



Operating Agreement with Path of Life Ministries for 2840 Hulen Place

**Community & Economic Development
Department**

**Development Committee
October 3, 2016**

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OWNERSHIP ISSUE AND OUSTANDING DEBT

Resolve all ownership, operating and outstanding debt of \$585,150 issues between the City and Path of Life Ministries for 2840 Hulen Place.

City staff met with POLM to discuss options for bringing about clarity with the following documents:

1. Operating Agreement and subsequent agreements
- Property ownership
2. Deed of Trust and Promissory Note Outstanding
debt - \$585,150



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2840 HULEN PLACE

1. Since 2005 operated as a Short-Term Emergency Shelter
2. POLM acquired and rehabilitated the property
3. Financial support from the City of Riverside and State of California



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2840 HULEN PLACE – CONT.

4. Operating Agreement, amended and restated, Grant Deed, Promissory Note and Deed of Trust have inconsistent and self-contradictory terms
 - a. Property ownership
 - b. Outstanding debt
 - c. Structured debt service
5. Recommend restructuring and clarify



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OPERATING AGREEMENT

May 17, 2005: Executed Operating Agreement with POLM for the operation of the short-term emergency shelter at 2840 Hulen Place

1. CDBG funding allocation of \$585,150
 - a. \$85,000 for property acquisition
 - b. \$500,150 tenant improvements
2. Tenants in common ownership
3. Property revert back to the City at the end of the ten year agreement term



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EMERGENCY HOUSING ASSISTANCE PROGRAM

1. Path of Life submitted an EHAP application to the California Housing and Community Development (HCD) along with the Operating Agreement
2. HCD legal staff requested the following changes:
 - a) Remove the tenant in common language
 - b) Add a 50/50 equity sharing provision between the City and POLM
 - c) Record a Deed of Trust in favor of the City's for its' initial contribution of \$585,150 to be placed in second position behind HCD's EHAP Deed of Trust
3. Council approved these changes on June 21, 2005



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AMENDED OPERATING AGREEMENT

End of ten year term “Buy Out of the Property” provision

1. City can purchase 2840 Hulen Place from POLM for 50% for the fair market value less any City financial contributions made to the property
2. If the City no longer desires to continue participating in the Short-Term Emergency Shelter, POLM can buy out the City’s interest by reimbursing the City for any contributions the City has made to the property
3. To-date, the City has contributed approximately \$1.3 million towards the property

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AGREEMENT EXTENSIONS

1. July 14, 2015: Council approved to extend the agreement for another year
2. May 24, 2016: Council received an update on the Community Livability Task Force Action Plan goals and Homeless Reduction and Prevention Strategy Five-Year Plan
 - a. Approved extending the agreement for another year
 - b. Deferred the disposition of the property issue to Development Committee

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ORIGINAL STAFF RECOMMENDATIONS

To ensure the longevity of the homeless shelter operations and to protect the City's initial contribution made to the Property, City staff made the following recommendations to POLM subject to City Council approval:

1. Terminate the operating agreement and mutually waive any provisions identified in the operating agreement with the exception of the underlying documents which are to be reaffirmed by both the City and POLM.



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ORIGINAL STAFF RECOMMENDATIONS - CONT

3. Reaffirm the current and recorded Grant Deed confirming fee ownership of the subject property vested solely in the name of POLM.
4. Reaffirm the outstanding debt due from POLM to the City of Riverside evidenced by a promissory note in the amount of \$585,150 and secured by a deed of trust recorded against the subject property with a term of all debt services fully deferred until conveyance of the property and due then with a single balloon payment at 0% interest.



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ORIGINAL STAFF RECOMMENDATIONS - CONT

5. In lieu of an operating agreement, execute a covenant agreement requiring a deed restriction for the subject property to be owned by POLM and used as a homeless shelter or for the direct benefit of the homeless population recorded against the subject property in perpetuity and requiring a performance audit every two years procured by POLM and approved by the City with the reversion of title back to the City if the deed restriction is violated.



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POLM RESPONSE & REQUESTS

1. End and waive the provisions in the Operating Agreement and subsequent agreements with POLM for the Riverside Emergency Shelter that expires on June 30, 2017.
2. Reaffirm the recorded Grant Deed confirming POLM's ownership of the Property.
3. Affirm that there is an outstanding debt in the amount of \$49,978 due from POLM to the City, which is amount of General Fund that have been contributed to the Property. This debt shall be secured by a new Deed of Trust and Promissory Note.
4. The City shall subordinate its first position lien, upon written request from POLM, to any other party should POLM incur other debt or liens against the property.



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POLM RESPONSE & REQUESTS - CONT

5. In lieu of an operating agreement, execute a covenant agreement requiring a deed restriction for the subject property to be owned by the POLM and operated as a homeless shelter or for the direct benefit of the homeless population with a term of five (5) years. The agreement would also require POLM to conduct financial audits in year two and year four and the property would revert back to the city if the deed restriction is breached.



