 6, 2015 explaining this agreement see Attachment B).

In February of this year, Allen Palmer had several conversations with the CUSI representatives to discuss how they were going respond to this statutory challenge. During the course of these conversations it was learned that CUSI wished to reconfigure their space thereby giving up a small amount of space and acquiring a larger amount of adjacent space.

Currently the adjacent space is unused, and BGS has no issue with this plan. However, it should be noted that the net gain to the amount of space that CUSI rents will be substantial, 5046 SF vs the 3907 SF that they are currently occupying. Using the current FFS figures, it will increase their rental obligation by approximately \$30,000.00 over the next 4 years.

On February 26, 2016, CUSI submitted a plan that specifies that they will pay \$17,581.50 for FY 17 on July 1, 2016. (see attachment A). Additionally, they have requested that they be given until November 1, 2016 to submit a follow up plan that will address how they would like to proceed going forward.

Because CUSI is making a “good faith” effort to comply with the language in their current lease, BGS requests that the JFC take all of the information submitted herein and decide whether to approve or deny CUSI’s request.

Thank you,

Michael J. Obuchowski
BGS Commissioner

ATTACHMENT A: Response to Statute



CUSI

Chittenden Unit for Special Investigations

50 Cherry Street, Suite 102
Burlington, VT 05401
Phone: (802) 652-6800
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MEMORANDUM

To: Michael Obuchowski, Commissioner, BGS
Wanda Minoli, Deputy Commissioner, BGS

From: Michael Warren, Director Chittenden Unit of Special Investigations
Veronica Rathgeb, Executive Director Chittenden Children's Advocacy Center

Date: February 26, 2016

Subject: Lease for CUSI & CCAC

This memo is to inform you of our plan to develop a long term lease and fee for space arrangement for the Chittenden Unit for Special Investigations (CUSI) and the Chittenden Children's Advocacy Center (CCAC). This plan will bring CUSI and the CCAC into compliance with Sec. E.112 "Use of State Space; Clarification"

First, CUSI and the CCAC agree to pay \$17,581.50 for FY17 (beginning on July 1, 2016) to BGS for **3907 square feet** of space leased at **50 Cherry Street, Suite 102, Burlington, VT**. This is the first of four steps proposed by the State of Vermont that will incrementally raise the rent over the next three fiscal years ultimately reaching the state "fee for space/fair market value" by July 1, 2019.

Second, we (CUSI and the CCAC) request that BGS grants us an extension on our current lease requiring a March 1, 2016 deadline to provide a plan on bringing CUSI and the CCAC into full compliance with section 23 of ACT 26. We currently are in the process of attempting to re-negotiate the space that we use. We have begun discussions with BGS regarding taking over new space and giving up current space to allow more suitable conditions. This will increase the amount of total square footage we occupy. There are multiple factors that need to be discussed and negotiated before we can provide a full plan and execute a five year lease.

Therefore, we are requesting the state allow us until November 1, 2016 to complete the review of the possible restructuring of space and potential financial allocations to assist with the changes.

Any questions please let us know.

Thank you.

CC: Allen Palmer, Property Management Specialist II
Janine Wright, Deputy Chief, Burlington Police Department

ATTACHMENT B: report to JFC

Allen Palmer
Property Management Specialist
Department of Buildings & General Services
Division of Property Management

August 6, 2015

Joint Fiscal Committee

RE: Request to consider approval of Less Than Fair Market Value Lease

Dear Committee members:

Commissioner Obuchowski has requested that I prepare a memo outlining the history of the LANDLORD-TENANT relationship between the State of Vermont and the Chittenden Unit for Special Investigations (CUSI). Additionally, I want to take this opportunity to let the Committee know how much the Commissioner and I support CUSI and their important mission. This exercise is an attempt to follow the law.

CUSI is under the auspices of The Chittenden Children's Advocacy Center, Inc. and has occupied 3,907 SF of State owned space at 50 Cherry Street in Burlington since 1999.

During their tenancy, the State has charged CUSI \$1,000.00 per year in rent, while the FFS rate has ranged from \$33,639.27 in in FY 04 to \$50,673.79 in FY15. Originally it was documented through an "agreement", but more recently the State and CUSI have executed a lease outlining this arrangement.

In 2014, Commissioner Obuchowski became aware that the State's actions were in violation law since it was leasing this space to a non-State entity at less than Fair Market Value (FMV).

The State is using its Fee For Space rate for the Burlington Area to establish FMV.

The Fee for Space (FFS) program creates a square footage cost that is based on the "sum of expenses" to operate the building. Thru this mechanism the tenant rent is based on actual cost of the space. An analysis of the cost difference between what CUSI paid and what should have been paid when compared to the State's Fee For Space (FFS) Program is attached here:

