

JOINT EXERCISE OF POWERS AGREEMENT

by and among

SANTA MARGARITA WATER DISTRICT

and

FENNER VALLEY MUTUAL WATER COMPANY

creating the

FENNER VALLEY WATER AUTHORITY

November 14, 2014

**JOINT EXERCISE OF POWERS AGREEMENT
FENNER VALLEY WATER AUTHORITY**

This Joint Exercise of Powers Agreement ("Agreement") is made and entered into as of November 14, 2014, by and among Santa Margarita Water District, a California water district ("SMWD") and Fenner Valley Mutual Water Company, a California nonprofit mutual benefit corporation ("FVMWC") (each individually a "Member" and collectively the "Members"), to provide for the formation and governance of the Fenner Valley Water Authority ("Authority").

RECITALS

A. SMWD is a California Water District, a local agency of the State of California with broad powers under the California Water District Act, Cal. Water Code Sections 34000 *et seq.*

B. SMWD is a participant in the Cadiz Valley Water Conservation, Recovery and Storage Project ("Project"), a public private partnership designed to appropriate groundwater from wells on certain property overlying the Orange Blossom Wash, Cadiz, Bristol and Fenner Valley aquifers (collectively, such aquifers being the "Fenner Valley Aquifer System"), and to deliver that groundwater for reasonable and beneficial uses via the Colorado River Aqueduct ("CRA") and other facilities necessary to deliver the groundwater to Project participants. The Project includes the opportunity to carry-over up to one hundred fifty thousand (150,000) acre feet of water in authorized carry-over storage accounts, of which SMWD owns the right to fifteen thousand (15,000) acre feet (of presently stored groundwater held within a carry-over storage account, but does not include any future imported water storage component.

C. SMWD is the lead public agency for the Project and on July 31, 2012, SMWD certified the Project EIR and made the required CEQA findings for the Project to move forward. The Project EIR and CEQA findings for the Project adopted by SMWD anticipated that SMWD would consider approval of further implementing documents, including the creation of the Authority to provide Project oversight and control the use of the Project Facilities.

D. FVMWC is a California mutual water company and is duly organized as a nonprofit mutual benefit corporation under the laws of the State of California. FVMWC was formed for the purpose of operating the Project and making water available from the Project to the Project participants at cost, all of whom are required to become members of FVMWC as a condition of receiving water. Pursuant to California Government Code Section 6525, a mutual water company may enter into a joint powers agreement with one or more public agencies.

E. The developer of the Project is Cadiz, Inc., a Delaware corporation, and its affiliate, Cadiz Real Estate LLC (collectively referred to herein as "Cadiz"). Cadiz has agreed to develop, finance and construct the Project in accordance with the terms of that certain Water Purchase and Sale Agreement between Cadiz, SMWD and FVMWC dated July 31, 2012 ("Project Agreement").

F. Cadiz has agreed to enter into a long-term lease ("Water Lease") of Project Water to FVMWC taken from the Fenner Valley Aquifer System to make water available for the use of

Project participants. FVMWC will collect a water supply payment negotiated between Cadiz and each Project participant as consideration for the delivery of Project Water and forward such payment to Cadiz as required under the lease.

G. Cadiz has further agreed to enter into a long term lease with the Authority for use and control of the Project Facilities ("Facilities Lease") which will be used to extract, treat and transport Project Water, pursuant to which the Authority will become the owner of the Project Facilities upon the expiration of the Facilities Lease term. The Authority will collect a Capital Recovery Charge from the Project participants as consideration for the Facilities Lease.

H. The delivery of Project Water and operation of the Project Facilities is subject to the terms of that certain Groundwater Management, Monitoring, and Mitigation Plan ("GMMMP") approved by and between SMWD, FVMWC and the County of San Bernardino.

I. SMWD and FVMWC have a common interest in the timely development of the Project, the lease, and making available Project Water and the lease and operation of the Project Facilities. SMWD has a further interest in providing a mechanism for the proper oversight of the permitting, design, construction, operation and maintenance of the Project, as well as the Project's compliance with the GMMMP.

