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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: December 5, 2018

RE: Legal Status Report for December 10, 2018, Trustees' Meeting

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 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. As of

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October 3, 2018, no subsequent draft or final IGA has been submitted for review or approval.

At the September meeting, Trustee Wise reported that he has joined the URA board as a commissioner. Discussion at the URA had focused on what timeframe was appropriate for an impacted taxing entity to review projects, financial impact models, and possible mitigation steps including negotiating a reduced increment from the URA. Trustee Wise was seeking input from other Trustees, staff and legal counsel. Suggestion of a policy for reviewing a TIF was considered.

Legal counsel has spoken to Mr. Slivken about the matter and reviewed a draft policy that would permit 60 days to review a proposal before a Board vote was necessary. This time period would allow for 2 Board of Trustees meetings before a decision is rendered. However, the review policy will need to sync with the IGA, which may impact the time available. Under the draft agreement a Public Review Committee is formed to analyze a project using an approved Financial Impact Model. Additionally, Colorado Law provides a default period of 120 days for an impacted taxing entity to negotiate an agreement concerning what increment goes to the URA. C.R.S. § 31-25-107(9.5).

The Public Review Committee recommendations may trigger the start of the negotiation period (120 days after recommendation issued). Or the submission of the project by the URA may trigger the negotiation period (120 days after recommendation issued). Or the IGA may modify the 120 period as the Public Review Committee is intended to centralize some of this analysis. Further discussion may assist the Board in evaluating the issue. However, adopting a policy that may subsequently need revision under the IGA may be premature.

Update: Trustee Wise informed the Board at the November meeting that the County did not receive substantial buy-in from various stakeholders to warrant advancing the proposed IGA. Accordingly, the County Attorney is not submitting the IGA for adoption by either Larimer County or any other taxing entity in Larimer County. However, the stated intent of County will be to use the draft IGA as “principles” to guide TIF use in Larimer County. How this will be actually implemented is unknown.

Action: Discuss the issue and provide comment or feedback as necessary.

Library Policy Regarding Consideration of TIF Financing Proposals

Task: Work with the Executive Director to draft a policy concerning the time frame for the District to review the impact of any TIF proposals.

Statuts: The Executive Director and the legal team propose the following language for the District's policy on reviewing TIF supported projects:

> "The Library District shall have up to sixty (60) days to review the written opinion of the Fort Collins Urban Renewal Authority Project Review Committee, or any similar committee formed by an Urban Renewal Authority within the District's service area, before entering into negotiations for an intergovernmental agreement to address allocation of incremental property tax revenues and mitigation of other impacts of the Urban Renewal Plan or substantial modification of an existing Urban Renewal Plan pursuant to C.R.S. 31-25-107(9.5). This policy shall not function as a waiver of any part of the provisions of C.R.S. 31-25-107(9.5). Unless separately agreed to the Library District, this period shall not be counted towards the one hundred and twenty day negotiating period contemplated by C.R.S. 31-25-107(9.5)(c)."

This policy takes into account the stated intent that the County and the URA will proceed under the guidelines of the draft IGA with a Project Review Committee. Following any recommendation concerning a TIF funded project, the District shall have up to 60 days for review before starting negotiations. This allowa for at least two Board meetings of investigation and comment before the negotiation period begins. The District has explicitly reserved all rights granted to it under the URA law.

Action: The policy is being presented for first reading. Pursuant to the District's bylaws, if all Trustee's are present at a meeting, a policy may be adopted upon first reading by motion, second and majority vote. If less than all of the Trustees are present, the policy will be presented for discussion and brought back for a second reading at the next meeting where it can be adopted by motion, second and a majority vote of a quorum.

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

Pornography Is Not Education v. EBSCO Industries, Inc., and Colorado Library Consortium

On October 10, 2018, Plaintiff Pornography Is Not Education, a Colorado non-profit corporation, filed suit against EBSCO and Colorado Library Consortium ("CLiC") in Arapahoe County District Court alleging EBSCO and CLiC knowingly provide and make available sexually explicit and obscene materials to school children in Colorado through the EBSCO databases. Claims are being brought under Colorado's Consumer Protection Act and federal laws concerning provision of obscene materials to minors.

Seter & Vander Wall is representing CLiC in this suit. Plaintiff is being represented by the Thomas Moore Society, an organization out of Nebraska that provides legal services in support of socially conservative causes. We will provide updates in the future as we are able.