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POLM RESPONSE & REQUESTS - CONT

6. The covenant agreement shall state that at the end of five (5) years, if POLM has satisfied the conditions of the operating agreement, the condition of the agreement shall be lifted, the debt of \$49,978 shall be forgiven and the City will relinquish its position on the Property by removing the Deed of Trust.



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STAFF ANALYSIS OF POLM REQUESTS

POLM REQUEST: End and waive the provisions in the Operating Agreement and subsequent agreements with POLM for the Riverside Emergency Shelter that expires on June 30, 2017.

STAFF ANALYSIS: City staff agree to recommend to City Council end the Operating Agreement, as amended, with POLM for the Short-Term Emergency Shelter located at the Property on June 30, 2017 and mutually waive the "Buy Out of the Property" provision



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STAFF ANALYSIS OF POLM REQUESTS – CONT.

POLM REQUEST: Reaffirm the recorded Grant Deed confirming POLM's ownership of the Property.

STAFF ANALYSIS: City staff agree to recommend to City Council to reaffirm the recorded Grant Deed confirming POLM's ownership of the Property.



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STAFF ANALYSIS OF POLM REQUESTS – CONT.

POLM REQUEST: Affirm that there is an outstanding debt in the amount of \$49,978 due from POLM to the City, which is amount of General Fund that have been contributed to the Property. This debt shall be secured by a new Deed of Trust and Promissory Note.

STAFF ANALYSIS: City staff do not agree to recommend City Council reduce POLM's outstanding debt of \$585,150 to \$49,978.

Staff recommendation to City Council is to extend the Promissory Note and recorded Deed of Trust evidencing outstanding debt of \$585,150 due from POLM to the City and amend to restructure the terms to a 0% interest rate fully deferred until conveyance of the Property.

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STAFF ANALYSIS OF POLM REQUESTS – CONT.

POLM REQUEST: The City shall subordinate its first position lien, upon written request from POLM, to any other party should POLM incur other debt or liens against the property.

STAFF ANALYSIS: City Staff are neutral to recommending City Council permit POLM subordination requests to place the City's lien in second position behind a new first lien is subject to City approval and any equity removed from the Property can only be used towards activities that directly benefit the homeless population.

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STAFF ANALYSIS OF POLM REQUESTS – CONT.

POLM REQUEST: In lieu of an operating agreement, execute a covenant agreement requiring a deed restriction for the subject property to be owned by the POLM and operated as a homeless shelter or for the direct benefit of the homeless population with a term of five (5) years. The agreement would also require POLM to conduct financial audits in year two and year four and the property would revert back to the city if the deed restriction is breached.

STAFF ANALYSIS:

- a. City staff agree to recommend to City Council to execute a covenant agreement requiring a deed restriction for the Property to be used as a homeless shelter or an activity that benefits the homeless population;
- b. City staff do not agree to recommend to City Council that the term should be for only five years. Staff recommendations are to restrict the Property, in perpetuity for, use to a homeless shelter or an activity that benefits the homeless population.
- c. City staff agree to recommend to City Council that the Property should be owned by POLM, financial audits should be conducted every two years, and the Property should revert back to the City if the covenant agreement is breached.

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STAFF ANALYSIS OF POLM REQUESTS – CONT.

POLM REQUEST: The covenant agreement shall state that at the end of five (5) years, if POLM has satisfied the conditions of the operating agreement, the condition of the agreement shall be lifted, the debt of \$49,978 shall be forgiven and the City will relinquish its position on the Property by removing the Deed of Trust.

STAFF ANALYSIS: City staff do not agree to recommend to City Council that the covenant agreement end in five (5) years.

Staff recommendation to City Council is to execute a covenant agreement with POLM to:

- a. Restrict the Property, in perpetuity for, use to a homeless shelter or an activity that benefits the homeless population;
- b. Require the operator to hire an independent third party auditing firm, as approved by the City of Riverside, to complete a performance audit every two years; and
- c. Require a transfer of title to the Property to the City of Riverside, if the independent audit finds that covenant agreement is breached. that the Covenant Agreement and Deed of Trust need to remain in place to ensure that the Property continues to serve the homeless population.

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RECOMMENDATIONS

That the Development Committee recommend City Council to:

1. End the Operating Agreement, as amended, with POLM for the Short-Term Emergency Shelter located at 2840 Hulen Place on June 30, 2017 and mutually waive the “Buy Out of the Property” provision;
2. Reaffirm the recorded Grant Deed confirming POLM’s ownership of the Property;
3. Extend the Promissory Note and recorded Deed of Trust evidencing outstanding debt of \$585,150 due from POLM to the City, and amend to restructure the terms to a 0% interest rate fully deferred until conveyance of the Property;



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RECOMMENDATIONS - CONT

4. Execute a covenant agreement with POLM to:
 - a. Restrict the Property, in perpetuity, for use as a homeless shelter or an activity that benefits the homeless population;
 - b. Require the operator to hire an independent third party auditing firm, with joint approval, to complete a performance audit every two years; and
 - c. Require a transfer of title to the Property to the City of Riverside, if the independent audit finds the covenant agreement is breached.



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