J. In order to facilitate the Project and carry out the purposes described above, SMWD and FVMWC desire to form the Authority as a joint powers authority on the terms and conditions set forth herein, with SMWD serving as the Managing Member and the "designated entity" of the authority pursuant to Government Code Section 6509.

TERMS OF AGREEMENT

In consideration of the mutual promises and covenants herein contained, the Members agree as follows:

ARTICLE 1 DEFINITIONS

Unless defined elsewhere in this Agreement, all defined terms used herein, shall have the meanings specified as follows:

"Act" means the Joint Exercise of Powers Act, set forth in Chapter 5 of Division 7 of Title 1 of the California Government Code Sections 6500 et seq., including all laws supplemental thereto.

"Administrative Costs" means the administrative costs associated with the operation and management of the Project by the Authority and FVMWC following the Commencement Date, calculated in accordance with generally accepted accounting principles, which shall include costs related to insurance, taxes (if any), and professional service providers such as accountants, attorneys and engineers.

"Director" and "Alternate Director" mean a director or alternate director appointed by a Member pursuant to Section 6.3 of this Agreement.

“Board of Directors” or “Board” means the governing body of the Authority as established by Article 6 of this Agreement.

“Capital Investment” means any and all capital costs incurred by Cadiz to develop and build the Project, including design, permitting, construction and financing costs related to Project Facilities. For the purposes of this definition, construction costs shall include the costs of inspecting and performance testing the Project Facilities and preparing them for operation.

“Capital Recovery Charge” means the charge payable in connection with the purchase of Project Water as described in Section 9.2.2 of the Project Agreement to allow for the recovery of the Capital Investment by Cadiz and to permit Cadiz to make timely payment of all Debt Service.

“CEQA” means the California Environmental Quality Act.

“Commencement Date” means the date on which water is first made available to the Project Participants by it being delivered from the Project Facilities to the CRA.

“County” means the County of San Bernardino.

“County MOU” means that certain Memorandum of Understanding By and Among SMWD, Cadiz, Inc., FVMWC, and the County of San Bernardino (Related to County Ordinance for Desert Groundwater Management) dated May 11, 2012.

“CRA” means the Colorado River Aqueduct.

“Executive Director” has the meaning set forth in Section 9.1.

“Facility Operation Agreement” means that agreement to be executed between FVMWC and the Authority pursuant to which the actual extraction, conveyance and delivery of water from the Project Facilities shall be governed. The terms of the Facility Operation Agreement shall include: (i) the responsibility of FVMWC for paying or reimbursing costs incurred by the Authority, County and SMWD for overseeing compliance with the GMMMP on a time and materials basis; (ii) permitting the Authority and FVMWC to contract with third parties, including another Project participant, another local public agency, other person or entity, to provide for the day-to-day operation and maintenance of the Project, as well as bookkeeping and administration duties; (iii) the responsibility of FVMWC for actual day-to-day operations; (iv) the responsibility of FVMWC for the collection of proceeds from the sale of water to Project Participants; and (v) the proper allocation and payment of all costs and charges related to the operation of the Project, including payments due and payable to Cadiz.

“Fixed O&M Costs” means all Project Operation and Maintenance Expenses which do not vary with the amount of water extracted, conveyed and delivered during the applicable time period.

“Managing Member” has the meaning set forth in Section 4.1 of this Agreement.

“Member” means each party to this Agreement that satisfies the requirements of Article 5 of this Agreement, including any new members as may be authorized by the Board, pursuant to Section 5.2 of this Agreement.

“MWD” means The Metropolitan Water District of Southern California.

“MWD Fees” means any fees charged by MWD and MWD member agencies (if any) in connection with the delivery of Project Water to the Project participants, as set forth in Section 9.3.4 of the Project Agreement.

“MWDOC” means the Municipal Water District of Orange County.

“Project EIR” means the Environmental Impact Report for the Project which was certified by SMWD is the lead agency on July 31, 2012, pursuant to SMWD’s Resolution No. 2012-07-02.

