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## MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C., Kim J. Seter, Esq., and Cameron J. Richards, Esq.

DATE: October 3, 2017

RE: Legal Status Report for October 9, 2017 Trustees' Meeting

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This is our legal status report for the Trustees' meeting scheduled for October 9, 2017.

### Review of Bylaws

**Task:** Review the District's bylaws for any changes or updates that are necessary or inconsistent with changing law.

**Status:** The review of bylaws was requested as part of the ongoing review of policies. We are working with the committee of Ms. Quijano, Mr. Frey, and Ms. Schultz to make appropriate and necessary revisions.

The bylaws are generally in good shape, though there are areas which could be cleaned up for clarity, consistency with policy, and corrections to grammar. Because these changes will affect numerous provisions throughout the document, the recommended procedure is to present a fully revised copy of the bylaws to the Board which can then be voted on as amended and restated bylaws. A copy will be provided to the Committee for review and comment prior to presentment to the Board.

Pursuant to the bylaws, any proposed amendment must be presented to the entire Board at least 15 days before a vote.

**Action:** None at this time.

### Request for Proposals for District Master Plan

**Task:** Issue a request for proposals to develop a District Master Plan.

**Status:** At the September 11, 2017 meeting, the Board approved moving forward with a request for proposals to develop a District Master Plan. A committee of Trustees and library staff will be formed to oversee and

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guide this process. The State Librarian has offered assistance with drafting the request for proposal.

**Action:** Appoint or elect the Trustee or Trustees that will serve on the committee. We will assist in whatever way the District requires.

### **Options for Funding Future Facilities Development**

**Task:** Summarize financing options the District can 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; and (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 and 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. Lease/purchase financing does not constitute long-term debt obligations of the issuing authority, and is therefore exempt from state and local laws that require voter approval under TABOR.

We recommend lease/purchase financing as the best option. However, we

are ready to assist on any method the District may ultimately pursue.

**Action:** No action is required at this time.

### **Enforcement of Behavior Policy in Library Park**

**Task:** Analyze the ability of the District to enforce its Behavior Policy rules in Library Park

**Status:** A detailed memorandum was provided at the September meeting. In short, the park is leased to the City of Fort Collins and, per that lease, it is the City's Park Rules and Regulations that apply. The lease must be amended to change this situation.

**Action:** None required at this time.

### **Verizon Rooftop Antennae Lease**

**Task:** Review proposed rooftop lease with Verizon for a communications antennae.

**Status:** The proposed lease has been reviewed and returned to Jeff Barnes for further consideration. Jeff will present this to the Board when deemed appropriate.

**Action:** None at this time.

### **Effect of Library Privacy Law and Policy During Police Investigation**

**Task:** Provide information regarding the operation of library privacy law when a police officer seeks video footage, library user description and computer login information to identify a suspect accused of inappropriately touching a minor in the library.

**Status:** A copy of our Memorandum is attached.

**Action:** None required unless requested by staff.

### **Intergovernmental Agreement Regarding TIF Financing Matters**

**Task:** Review and comment on proposed draft Intergovernmental Agreement TIF Project Review proposed for execution by the library district, county, municipalities and districts.

**Status:** We are working on this review now. An explanation of the draft, its

purpose and our comments will be provided in next month's report.

**Action:** None required until staff requests action.

### **Important Case Updates**

#### **Sutherland Lawsuits**

**Task:** Eric Sutherland has filed numerous lawsuits concerning tax, URA and election issues against the county, city and two school districts.

**Status:** We are monitoring the actions in preparation for any claims against the Library District which now seem very unlikely.

1. *Sutherland v. Poudre School District*, Larimer County District Court, 2016CV000299 – This case was dismissed on January 19, 2017. To my knowledge, no appeal has been filed.

2. *In Re Petition of Poudre School District R-1*, Larimer County District Court, 2016CV31129 – This case was combined with 2016CV31130.

3. *Poudre School District v. Sutherland*, Larimer County District Court, 2016CV031130 – This case was combined with 2016CV31129.

The combined cases were resolved in favor of the School District on summary judgment on May 3, 2017. Mr. Sutherland has appealed the decision to the Colorado Court of Appeals (Case No. 17CA1178) on technical, procedural grounds. Specifically, Mr. Sutherland asserts the cases were improperly combined, the court lacked jurisdiction to rule, and genuine issues of material fact were present.

