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**MEMORANDUM**

TO: Poudre River Public Library, Board of Trustees

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

DATE: June 4, 2024

RE: Legal Status Report

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This is our legal status report for the June 10, 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 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 reviewed the IGA and participated in meetings with the City and the school district representatives. The IGA was also 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 approved the initial South East Community Center IGA, and it is fully executed by all parties. Counsel is currently drafting the operations IGA to begin discussion.

Counsel also revised the draft Owner representative agreement and project management services agreement between the City and Wember, Inc. to include the Library as an additional party to the agreement.

**Action:** None at this time.

### **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.** 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: SB24-216 (Formerly SB24-049)**

**Task:** Monitor SB24-216- "Standards for Decisions Regarding Library Resources"- A bill to challenge censorship and institute requirements for the materials challenge process.

**Status:** SB24-049 was killed in committee, and SB24-216 was introduced at the end of the legislative session. This bill had a better chance of success because it applied solely to public libraries and removed all requirements regarding school libraries. One large improvement from the former bill was that the legislature took the bill out of the section of the library law listing the powers of the Board of Trustees and created a new section for the law. The bill was passed by the Legislature and was recently signed by the Governor.

The bill requires:

1. The Board of Trustees to establish written policies for the “acquisition, retention, display, and use of library resources and for the use of a public library facility;”
2. If the Board of Trustees considers materials challenges, the Board is required to establish a reconsideration policy and make the policy available on the District website;
3. The District’s determination of the challenge must be “made available to the public;”
4. A challenger must reside within the boundaries of the District;
5. The District may not reconsider the same library resource more than once every two years (although the District may extend this period in its reconsideration policy);
6. Challenged materials are not to be removed until the completion of the reconsideration process;
7. The District shall make its facilities/materials available on an equitable basis (this is already a first amendment principle but helpful to be codified);
8. It is the responsibility of the public library to challenge censorship;
9. A written request for reconsideration does not qualify as a library user record under the privacy law and is subject to disclosure under CORA.

**Action:** None at this time.