

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In Re: Brattleboro Memorial Hospital,)
Construction of Four-Story Medical) Docket No. GMCB-001-16 con
Office Building and Replacement Boilers)

**EXPEDITED REQUEST FOR AMENDMENT AND ONE-YEAR EXTENSION TO
CERTIFICATE OF NEED DUE TO PANDEMIC DELAYS AND RESULTANT COST
INFLATION**

Brattleboro Memorial Hospital (“BMH”) hereby requests the Green Mountain Care Board to grant to BMH an amendment and an additional extension to the Certificate of Need (“CON”) issued on October 2, 2017, and amended on December 12, 2019, for the construction and renovation of a four-story medical office building, new replacement operating room suite, replacement boilers and relocation of medical/surgical practices, all referred to as the Ron Read Pavilion Project (the “Project”). This request seeks expedited consideration from the Green Mountain Care Board in order for BMH to avoid any interruption in the construction of the Project.

BMH’s CON, as previously amended, requires that the Project cost no more than the amount of \$22,692,789, as applied for in December of 2016, and be fully implemented within five years of the date when the CON was granted—by October 2, 2022—or the CON becomes invalid and is deemed revoked. (See CON Conditions No. 3 and No. 4, as amended.) As of this date, BMH has experienced extensive and unanticipated construction delays – first, as a result of an extended Act 250 permitting proceeding, and then followed by a construction shutdown as a result of the global COVID-19 pandemic and public health emergency. Now, with all permits obtained, and having weathered the COVID-19 public health emergency, Project construction has resumed, but the cost of needed labor, materials and equipment to fully construct the Project

as applied for has increased significantly. Total Project costs are now projected to be in the amount of \$26,750,896 which represents a 7.17% increase over the original approved amount on October 1, 201, plus ten percent allowed as a nonmaterial change. See attached Exhibit 1 – BMH Modernization Project Budget Update. The projected completion date for construction has been extended into 2023. Consequently, BMH seeks to amend its CON to permit a total Project expenditure in the amount of \$26,750,896 and also to extend it for an additional year, through October 2, 2023.

Description of Approved Project:

In October of 2017, the Green Mountain Care Board granted BMH a CON to demolish a two-story building attached to the hospital building and to build a new four-story building on the same site. The new building will house central sterile processing, a new replacement operating room suite relocated from the main hospital and medical/surgical offices and exam rooms. The Project includes the renovation of 6,518 square feet of vacated space and 4,809 square feet of connecting hallways from the main hospital to the new building, and the replacement of three boilers that provide the heating and cooling for the hospital complex. The approved cost of the Project is \$22,692,789. It is important to note that this Project’s scope has not increased since CON approval in 2017.

Act 250 Proceedings:

Due to BMH’s immediate need to replace and upgrade the hospital campus’s boiler system, BMH first proceeded with an Act 250 application, filed on April 16, 2018, relating solely to the replacement of the existing boilers, while increasing their capacity in contemplation of the needs for the overall Project. The District #2 Environmental Commission (the “District Commission”) conducted a merits hearing on the application, and an Act 250 permit was issued

on August 7, 2018. Although the new boilers then proceeded to be installed, a BMH neighbor filed an appeal of this Act 250 permit with the Environmental Division of the Vermont Superior Court (“Boiler Appeal”). The Boiler Appeal was scheduled for trial on August 5, 2019. The neighbor withdrew her appeal, and the Environmental Division issued its final, (unappealed) judgment for the Act 250 permit for the boiler replacement on August 6, 2019.

On October 30, 2018, BMH filed its Act 250 application for the balance of the Project components as approved in the CON. After a merits hearing on April 10, 2019, the District Commission granted BMH’s Act 250 application for the Project as a whole on September 30, 2019. The BMH neighbor filed a motion to alter the decision which was denied on October 28, 2019. The appeal deadline for this Act 250 decision expired on November 27, 2019, and BMH’s Act 250 permit for the Project became final and binding on November 27, 2019.

Financing and Project Funding:

On December 19, 2019, BMH closed on a 30-year variable rate direct purchase bond totaling \$12.5 million with People’s United Bank that includes a 10-year mandatory redemption provision. The bonds are interest only for three years, with estimated all-in interest cost is 3.50%. The balance of the funding for the Project cost, including all Project cost increases, shall come from investment funds set aside to fund this long planned Project, including retained earnings from investments and investments and retained earnings from the bequest of Ronald Read who died in 2014. Consistent with its CON, BMH will not raise the rates it charges commercial payers to fund any expenses related to Project costs. (See CON Condition No. 2.)

Project Construction to Date:

Four new dual fuel boilers have been installed and are operational to produce steam for heat and “process heat” for functions such as laundry, central sterile processing and BMH’s main

kitchen. Subcontractor bids were received in February 2020 for the main components of the Project based on an April 13, 2020 start date. After the Governor's stop work order in March, 2020, BMH requested contracts to be rewritten with a June 8, 2020 start date at the same pricing. Unfortunately, due to the ongoing COVID-19 pandemic, BMH postponed the construction start date until September 2020.