The Court of Appeals case has been briefed and is before the Court for determination. Briefing has focused exclusively on the procedural and technical issues which, regardless of outcome, would not impact the District as a public taxing entity. We will monitor the appeal and any judgment for any issues that may impact the District.

**Action:** None required at this time.

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## MEMORANDUM

TO: David Slivken

FROM: Seter & Vander Wall, P.C., Beth Dauer, Esq., Kim J. Seter, Esq.

DATE: September 13, 2017

RE: Library Privacy Law and Policy During Police Investigations

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Library staff was approached by law enforcement to review library security footage to determine the identity of a library patron that was accused of inappropriately touching a minor in the library. The investigating officer requested the internet log-on information of the suspect and requested the suspect's physical description from the video surveillance system for identification purposes. Our understanding is that the District staff declined the officer's requests, citing the District privacy policy.

### Library Privacy Law

Both the First Amendment to the United States Constitution and Article II, Section 10 of the Colorado Constitution protects an individual's right of free speech and corresponding right to access books anonymously, free from governmental interference. These fundamental rights apply, even during a law enforcement investigation. See *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044 (2002).

A foundational principle of the Colorado Library Law provides that it is unlawful for certain classes of libraries to disclose patron records and usage information. Specifically, Colorado Revised Statutes, Section 24-90-119 states that "a publicly-supported library *shall* not disclose any record or other information that identifies a person as having requested or obtained specific materials or service or as otherwise having used the library." Pursuant to statute, a Colorado, publicly-supported library *may* release patron records in the following instances:

1. When necessary for the reasonable operation of the library;
2. Upon written consent of the user;
3. *Pursuant to subpoena, upon court order, or where otherwise required by law;*
4. To a custodial parent or legal guardian who has access to a minor's library card or its authorization number for the purposes of accessing by electronic means library records of the minor.

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### Discussion

Counsel believes the District staff acted appropriately pursuant to District policy and the law. We recognize the time-sensitive nature and importance of police investigations, however, all police investigations must be conducted within the bounds of the Constitution and Colorado law. The Colorado legislature mandated through passage of the library privacy law that District staff shall not provide patron information to law enforcement without a subpoena, court order, or other legal document. An argument could be made that releasing patron information to police on matters of patron safety could qualify as “necessary for the reasonable operation of the library,” but, it appears from a reading of the statute’s plain language that the legislature intended to regulate access to information by police through the inclusion of the requirement for a court order. In other words, allowing law enforcement access to records under the “reasonable operation” exception would render the exception for a court order meaningless.

The investigating officer has suggested that staff should review surveillance videos and provide a physical description of the patron. We do not recommend this burden be placed on staff. Providing the physical description of a patron for law enforcement identification purposes remains a violation of the privacy law because the privacy law is broadly written to exclude the distribution of “any record or other information that identifies a person.”

### What Can the District do in the Future?

We do not have a full account of the scenario and communication between the investigating officer and District staff; but, in the future, staff should encourage law enforcement to contact District legal counsel immediately for an explanation of the Colorado privacy law if necessary. Further, staff should report to law enforcement that they are obligated under *both* Colorado law and District policy to maintain patron privacy unless and until the officer provides a subpoena or appropriate court document ordering the release of the requested information. Prior to execution, the subpoena or other document should be reviewed by legal counsel to ensure an appropriately tailored scope. We recommend supplementing the Security Camera Policy or employee handbook/manual to include a procedure for staff to follow upon the request for information from law enforcement. Alternatively, it may be best to draft a new policy that specifically governs any request for patron information from law enforcement.

The investigating officer requested the District report all possible crimes committed in the library as soon as possible. We agree that the District should make appropriate and timely efforts to report crimes that occur within the libraries to the extent these crimes fall within its jurisdiction (there may be questions concerning the appropriate reporting entity in the Harmony Library). The time periods for reporting crime would be a major element in the “Law Enforcement Communication Policy.” Reporting such crimes would fall within the “necessary for the reasonable operation of the library” exception to the privacy law.

Finally, it is important to note that under the children’s code, C.R.S. Section 19-3-304, library staff (unless they are employed as a public or private school librarian) are not listed as individuals with a legal “duty to report” child abuse or neglect. While library staff is permitted to

Memorandum

Re: Library Privacy Law and Policy During Police Investigations

September 13, 2017

Page 3 of 3

report incidents of child abuse and neglect under the statute, any failure to report child abuse or neglect does not subject the District or its staff to the penalties under the children's code.