



**FENNER VALLEY
WATER AUTHORITY**

MEETING HANDOUT

Meeting: Special Board Meeting

Date: October 5, 2018

Item: 5.1 Consideration and Action on an Agreement Between Fenner Valley Water Authority and Cadiz Inc. Regarding Safe Drinking Water for Disadvantaged Communities

The attached Agreement is being provided for consideration at the Board meeting.

Note: The agency City of Twentynine Palms named in the Agreement was corrected to Twentynine Palms Water District.

AGREEMENT

THIS AGREEMENT is made and entered into as of _____, 2018 (the “**Effective Date**”), by and between the Fenner Valley Water Authority, a California joint powers authority (“**FVWA**”) and Cadiz, Inc., a Delaware corporation (“**Cadiz**”) (collectively, the “**Parties**” and individually a “**Party**”), with respect to the following facts and intentions.

RECITALS

Whereas, by definition under the laws of the State of California, a “disadvantaged community” (“**DAC**”) is a community whose median household income (“**MHI**”) is less than 80% than that of the statewide MHI;

Whereas, a “severely disadvantaged community” (“**SDAC**”) is a community whose MHI is less than 60% of the statewide MHI, or less than \$36,893;

Whereas, small water systems in rural desert communities can often suffer from poor water quality and water supply shortages (see <http://www.ppic.org/blog/modernizing-water-systems-disadvantaged-communities/>);

Whereas, solutions are needed to develop small water systems that provide clean, safe and affordable water;

Whereas, California voters passed Proposition 68 in June 2018 to make funds available for DACs and SDACs;

Whereas, Cadiz desires to make a further commitment to small water systems serving DACs and SDACs by creating a fund that may be accessed by eligible small water systems to provide financial assistance, which, together with state and federal grants and loans, can be used to develop systems that provide clean, safe and affordable water to such communities;

Whereas, the Inland Empire Utilities Agency and the Mojave Water Agency are two wholesale water agencies within San Bernardino County (“**County**”) that, along with the Twentynine Palms Water District and the County can assist in the identification of small retail water systems that may benefit from access to funds to improve their water treatment systems;

Whereas, FVWA is a public agency with responsibility to manage the Cadiz Water Project and desires to assist Cadiz in administering such fund by coordinating with the San Bernardino County wholesale water agencies, the Twentynine Palms Water District, and the County pursuant to the principles set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into the operative provisions of this Agreement by this reference, and for all the good and valuable consideration herein, the Parties hereto agree as follows:

1. Within 180 (one hundred and eighty) days of the completion of the 43-mile conveyance pipeline interconnecting certain real property owned by Cadiz Real Estate, LLC (a wholly-owned subsidiary of Cadiz) in the County to the Colorado River Aqueduct, Cadiz will make a one-time deposit in the amount of \$5,000,000 (Five million dollars) to an interest-bearing account (the “**Fund**”) which will be used for the sole purpose of providing assistance to Eligible Small Water Systems as defined in Section 2 of this Agreement. \$3,000,000 (Three million dollars) of the Fund will be reserved for the benefit of Eligible Small Water Systems located in the County, and \$2,000,000 of the Fund will be available to Eligible Small Water Systems located in any County in the State of California (including those located in the County of San Bernardino) which receives water from the Cadiz Valley Water Conservation, Recovery and Storage Project.

2. For purposes of this Agreement, an “Eligible Small Water System” is a small water system that services DACs and/or SDACs.

3. FVWA agrees that upon establishment of the Fund it will administer the Fund in accordance with the foregoing principles and on such other terms and conditions as set forth by Cadiz, provided such terms and conditions are not inconsistent with the terms of this Agreement. In carrying out its responsibilities hereunder, FVWA will coordinate its efforts with wholesale water agencies within the County, including but not limited to the Mojave Water Agency and the Inland Empire Utilities Agency, seeking their collective input to maximize the likelihood that desert communities and small water systems within the County are aware of the Fund and the opportunity it presents for financial assistance. The County must independently approve the dispersal of any portion of the Fund to entities within the County.

4. Within ninety (90) days of execution FVWA will develop criteria for accepting applications from DACs and will begin outreach with the intention of receiving applications from DACs for funding in 2019.

5. Should any portion of the available funds remain unused after 5 (five) years from the date of the initial deposit, FVWA and Cadiz will meet with Inland Empire Utilities Agency, the Mojave Water Agency, the Twentynine Palms Water District and the County and confer in good faith consideration of alternative strategies to use the available funding for the purposes of providing water system benefits to DACs and make reasonable good faith efforts to fairly and equitably distribute the funds in a manner consistent with the intentions of this Agreement. Following the good faith consultation, Cadiz and FVWA will ensure that all remaining funds are in fact distributed to DACs within 12 months.

6. FVWA shall not assign this Agreement in whole or in part to any person or persons without obtaining the prior written consent of Cadiz, which consent Cadiz may grant or withhold in its sole and uncontrolled discretion. In the event of permitted assignment, each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the respective Parties.

7. Any notice to the other Party shall be deemed sufficient if given to the other Party in writing and either delivered in person, sent via commercial overnight courier or transmitted by

electronic mail (subject to confirmation by return email from the recipient), and addressed as follows:

If to Cadiz:	Chief Financial Officer 550 South Hope Street Suite 2850 Los Angeles, CA 90071
If to FVWA:	Executive Director 26111 Antonio Parkway Rancho Santa Margarita, CA 92688

Or to such updated address or duly authorized representative as the Party shall have last designated by such notice to the other Party. The effective date of such notice shall be the earlier of the date of actual receipt or acknowledgment of receipt.

8. This Agreement may be amended only by an agreement in writing and executed by all Parties. No waiver of any provision of, nor any consent to any exception to the terms of this Agreement, shall be effective unless in writing and signed by the Party to be bound and then only for the specific purpose, extent and circumstance so provided. The failure of any Party at any time or times to enforce or require performance of any provision hereof shall in no way operate as a waiver or affect the right of such Party at a later time to enforce the same. No waiver by any Party of any condition or the breach of any term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach, or a waiver of any other condition or of any other breach of any term, covenant, representation or warranty contained in this Agreement.

9. This Agreement is made in the State of California, and its interpretation, its construction, and the remedies for its enforcement or breach are to be applied pursuant to, and in accordance with, the laws of the State of California.

10. To the extent permitted by applicable law, the Parties, to the same extent, waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provision or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part of this Agreement is stricken in accordance with the provisions of this section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in content to the stricken provision as is legally possible.

11. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officials or officers therefore duly authorized.

Fenner Valley Water Authority

Cadiz, Inc.

By: _____

By: _____

Its: _____

Its: _____