



Santa Clara Valley Water District

File No.: 19-0176

Agenda Date: 2/26/2019

Item No.: 6.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Refund of Purchase Deposit from Sale of District-Owned Residential Surplus Property Located at 110 Sunset Avenue, San Jose, (Assessor's Parcel Number 481-21-055) (District Real Estate File 4026-131.1) (District 6) (San Jose).

RECOMMENDATION:

Approve the refund of a \$60,000 purchase deposit from the sale of District residential surplus property located at 110 Sunset Avenue in San Jose to Mr. Jasraj Bhatia due to extenuating circumstances related to the federal government shutdown.

SUMMARY:

On September 27, 2016, the Board adopted Resolution No.16-71 (Attachment 1) declaring several District parcels surplus property including 110 Sunset Avenue in San Jose.

On June 20, 2018, District staff conducted a public oral auction of the subject property. There were five (5) registered bidders in attendance and each bidder posted a deposit of \$60,000. The minimum bid, was established at \$600,000. Oral bids were received and Mr. Jasraj Bhatia submitted the highest bid of \$665,000 for the property. The highest bidder was required to deposit \$60,000 toward the purchase of the subject property with the balance due on the close of escrow.

On August 28, 2018, the Board approved the sale of the subject property to Mr. Bhatia (Buyer) and the Purchase and Sale Agreement (PSA) was fully executed on August 30, 2018 (Attachment 2). The close of escrow date in the PSA was set for November 30, 2018.

On November 29, 2018, Mr. Bhatia requested a 45-day extension in order to secure the necessary funds, which includes the balance of the Purchase Price and closing costs. On November 30, 2018, the District granted a 45-day extension and the close of escrow was extended to January 15, 2019.

On January 9, 2019, the District received a request from Mr. Jasraj Bhatia's attorney, Eric F. Hartman, requesting a 90-day escrow extension to permit Mr. Bhatia and his lender to complete financing on his Small Business Administration (SBA) loan. Even though Mr. Hartman acknowledged the current federal government shutdown, he looked forward to working with the District to successfully complete this real estate transaction.

A few days later on January 11, 2019, the District received an email request from Mr. Hartman to terminate the Purchase and Sales Agreement solely because Mr. Bhatia's SBA Loan cannot proceed due to the U.S. government shutdown. Additionally, both Mr. Bhatia and Mr. Hartman verbally requested a refund of the \$60,000 deposit for the purchase of the subject property. The federal government shutdown began at midnight on December 22, 2018.

On January 15, 2019, escrow period closed and Buyer failed to satisfy its obligation to deposit into escrow the Purchase Price and applicable closing costs by this date as required by Sections 4(B) and 5(E) of the PSA. In this event, the Buyer's rights to purchase the Property shall be terminated; the District shall retain all Purchase deposits paid as liquidated damages; and neither party has any further rights or obligations under the PSA.

On January 29, 2019, the District sent a letter to Mr. Bhatia, explaining, that based on failure to deposit the total cash required on or before the close of escrow date, the District is entitled to retain all purchase deposits paid as liquidated damages.

Presently, the Buyer's request for a full refund of the purchase deposit is presented to the Board for its consideration because only the Board of Directors has the authority to grant a refund to the Buyer.

FINANCIAL IMPACT:

The \$60,000 was deposited into Fund 12. Refund of the deposit will result in a corresponding charge to Fund 12.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: SCVWD Resolution No. 16-71
Attachment 2: 082818 Purchase and Sale Agreement
Attachment 3: Deposit Receipt and Check
Attachment 4: Location Map

UNCLASSIFIED MANAGER:

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