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## MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C., Kim J. Seter, Esq., Elizabeth A. Dauer, Esq., and Cameron J. Richards, Esq.

DATE: August 8, 2018

RE: Legal Status Report for August 13, 2018, Trustees' Meeting

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### Library 3D Printing Guidelines

**Task:** At the request of Director Slivken, review the Library's 3D Printing Guidelines in light of the recent news surrounding the 3D printing of firearms.

**Status:** We reviewed the Library's current 3D Printing Guidelines. Currently, a Library user must request that a given 3D file be produced from Library staff. The guidelines specifically prohibit the creation of material that is "unsafe, harmful, dangerous, or an immediate threat to the well-being of others" and "construed as having the intent to harm." These guidelines appear sufficient to allow the Library to decline to 3D print any item that may be considered a weapon, including a 3D printed firearm. Legal counsel and staff will continue to monitor the issue and, if necessary, make a recommendation as to whether a full policy of the Library District should be considered.

**Action:** No action required at this time.

### Intergovernmental Agreement Re: TIF Financing

**Task:** Tax Increment Financing is an economic development tool usually utilized to fund Urban Renewal Authorities. TIF financing affects the library because:

- A. The assessable value of a TIF area is determined and then fixed.
- B. The revenue derived from the library mill levy on any growth in assessable value for a period of 25 years thereafter is called the

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Tax Increment.

C. The Tax Increment is diverted from the library to an Urban Renewal Authority to be used to finance public infrastructure or provide other incentives to development.

Historically, affected taxing entities had no say in the imposition of TIF. Recent laws have given taxing entities a voice in whether or not their incremental tax revenue should go entirely to the URA. It is still the presumption that new development drives the increase in the Tax Increment and should be given to the URA. However, taxing entities now have a forum to argue otherwise.

Larimer County is forming a TIF financing committee by intergovernmental agreement that will assist the County and taxing entities in developing information to fairly distribute the opportunity cost of TIF.

**Status:** We have reviewed and commented on the second draft of the proposed IGA and provided those comments to staff for consideration.

**Action:** Discuss and consider whether to participate in the IGA when it is brought before the Board by staff.

### **Review of Bylaws**

**Task:** Review the District's bylaws for any changes or updates that are necessary or inconsistent with changing law.

**Status:** The review of bylaws was requested as part of the ongoing review of policies. We will work with the committee of Ms. Quijano, Mr. Frey and Ms. Schultz to make appropriate and necessary revisions.

A mark-up copy will be provided to the Committee for review and comment prior to presentment to the Board.

Pursuant to the bylaws, any proposed amendment must be presented to the entire Board at least 15 days before a vote.

**Action:** None at this time.

### **Options for Funding Future Facilities Development**

**Task:** Summarize financing options the District can consider to fund future facilities development.

**Status:** The District has three options to pay for the construction of new libraries or the improvement of existing branches: (1) Cash out of reserve/budgeted funds; (2) General obligation bonds; and (3) Lease/purchase financing with or without certificates of participation. Each is summarized below. We recommend use of certificates of participation as a simple and cost effective approach.

Cash on Hand: Availability of this “pay as you go” option depends on the scale of the project, the District’s financial position, and budget considerations for not only the next year, but in years to come. It is often best to utilize cash on hand to provide current services.

General Obligation Bonds: The most common form of government financing. Bonds are secured by the full faith credit and taxing power of the government issuer. Bonds offer low interest rates and are attractive to investors due to their double tax-exempt status. However, the issuance of debt through general obligation bonds requires an election as does the corresponding increase in taxes pursuant to Art. X, §20 of the *Colorado Constitution* (“**TABOR**”).

Lease/Purchase with or without Certificates of Participation (“COP”): Libraries are in a unique position to take advantage of sale/lease back financing. From a legal perspective, this method involves selling or leasing a property that is owned by the District. The funds received are used to buy new or improve old facilities. The property sold/leased by the District is leased back to the District which pays rent consisting of principal and interest to the investor[s]. The lease back to the District contains an option to purchase the property at the end of the lease for a nominal fee, often \$1.00. Lease/purchase financing does not constitute long-term debt obligations of the issuing authority, and is therefore exempt from state and local laws that require voter approval under TABOR.

We recommend lease/purchase financing as the best option. However, we are ready to assist on any method the District may ultimately pursue.

**Action:** No action is required at this time.

### **Important Case Updates**

#### **Elbert County Library District Litigation**

**Task:** On January 17, 2018, the Elbert County Library District Board of Trustees filed suit against the Elbert County Board of County Commissioners seeking declaratory and injunctive relief pertaining to a policy imposing

requirements and qualifications on Library Trustees.

**Status:** Our firm represented the Elbert County Library District a/k/a Pines & Plains Library District. The policy adopted by the Board of County Commissioners imposed different burdens, processes, and procedures regarding the appointment, retention, and removal of Library District Trustees than those mandated by the Colorado Library Law, C.R.S. §24-90-101 *et seq.*

The Library District and the Board of County Commissioners settled the litigation after the negotiation of an Intergovernmental Agreement concerning trustee appointment that is consistent with both Colorado's Library Law and the position the Library District took in litigation. We view this as a successful resolution of the issues.

**Action:** None required at this time.