



# Santa Clara Valley Water District

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**File No.:** 18-0635

**Agenda Date:** 8/14/2018

**Item No.:** 3.1.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Amendment No. 1 to Option Agreement for Acquisition of Temporary Construction Easement (TCE) Interest from Anita S. Siegel, Trustee or Successor Trustee of the Anita S. Siegel 2001 Trust dated June 27, 2001 (Owner), for the Permanente Creek Flood Protection Project (Project), Project No. 26244001, APN No. 189-03-047, Real Estate File No. 1016-84 (Los Altos) (District 5).

### **RECOMMENDATION:**

Approve and authorize the Chief Executive Officer to execute Amendment No. 1 to Option Agreement for Acquisition of Temporary Construction Easement Interest from Anita S. Siegel, Trustee or Successor Trustee of the Anita S. Siegel 2001 Trust dated June 27, 2001 (Owner) to reflect the New Baseline Rent being paid to the Owner by her tenants.

### **SUMMARY:**

The Permanente Creek Flood Protection Project (Project) is a Clean, Safe Creeks funded project that will provide flood protection to approximately 2,200 parcels. As part of the project, the District requires a Temporary Construction Easement (TCE) (Attachment 1) to facilitate modifications to an existing concrete channel wall along two areas of Hale Creek adjacent to the Siegel property in Los Altos, California. The TCE affects approximately 65 linear feet of the channel wall as shown on Exhibit A of the Agreement (Attachment 2). The channel will be deepened and the channel wall will be raised increasing the maximum depth of the channel by up to four feet.

Acquisition of the easement and construction associated with the easement is consistent with the overall purpose of the project.

On November 20, 2012, the Board adopted RESOLUTION NO. 12-76 certifying a Final Subsequent Environmental Impact Report (FSEIR) for the Permanente Creek Flood Protection Project. This Board action satisfies the express conditions contained in the option agreement.

On August 13, 2013, the Board authorized the CEO to exercise the District option rights under option agreement with Anita S. Siegel, Trustee for purchase of easement dated November 8, 2012. The Agreement stated that the Owner had two month-to-month tenants on portion of Real Property commonly known as 85 Mountain View Avenue and 91 Mountain View Avenue ("Rental Premises") paying monthly rent totaling \$2000 ("Baseline Rent").

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On February 27, 2017, the District informed the Owner that the District was commencing use of the TCE starting in May 2017. The Owner then provided the District documentation depicting that the amount of monthly rent paid by her tenants had increased since the Agreement was executed five years ago and that the Agreement should be modified to reflect the current monthly rent being paid to the Owner by her tenants.

The Owner currently has two month-to-month tenants on portions of Real Property commonly known as 85 Mountain View Avenue and 91 Mountain View Avenue ("Rental Premises") paying monthly rent of \$2,500 and \$2,800 respectively ("New Baseline Rent"). The Owner estimates needing to grant its tenants a 50 percent reduction in rent for a period of six months due to construction of the Project.

The District and Owner agree that should the Owner have to offer tenants a temporary rent concession due to construction of the Project, District shall pay Owner the difference between the Baseline Rent and the temporarily lowered rent ("Rent Differential"). Owner shall reasonably cooperate with District in providing all requested records, including but not limited to cancelled checks, correspondence, emails, and bank statements, establishing both the Baseline Rent and any rent concession. District shall pay Owner this Rent Differential no less frequently than once every three months.

All other terms and conditions of the Agreement remain in full force and effect.

**FINANCIAL IMPACT:**

Staff estimates a \$16,000 expenditure associated with approval of this item. Funding for this item is included in the FY19 Permanente Creek Flood Protection Project Fund 26.

**CEQA:**

On November 20, 2012, the Board adopted RESOLUTION NO. 12-76 certifying a Final Subsequent Environmental Impact Report (FSEIR) for the Permanente Creek Flood Protection Project. The FSEIR provides the environmental coverage to acquire and use the property interests from the Owner. The recommended action to amend the baseline rents set forth in the Option Agreement 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. No further environmental review is necessary.

**ATTACHMENTS:**

Attachment 1: Amendment No. 1  
Attachment 2: Option Agreement

**UNCLASSIFIED MANAGER:**

Ngoc Nguyen, 408-630-2632