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**CITY COUNCIL STAFF REPORT**

Meeting: June 18, 2024

Subject

Termination of loan agreement between the City of Cupertino and the Pacific Autism Center for Education

Recommended Action

Authorize the City Manager to terminate a loan agreement between the City of Cupertino and the Pacific Autism Center for Education pursuant to a settlement agreement between the parties, in consideration for a payment of \$50,000 into the City's BMR fund

Reasons for Recommendation

On June 23, 1995, the City of Cupertino and Pacific Autism Center for Education ("PACE") entered into a loan agreement in which PACE received a \$100,000 Community Development Block Grant ("CDBG") for the purpose of acquiring the property located at 7576 Kirwin Lane, Cupertino (Attachment A). PACE acquired the property for the purpose of providing affordable housing for low- and very low-income autistic clients and operated a group home on the property until 2023.

PACE repaid the loan in 2015. However, the 1995 loan agreement included a deed restriction limiting the property to affordable housing uses for a period of 30 years, through June 23, 2025, and obligated PACE to provide affordable housing on the property throughout that period. The group home ceased operations in 2023 and remains vacant.

At around the time the group home closed, PACE sought to obtain the City's consent to reconvey the deed of trust, notwithstanding PACE's ongoing obligation to provide affordable housing on the property. PACE reported significant operating losses associated with operating the group home and broader financial distress to the organization as a whole.

The parties were unable to agree on a mutually acceptable solution in response to PACE's request, and on October 9, 2023, PACE filed a lawsuit in Santa Clara County Superior Court seeking to compel the City to reconvey the deed of trust for purposes of allowing

the sale of the property unencumbered by the affordability restriction (Case No. 23CV423995).

Despite PACE's breach of its obligation to provide affordable housing, the parties negotiated a mutually beneficial resolution of the lawsuit that would allow the City to receive funds to support below market rate ("BMR") housing while allowing the sale of the vacant property to move forward. On June 4, 2024, the parties executed a settlement agreement in which PACE agreed to make a \$50,000 contribution to the City's BMR housing fund in exchange for the City's termination of the loan agreement and the associated affordable housing covenant (Attachment B). The settlement agreement is contingent on the City's Council's authorization to terminate the loan agreement.

Under Section 14(B) of the loan agreement, the City and PACE may terminate the agreement and the affordability covenant if both parties agree that continued operation of the group home "would not produce beneficial results commensurate with further expenditure of funds." Staff recommends that the City Council approve the termination of the agreement on that basis.

If Council authorizes the termination of the loan agreement, PACE will deliver the settlement payment to the City within seven days following the City Council's vote, and the City Manager will then reconvey the deed of trust to PACE within seven days of receipt of the settlement payment.

Sustainability Impact

No sustainability impact.

Fiscal Impact

The City's BMR fund would receive a payment of \$50,000 as a result of the settlement agreement with PACE. The funds will be placed in the BMR fund, 265-90-001 480-401.

California Environmental Quality Act

Not applicable.

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Prepared by:

Christopher D. Jensen, City Attorney

Approved for Submission by:

Pamela Wu, City Manager

Attachments:

A – Loan Agreement

B – Settlement Agreement