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**MEMORANDUM**

TO: Poudre River Public Library District Board of Trustees

FROM: Seter, Vander Wall & Mielke, P.C.

DATE: February 6, 2024

RE: Legal Status Report

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This is our legal status report for the February 12, 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.

The Board has approved the initial South East Community Center IGA. Counsel is currently drafting the operations IGA to begin discussion.

**Action:** None at this time.

### **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:** Consider approval of the First Amendment to the Intergovernmental Agreement. The Agreement has been executed by the State Board for Community Colleges. The following motion may be used to approve the Amendment:

*I move for approval of the First Amendment to IGA for District Operations within the Front Range Community College.*

### **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.

### **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.

**FIRST AMENDMENT TO THE  
INTERGOVERNMENTAL AGREEMENT**

**THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT** (“**Amendment**”) is made and entered into by and between THE Poudre River Public Library District, formerly known as the Fort Collins Regional Library District (“**District**”) and the STATE OF COLORADO, Department of Higher Education, by the State Board for Community Colleges and Occupational Education for the use and benefit of Front Range Community College (“**College**”) and is effective on the date last signed below.

**RECITALS**

WHEREAS, the City of Fort Collins, Colorado and the College entered into an Intergovernmental Agreement dated February 19, 1996, which set forth the rights, obligations, and responsibilities, financial and otherwise, for the operation of a joint library, now known as the “**Harmony Library,**” located on the College campus (the “**IGA**”); and,

WHEREAS, the City of Fort Collins, Colorado assigned all of its rights and delegated all of its duties under the IGA to the District through execution of that certain Assignment of Intergovernmental Agreement, dated December 31, 2007; and,

WHEREAS, the District and the College (the “**Parties**”) now wish to amend the IGA to clarify the roles and responsibilities of the District and the College regarding the jointly-operated Harmony Library.

NOW, THEREFORE, the Parties hereto agree as follows:

1. Section 7.9 of the IGA is hereby amended by deleting this Subsection in its entirety and replacing it with the following language:

The District’s obligation to maintain a maintenance contingency fund is terminated. The District will contribute a portion of repair and replacement costs in an amount based on needs to be assessed and agreed upon by the District and College on an annual basis.

2. Section 7 of the IGA is amended by the addition of the following sections:

7.10 The District will be responsible for and provide for the overall planning and management of all information technology (“**IT**”) needs at the Harmony Library for its staff and patrons. This includes but is not limited to:

- a. Providing all IT hardware and software needs such as computers, laptops, telephones, printers/copiers (including supplies), and other IT equipment needs for District staff members;
- b. Providing and maintaining a lending library of IT products such as hot spots and laptop computers for library patrons;

- c. Providing all IT infrastructure needs such as internet services, installation of cabling, fiber optics, wireless access devices, etc.;
- d. Maintaining all public IT equipment. Public IT equipment is defined as computers, self-checkout circulation stations, audiovisual equipment including projectors and display screens in spaces for public use, and Wi-Fi;
- e. Providing library staff information to sign up for College emergency alert notifications.

7.11 The College will be responsible for and will provide:

- a. All IT hardware and software needs such as computers, laptops, telephones, printers/copiers (including supplies), and other IT equipment needs for College staff members;
- b. Funding for all public IT equipment. For purposes of this section 7.11 only, Public IT equipment is defined as computers and audiovisual equipment including projectors and display screens in spaces for public use.
- c. Funding to manage and maintain all College security technologies, such as public address/emergency alert systems, security cameras, and remote door access and control systems.
- d. Funding to install and maintain College specific educational technologies in library rooms dedicated to the College (for example room HL 117).
- e. District staff the ability to receive emergency alert notifications.

7.12 Prior to procurement, the Parties shall mutually agree to the purchase of any public IT equipment and purchase and funding of any operational technology such as automated material handlers, self-check kiosks, laptop kiosks, etc.

- 3. All terms and conditions of the IGA remain in full force and effect except as modified by this First Amendment.

POUDRE RIVER PUBLIC  
LIBRARY DISTRICT  
BOARD OF TRUSTEES

STATE OF COLORADO:  
Jared S. Polis, Governor  
Department of Higher Education, by the  
State Board for Community Colleges and  
Occupational for the use and benefit of  
Front Range Community College

\_\_\_\_\_  
President

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Print Name

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Date

Approved as to Form:

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Seter & Vander Wall, P.C.

DocuSigned by:  
*Dr. Colleen Simpson*  
\_\_\_\_\_  
President

Colleen Simpson, Ed.D.  
\_\_\_\_\_  
Print Name

1/22/2024

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Date