CUSI LEASE PAYMENT COMPARISON TO FFS RATES IN BURLINGTON

YEAR	CUSI PAYMENT	FFS RATE	SF	FFS TOTAL	PAYMENT DELTA	CUSI SUBSIDY		
FY04	\$ 1,000.00	\$ 8.61	3,907	\$ 33,639.27	\$ 32,639.27	\$ 32,639.27		
FY05	\$ 1,000.00	\$ 8.09	3,907	\$ 31,607.63	\$ 30,607.63	\$ 30,607.63		
FY06	\$ 1,000.00	\$ 9.60	3,907	\$ 37,507.20	\$ 36,507.20	\$ 36,507.20		
FY07	\$ 1,000.00	\$ 10.25	3,907	\$ 40,046.75	\$ 39,046.75	\$ 39,046.75		
FY08	\$ 1,000.00	\$ 10.14	3,907	\$ 39,616.98	\$ 38,616.98	\$ 38,616.98		
FY09	\$ 1,000.00	\$ 11.79	3,907	\$ 46,063.53	\$ 45,063.53	\$ 45,063.53		
FY10	\$ 1,000.00	\$ 13.00	3,907	\$ 50,791.00	\$ 49,791.00	\$ 49,791.00		
FY11	\$ 1,000.00	\$ 13.05	3,907	\$ 50,986.35	\$ 49,986.35	\$ 49,986.35		
FY12	\$ 1,000.00	\$ 13.24	3,907	\$ 51,728.68	\$ 50,728.68	\$ 50,728.68		
FY13	\$ 1,000.00	\$ 12.47	3,907	\$ 48,720.29	\$ 47,720.29	\$ 47,720.29		
FY14	\$ 1,000.00	\$ 13.46	3,907	\$ 52,588.22	\$ 51,588.22	\$ 51,588.22		
FY15	\$ 1,000.00	\$ 12.97	3,907	\$ 50,673.79	\$ 49,673.79	\$ 49,673.79		
TOTAL	\$ 12,000.00			\$ 533,969.69	\$ 521,969.69	\$ 521,969.69	TOTAL AMOUNT OF CUSI SUBSIDY	

Although the CUSI lease started in 1999, THE FFS program did not develop until 2004. The Data above illustrates the amount of money that BGS has subsidized CUSI from 2004 through FY15.

As you can see, the State has subsidized CUSI's rent significantly (\$521,969.69) over the past 12 years based on a comparison of established the FFS rate and the fee CUSI paid.

In 2014, the Legislature passed the language stipulating that the State and CUSI would have a lease in place by July 1, 2015 that started CUSI on a gradual path to paying the State's FFS rate. The resulting lease called for Fair Market Value to be accomplished in incremental steps by July 1, 2018, see APPENDIX A.

Because CUSI was unable to budget for a rental increase in FY16, they returned to the Legislature and requested a stay on the language shown in APPENDIX A. In response to their plea, the Legislature passed language in ACT 26 CAPITAL APPROPRIATIONS BILL of 2015, see APPENDIX B.

In response, the SOV and CUSI have agreed that due to CUSI's inability to budget for the agreed upon rent increase in the lease executed in FY 2015, the lease rate for FY2016 would remain at \$1,000.00 per year with the proviso that CUSI present the Commissioner of BGS by March 1, 2016 with an incremental plan to bring their rent up to the State's FFS rate by July 1, 2019.

The attached lease #376 memorializes that agreement. I request that you approve the enclosed lease as is required in **29 V.S.A. § 165(h) SEE APPENDIX C.**

Thank you,

Allen Palmer

APPENDIX A.

**ACT 176 of the 2013-2014 Legislative Session
Sec. E.112 USE OF STATE SPACE; CLARIFICATION**

(a) Notwithstanding 29 V.S.A. § 165(h) the Commissioner of Buildings and General Services shall extend through June 30, 2015 the lease for space for the Chittenden Unit for Special Investigations at current payment rates. For fiscal year 2016 and beyond, the Commissioner shall consult with the Director of States' Attorneys and Sheriffs and the Director of the Chittenden Unit for Special Investigations and develop a long-term lease or fee-for-space arrangement. In the event such arrangements include a payment below prevailing market prices, it shall be presented to the Joint Fiscal Committee as required by 29 V.S.A. § 165(h) for approval at a regularly scheduled Joint Fiscal Committee meeting after September 1, 2014.

APPENDIX B.

ACT 26 CAPITAL APPROPRIATIONS BILL

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***** Policy *****

***** Buildings and General Services *****

Sec.23. LEASING PROPERTY; FAIR MARKET VALUE

(a) It is the intent of the General Assembly that any leases for State-owned space in any State-owned building, structure, or other real property under the jurisdiction of the Commissioner of Buildings and General Services that are in existence prior to the effective date of this act shall be renewed at fair market value by July 1, 2019.

(b) The Commissioner of Buildings and General Services shall evaluate whether to sell any State-owned building, structure, or other real property that is being leased under fair market

APPENDIX C

29 V.S.A. § 165(h)

• (h) No State-owned space in any State-owned building, structure, or other real property under the jurisdiction of the Commissioner of Buildings and General Services may be leased, occupied, or licensed for any purpose for less than its fair market value as determined by the prevailing area market prices for comparable space or property, except as follows:

(1) The Commissioner of Buildings and General Services may lease or license State-owned property under his or her jurisdiction for less than prevailing area market prices to municipalities, nonprofit organizations, school districts, or to persons whose proposed activities are determined by the Commissioner to serve a public purpose and when the term of the lease or license is less than three years.

(2) The Commissioner of Buildings and General Services may lease or license State-owned property under his or her jurisdiction for less than prevailing area market prices with the approval of the Joint Fiscal Committee when the term of the lease or license is three years or longer, or when the lease or license requested is a renewal of a lease or license issued pursuant to subdivision (1) of this subsection.