Construction on the main Project commenced without anyone knowing what the pandemic's full impact would be on scheduling or the cost of materials. The plans for the second and third floors of the medical office building were re-designed to accommodate COVID-19 physical distance requirements. As of this filing, the demolition of existing structures was completed and infrastructure support re-routed. The steel structure has been erected, and the concrete floors have been poured. To date, construction costs for the Ron Read Pavilion have been billed to 28% complete for the new addition and interior renovations. The boiler plant portion has been billed 100%.

Pandemic Construction Delays and Cost Inflation:

Although it was believed that construction costs were "locked in" with the subcontractor bids in early 2020, the length of the necessary delays and the impact of the pandemic on material supply chains undermined these arrangements. Over the past weeks, BMH has worked with its general contractor to cost out the Project's construction expense to completion. Material shortages, production interruptions, increased demand and shipping delays throughout the global market for construction materials generally and health care related equipment and subcontractor labor cost increases specifically have severely impacted the projected cost of the Project. After extensive work to line up and price needed materials and equipment, the Project total is projected to be \$26,750,896 assuming the Project suffers no further significant or unexpected delays.

CON Amendment Request Qualifies for Expedited Review


There were no Interested Parties to BMH’s CON application, and the amendments sought by this request do not alter the proposed Project or affect BMH’s services. The additional cost of the Project is an amount that BMH has the financial strength to absorb such that it will not affect the cost of the health care services it provides or its financial stability. If this mission critical Project cannot proceed to full completion without interruption, however, BMH will suffer substantial financial harm. The prompt completion of the planned modernization of BMH’s ORs and its peri-operative service space is needed without further delay in order for BMH to provide surgical services without interruption and for it to be able to meet its bond repayment terms and to avoid risk of non-compliance with its bond covenants.

Conclusion:

Based on the above, BMH respectfully seeks an Amendment to its CON to (1) increase the total expenditures allowed to be in the total amount of \$26,750,896 to cover increased construction costs and expense as a result of the global pandemic and (2) to provide a one -year extension to Condition Number Four of BMH’s CON, as earlier amended, to October 2, 2023 to ensure that it can complete this Project. BMH requests an expedited decision in order that it can avoid any further interruption to the construction of the Project.

Submitted by legal counsel on behalf of
Brattleboro Memorial Hospital

PRIMMER PIPER EGGLESTON & CRAMER PC

By: 

Anne E. Cramer

Dated: July 21, 2021

EXHIBIT 1
BMH Modernization Project-Budget Update
7/1/2021

Project Costs

		CON Approved 10/2017	Project Cost Estimates as of 7/2021	Variance	Comments
1	New Construction	\$ 12,044,188.00	\$ 16,160,181.00	\$ 4,115,993.00	Project delays (ACT 250 & COVID), labor and material cost increases in current construction environment, and inflation
2	Renovation	\$ 1,905,688.00	\$ 2,166,863.00	\$ 261,175.00	inflation
3	Site Work	\$ 572,552.00	\$ 616,146.00	\$ 43,594.00	inflation
4	Fixed Equipment	\$ 506,165.00	\$ 864,507.00	\$ 358,342.00	fixed and MME lines are under the original CON when Combined
5	Design/Bidding Contingency	\$ 726,119.00	\$ 310,353.00	\$ (415,766.00)	
6	Construction Contingency	\$ 1,524,855.00	\$ 895,873.00	\$ (628,982.00)	Includes 700K for Continuing Material and Other Cost Increases
7	Construction Manager Fee	\$ 461,269.00	\$ 428,682.00	\$ (32,587.00)	
8	Major Movable Equipment	\$ 1,705,130.00	\$ 1,144,022.00	\$ (561,108.00)	
9	Furnishings, Fixtures and other Equipment			\$ -	
10	Architectural/Engineering Fees	\$ 2,160,394.00	\$ 2,350,627.00	\$ 190,233.00	covid redesign for 2nd and 3rd floors
11	Land Acquisition			\$ -	
12	Purchase of Buildings			\$ -	
13	Administrative Expenses and Permits	\$ 703,096.00	\$ 1,430,309.00	\$ 727,213.00	Legal and Engineering fees due to ACT 250. Increased Permit Fees
14	Debt Financing Expenses	\$ 383,333.00	\$ 383,333.00	\$ -	
15	Debt Service Reserve Fund			\$ -	
16	Working Capital			\$ -	
17	Other			\$ -	
	Total	\$ 22,692,789.00	\$ 26,750,896.00	\$ 4,058,107.00	17.88%
	CON allowed expanded limit	10% \$ 24,962,067.90	\$ 26,750,896.00	\$ 1,788,828.10	7.17%