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## MEMORANDUM

TO: Poudre River Public Library District, Board of Trustees

FROM: Seter & Vander Wall, P.C.

DATE: October 3, 2023

RE: Legal Status Report

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This is our legal status report for the October 9, 2023 meeting of the Board of Trustees.

### First Amendment to IGA with Front Range Community College

**Task:** Draft First Amendment to IGA with Frant Range Community College (“FRCC”) to clarify roles and responsibilities between the parties.

**Status:** The original IGA between the District and FRCC was entered into in February, 1996. The relationship between the District and FRCC has evolved over this time requiring an amendment to the IGA to address unforeseen operational matters, particularly with regard to technology and abolishment of late fees.

**Action:** None at this time, but this item will require Board approval, likely at the November meeting.

### Executive Director Salary Survey Information

**Task:** **On hold until the Fall.** Obtain a copy of the State’s Executive Director Salary survey for the budgeting process every September.

**Status:** This matter will remain on the report as a reminder for next Fall.

**Action:** None required.

### Second Amendment to IGA with the City and County

**Task:** Consider Second Amendment to formation IGA with the City of Fort Collins and Larimer County. The Second Amendment amends the Trustee selection process to provide that the Library District will recommend

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Trustee candidates to the City and the County. The City and County will then consider the recommended candidates and determine whether to appoint. This procedure considerably streamlines the Trustee appointment process.

**Status:** **On hold until 2024.** Counsel was informed by the City that the City staff will make a commitment to bring this discussion to City Council in late Summer/Fall to consider a change in the process for 2024.

**Action:** None at this time.

### **Resolution in Support of Ballot Measures (Informational Item)**

**Task:** This Fall, the City of Fort Collins will place certain ballot measures to increase sales and/or property taxes to fund a range of public services. As these tax increases may allow for future joint project(s) between the City and the District, the Board may consider the passage of a resolution in support of the ballot measures.

**Status:** The Fair Campaign Practices Act, Colorado Revised Statutes §§ 1-45-101, *et seq.*, permits the District Board to pass a resolution taking a position of advocacy on a particular issue/ballot measure. The District may also report the passage of or distribute such resolution through established, customary means, by which information about other proceedings of the District is regularly provided to the public. For example, a resolution may be posted on the District's website if it regularly posts other information to the public by that means. If the District regularly provides mailings to constituents, it may mail the resolution. However, any accompanying language with the resolution must be neutral and impartial with regard to the measure in question even though the resolution is not. In addition, the governmental entity may not use paid advertising to report on the passage of a resolution or to distribute a resolution.

**Action:** None at this time.

### **SB23-303 (Informational Item)**

**Task:** Review and analyze SB23-303, a property tax relief bill with significant effects on local governments.

**Status:** SB23-303 was signed into law on May 24, 2023. Assuming there is voter approval as indicated below, the bill does the following:

1. Refers a ballot issue to the voters at the November 7, 2023 election asking whether property taxes should be reduced and seeking voter approval to retain

- and spend TABOR refunds to backfill a portion of certain local governments' lost property tax;
2. Establishes a local government property tax limit that is equal to inflation above the property tax revenue from the prior property tax year;
    - a. Establishes a procedure for the governing board of the local government to annually override the property tax limit;
  3. Lowers the assessment rates for residential and nonresidential property (which generates property tax savings) and creates new subclasses of property with differing assessment rates through 2032;
  4. Refines the parameters for the property tax backfill by mandating that a local government is not eligible for a backfill of lost property tax revenues if the local government has experienced an increase in real property total valuation of 20%. Library Districts are local governments eligible for a backfill, but the amount received, if any, is dependent on the increase in total valuation;
  5. Changes the deadline for certification of the mill levy to the County from December 15<sup>th</sup> until January 5<sup>th</sup>.

### **Options for Funding Future Facilities Development (Informational Item)**

**Task:** Summarize financing options the District may 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; or (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. The District's ability to obtain funds through a sale/lease back transaction depends on the value of the assets available for sale.

In other words, in its simplest form, the District:

1. Sells a piece of property; and,
2. Utilizes the proceeds to build or improve other property; and,
3. Continues to occupy the original property under a lease with an option to repurchase.

Lease/purchase financing does not constitute long-term debt obligations of the issuing authority, and is therefore exempt from laws that require voter approval through a TABOR election. The Colorado Supreme Court has determined this is not a "debt" because the District is not required to pay the rent. It may choose to default on the rent and let the investor(s) keep the building.

We recommend lease/purchase financing as the best option. Nearly all of our library district clients have financed facilities in this manner, and it is common throughout Colorado. However, we are ready to assist with any method the District may ultimately pursue.