



Development Committee

City of Arts & Innovation

TO: DEVELOPMENT COMMITTEE MEMBERS DATE: OCTOBER 3, 2016

FROM: COMMUNITY & ECONOMIC DEVELOPMENT WARD: 1
DEPARTMENT

**SUBJECT: OPERATING AGREEMENT WITH PATH OF LIFE MINISTRIES TO OWN AND
OPERATE THE SHORT-TERM EMERGENCY SHELTER LOCATED AT 2840
HULEN PLACE AND THE OUTSTANDING DEBT DUE FROM PATH OF LIFE**

ISSUES:

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

RECOMMENDATIONS:

That the Development Committee recommend the City Council to:

1. End the Operating Agreement, as amended, with Path of Life Ministries (POLM) for the Short-Term Emergency Shelter located at 2840 Hulen Place (Property) 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;
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.

INTRODUCTION:

The property located at 2840 Hulen Place has hosted the Short-Term Emergency Shelter since 2005 when Path of Life Ministries acquired and improved it with financial assistance and support from the City of Riverside and the State of California. The overarching Operating Agreement, as amended and restated, and the various underlying agreements, including the Grant Deed, Promissory Note and Deed of Trust include several inconsistent and self-contradictory terms regarding property ownership, outstanding debt and structured debt service. Since several of the inconsistencies cannot be fully reconciled, the recommendations above and the discussion below represent a restructure to move forward with clarity and certainty.

BACKGROUND:

On May 17, 2005, the City of Riverside and POLM entered into an Operating Agreement (Agreement) for the operation of the short-term emergency shelter located at 2840 Hulen Place (Property). The Agreement included a Community Development Block Grant funding allocation of \$585,150 to acquire the property and complete site improvements. The agreement established a tenant in common ownership between the City and POLM and required the Property to revert back to the City at the end of the ten year agreement term period.

To facilitate the purchase of the Property, POLM submitted an Emergency Housing and Assistance Program (EHAP) grant application for \$500,000 to the California Department of Housing and Community Development's (HCD) along with the Operating Agreement to HCD's legal department for review. HCD's legal staff reviewed the Operating Agreement and requested the City to make the following changes to the agreement:

- a) Remove the tenant in common language;
- b) Add a 50/50 equity sharing provision between the City and POLM; and
- c) Record a Deed of Trust in the favor of the City for its' initial contribution of \$585,150 to be placed in second position behind HCD's EHAP Deed of Trust.

On June 21, 2005, the City Council approved the changes recommended by HCD's legal department and they were incorporated into the First Amended and Restated Operating Agreement. The agreement had a term period of ten years with a "Buy Out of the Property" provision. During the term of the Agreement, the City and POLM were deemed 50/50 equity sharing partners. At the end of the agreement term, the City can purchase the Property from POLM by paying POLM 50% of the fair market value of the Property, less any and all contributions that the City has made to the Property, including the initial contribution. If at the end of the agreement term, the City determines it no longer desires to continue participation in the Short-Term Emergency Shelter, POLM can buy out the City's interest by reimbursing the City for any and all contributions the City has made to the Property.

To-date, the City has made approximately \$1.272 million in contributions to the Property as identified in the table below.

DATE	ACTIVITY	FUNDING AMOUNT	FUNDING SOURCE
5/17/2005	Property acquisition	\$95,021	CDBG (Federal Funds)
7/12/2005	Reorient entrance, ADA path of travel at back of building, and parking lot	\$250,000	CDBG (Federal Funds)
7/26/2005	Initial tenant improvements	\$665,967	CDBG (Federal Funds)
8/9/2005	ADA path of travel in front of the building	\$55,451	CDBG (Federal Funds)
7/17/2008	Purchase of kitchen equipment	\$60,373	Redevelopment Agency
1/27/2009	Interior improvements (repaint interior and remodel entryway and client's restrooms.	\$95,550	CDBG (Federal Funds)
6/11/2009	Install solar panels	\$49,978	General Funds
TOTAL CITY CONTRIBUTION		\$ 1,272,340	

On July 14, 2015, the City Council approved a First Amendment to the First Amended and Restated Operating Agreement with POLM to extend the agreement for another year to provide staff with sufficient time to identify funding resources for the Riverside Homeless Service Campus Tenant Improvements, which included minor interior and exterior rehabilitation of the Property.

On May 24, 2016, City Council received an update on the Community Livability Task Force Action Plan goals and Homeless Reduction and Prevention Strategy Five-Year Plan. The approved actions included a one year extension to the existing Operating Agreement with POLM. City Council also deferred the disposition of the Property issue to Development Committee.

DISCUSSION:

City staff held several meetings with POLM's Executive Director and board members to discuss options for resolving the Operating Agreement and subsequent agreements, Deed of Trust and Promissory Note that dictates what happens to the Property at the end of the agreement term and the outstanding debt of \$585,150 that is owed from POLM to the City under the Deed of Trust that is recorded against the Property.

City Staff's Original 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.
2. Reaffirm the current and recorded Grant Deed confirming fee ownership of the subject property vested solely in the name of POLM.
3. 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.
4. 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.

POLM Response and Requests

POLM presented the aforementioned recommendations to their Board of Directors for consideration. The Board of Directors reviewed City staff's recommendations and then countered with the following recommendations:

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.
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.
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.

Staff Analysis of POLM Requests and Staff Recommendations:

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.

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;

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

City staff agree to recommend to City Council to 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.

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.

Whether the funds come from federal, state or local resources, these are taxpayer's funds and need to remain as an outstanding debt on the property to ensure that the Property continues to benefit the homeless population in perpetuity. If the Property no longer serves the homeless population, the outstanding debt will be repaid to the City and the funds will be used to fund an activity that serves the homeless population.

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.

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.

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.

- 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.
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.

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 the Covenant Agreement is breached, the Covenant Agreement and Deed of Trust need to remain in place to ensure that the Property continues to serve the homeless population.

FISCAL IMPACT

There is no impact to the General Fund. If the \$585,150 of Community Development Block Grants funds are recaptured, the funds will be used to support activities that benefit low- and moderate income persons or aid in the prevention or elimination of slums or blight.

Submitted by:	Rafael Guzman, Community & Economic Development Director
Certified as to availability of funds:	Scott G. Miller, PhD, Finance Director/Treasurer
Approved by:	Al Zelinka, FAICP, Assistant City Manager
Approved as to form:	Gary G. Geuss, City Attorney

Attachments:

1. Operating Agreement for Access/Homeless Shelter
2. First Amended and Restated Operating Agreement for Access/Homeless Shelter
3. Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing
4. Promissory Note Secured by Deed of Trust
5. Presentation