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## MEMORANDUM

TO: Poudre River Public Library District Board of Trustees

FROM: Seter & Vander Wall, P.C.

DATE: January 2, 2024

RE: Legal Status Report

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This is our legal status report for the January 8, 2024 meeting of the Board of Trustees.

### SE Community Center Library

**Task:** In April 2015 the voters of Fort Collins approved Ordinance No. 013, 2015, extending for ten years a quarter-cent sales tax to be dedicated to the “Community Capital Improvement Program” capital projects and related operation and maintenance. The Ordinance includes a requirement that the City construct a Community Center in southeast Fort Collins focused on innovation, technology, art, recreation and the creative process, including a “large outdoor leisure pool with water slides, sprays and jets, decks, a lazy river and open swimming area,” as well as meeting spaces dedicated to innovation and creativity.

The Poudre School District currently has approx. 10 acres of land available that may be a suitable site for the construction of a new Community Center that includes the facility requirements contained in the 2015 ballot language in addition to an expanded library branch, and the construction of an indoor aquatics facility that would serve the Fort Collins community and allow the School District access to indoor lanes for its swim programs.

**Status:** The Library, School District and the City have fostered a partnership to design, construct, and operate the proposed Community Center. The Parties have developed an initial intergovernmental agreement (“IGA”). The Library has a small role in the initial IGA, essentially agreeing to participate in the future project negotiations. This was on request of legal

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counsel, so that the finer details of the operations relationship could be established once further specifics are available and the project is more certain. Legal counsel has reviewed the IGA and participated in meetings with the City and the school district representatives. The IGA has also been reviewed by the District executive director and finance director. The primary points of the IGA are as follows:

1. **Conveyance of Land-** The initial IGA is conditioned on the execution of a Purchase and Sale Agreement (“PSA”) whereby the School District sells the land for the Community Center to the City.
  - a. The PSA is to be executed by April 2024, with closing slated for November 2024;
  - b. The PSA will include further details, but the IGA indicates that the school district will contribute 15% for construction of the aquatics portion of the facility, in exchange for the City’s promise to build the aquatics facility and coordination/accommodation of school district swim programs.
2. **Funding/ Construction of the Community Center-**The Library and the City will jointly design and construct the library portion of the Community Center.
  - a. The Library will have input on the common areas in the Community Center, as further described in a subsequent operating IGA;
  - b. Contracting for the project will be done by the City through its purchasing processes;
  - c. The aquatics portion will be solely owned and maintained by the City, with the school district contributing 15% for construction of the aquatics facility and a yearly maintenance obligation of \$150,000 and \$45,000 for equipment replacement;
  - d. A separate IGA governing the operations of the aquatics facility will be negotiated between the School District and the City.
3. **Community Center and Library Branch-** The IGA does not bind the Library to participate in the project. However, if the Library participates, it will share in the design and construction costs to equip and operate at least a 30,000 square foot library with meeting rooms and innovation/programming space.
  - a. The Library and City will negotiate a separate operations IGA governing the library space to include the following.
    - i. The form of the library’s interest in the real property;
    - ii. Designation of the parties’ project managers;
    - iii. Whether the library portion will be a stand-alone structure or part of a larger facility;
    - iv. Cost sharing for land acquisition, design, and construction costs;

- v. Ongoing maintenance and operations of the real property facilities.

A copy of the initial draft IGA is attached for reference. Counsel is currently drafting the operations IGA to begin discussion.

**Action:** Consider the initial South East Community Center IGA between the Library, School District, and City. The City approved the IGA in December. If acceptable to the Board, a trustee may make the following motion:

*I move to approve the Intergovernmental Agreement Related to the South East Community Center.*

### **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.

### **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 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.

### **Legislative Update: SB23-001 (Informational Item)**

**Task:** Review and analyze SB23-001, a property tax relief bill with significant effects on local governments.

**Status:** In the wake of the failed Prop HH measure, the Governor called a special session of the legislature to enact a property tax relief bill to combat the rise in assessed valuation of residential property. SB23-001 is the law that was generated in the special session. SB23-001 primarily does the following.

1. Reduces the assessment rate for multi-family and all other residential real property to 6.7% and reduces the actual value of residential real property by \$55,000 (or less if property is worth less than \$55,000);
2. Maintains a backfill to reimburse certain taxing entities for revenues lost due to SB23-001. The District is not eligible for a backfill under SB23-001, however, the District is eligible for backfill pursuant to SB22-238 in 2024.
3. Extends budget deadlines as follows:
  - a. Deadline to certify mill levy and adopt a budget extended to **January 10, 2024**;
  - b. Deadline for the District to receive final assessed valuation numbers from the County assessor extended to **January 3, 2024**.

### **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.