

March \_\_, 2023

**VIA E-MAIL**

Ben Pearlman  
Boulder County Attorney  
P.O. Box 47  
Boulder, CO 80306

Re: Establishment of the Boulder County Library District

Dear Ben:

Following the passage of Ballot Issue 6C at the general election held on November 8, 2022, Boulder County, Colorado (the “County”), the City of Boulder, Colorado (the “City”) and the yet to be appointed board of trustees of the Boulder County Library District (the “District”) are to enter into an intergovernmental agreement (the “IGA”) regarding the District, which agreement is to include various provisions set forth in CRS Section 24-90-107(2)(e) and is to set forth fully the rights, obligations, and responsibilities, financial and otherwise, of all parties to the agreement.

Kutak Rock LLP (“Kutak”) has represented as the City as its bond counsel for a significant number of governmental financings and related matters in the past and frequently consults the City with respect to issues which may arise in connection with such financings. In connection with establishment of the District, the City has requested the Kutak attorneys assist the City in connection with the District and the preparation of the IGA.

As you know, Kutak has represented the County as its bond counsel for a significant number of governmental financings and related matters in the past and frequently consults the County with respect to issues which may arise in connection with such financings. The Kutak attorney which serves as lead counsel to the County for such governmental matters is Tom Weihe. It should be noted that Fred Marienthal has also represented the County in the past in connection with 501(c)(3) and specific housing related financings.

The Colorado Rules of Professional Conduct allow the representation of the City in this instance as long as the lawyer reasonably believes that he/she will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law, the representation does not involve claims asserted against the other client and each affected client gives informed consent in writing.

In connection with our representation of the City in the matter outlined above, we do believe that representation of the City in the matter will allow for competent and diligent representation of the City and the County by Kutak, the representation is not prohibited by law, and the representation does not involve claims against either the City or the County by the other. To maintain the integrity of the representation in this matter, an “ethical screen” will be established whereby Tom Weihe will not share client confidences of the County of which he is aware and will

March 9, 2023  
Page 2

have not access to or be consulted, internally or otherwise, in connection with any work product, activities or client confidences of the “client team” of attorneys serving the City (which team is anticipated to include Fred Marienthal and Tom Peltz, located in the Denver office of Kutak). The conflict of interest, and the need for informed consent, exist even where different client teams within the firm act on behalf of each client and an ethical screen is erected between the client teams that prohibits the sharing of either client’s confidences with the members of the other client’s team.

The purpose of this letter is to set forth the conflict, and the actual and potential consequences of such simultaneous, yet unrelated matter representations. We recommend that you seek outside counsel to confer with you on this conflict and the requested written waiver if you have additional concerns.

By your acknowledgment of this letter, you are confirming to us the County’s waiver of any potential conflict of interest that may arise in connection with Kutak’s representation of the City for the matter outlined above. In the event of any litigation between the County and the City involved in Kutak’s engagement by the City for this matter, Kutak will not represent either the County or the City in such litigation.

Please execute this letter and e-mail the executed page to me. Please don’t hesitate to call with any comments or questions regarding the foregoing.

Very truly yours,

Thomas C. Weihe

Accepted and Acknowledged  
this \_\_\_\_ day of March, 2023:

BOULDER COUNTY, COLORADO

By \_\_\_\_\_  
Ben Pearlman  
Boulder County Attorney

cc: Janet Michels, Senior Attorney, City of Boulder  
(Accepted and Acknowledged by separate writing)