“Project Facilities” means any and all facilities deemed necessary, advisable or appropriate to extract, convey or deliver Project water to Project participants, including facilities associated with the Groundwater Conservation and Recovery Component phase of the Project, as described in the Project EIR, viz., a wellfield located on the Property, manifold, 43-mile conveyance pipeline between the wellfield and the CRA, and interconnection between the conveyance pipeline and the CRA. Project Facilities may include, without limitation, wells, diversion infrastructure, conduits, pipes, reservoirs, tanks, pumping plants, treatment plants, water conveyance and storage facilities, buildings, and other structures and infrastructure utilized for the diversion, pumping, conveyance, treatment, control, storage, groundwater recharge and delivery of waters for beneficial use within the Project’s intended boundaries.

“Project Operation and Maintenance Expenses” means:

(a) Following the Commencement Date, the actual costs spent or incurred for labor, materials, services or utilities related to the operation, maintenance and repair of the Project and Project Facilities (including costs incurred by the Authority under the Facility Operation Agreement), calculated in accordance with generally accepted accounting principles and Section 9 of the Project Agreement, including: (i) the cost of all scheduled and unscheduled maintenance of the Project Facilities as necessary to preserve the Project in good repair and working order; (ii) following the Commencement Date, the cost of providing field staff, data collection and reporting as necessary for compliance with the GMMMP; and (iii) all costs payable to the Authority, SMWD and the County to oversee compliance with the GMMMP; and

(b) The current cost of funding adequate reserves for: (i) operations; and (ii) capital repairs, replacements or improvements which are necessary to keep the Project Facilities in good repair and working order over the term of the Project (excluding any capital improvements related to the Imported Water Storage Component phase of the Project);

(c) But excluding in all cases: (i) depreciation, replacement and obsolescence charges or reserves therefor; (ii) amortization of intangibles or other bookkeeping entries of a similar nature; and (iii) Administrative Costs.

"Project Storage" means the right to carry-over and store up to one hundred fifty thousand (150,000) acre-feet of Project Water.

"Project Water" means the right to produce and deliver fifty thousand (50,000) acre-feet per year of groundwater from the Fenner Valley Aquifer System over the Initial Term, aggregating two million, five hundred thousand (2,500,000) acre feet of such groundwater cumulatively over the fifty (50) year life of the Project. The parties acknowledge that the right to Project Water is a contractual right pursuant to the Water Lease and that no transfer, loss, severance, forfeiture, abandonment, estoppel or non-use of the water rights of Cadiz in the Property or the Fenner Valley Aquifer System is intended by the Water Lease or this Agreement.

"Total Project Costs" means the budget of costs and expenses for the Project as set forth in Section 12.1 of this Agreement.

"Variable O&M Costs" means all Project Operation and Maintenance Expenses which vary with the amount of water extracted, conveyed and delivered during the applicable time period.

ARTICLE 2 CREATION OF THE AUTHORITY

2.1 Creation of the Authority. There is hereby created pursuant to the Act a joint powers agency which will be a public entity separate from the parties to this Agreement and shall be known as the "Fenner Valley Water Authority."

2.2 Purpose. The purpose of this Agreement is to provide for the joint exercise of powers common to the Members through the Authority under the supervision of the Managing Member in order to implement the Project in a public private partnership with Cadiz and to accomplish the following objectives in connection with the Project (collectively, the "Project Objectives"):

2.2.1 To undertake the review and approval of the design, permitting and construction of the Project Facilities by Cadiz in accordance with the Project Agreement, Project EIR, the GMMMP, SMWD construction standards and specifications, and such other requirements as may be adopted by the Authority;

2.2.2 To negotiate, secure and hold a possessory interest in the Project Facilities pursuant to a long term lease with Cadiz as contemplated in the Project Agreement ("Facilities Lease") and upon the termination or expiration of such Facilities Lease, to thereafter own the Project Facilities;

2.2.3 To operate and maintain the Project Facilities, either directly or through a Facility Operation Agreement with FVMWC;

2.2.4 To ensure that the extraction, conveyance and delivery of water for the Project via the Project Facilities is undertaken in accordance with: (i) the requirements of the GMMMP, including oversight of the monitoring of safe yield and other legal and environmental standards applicable to the Project as identified in the Project EIR; (ii) the conditions applicable

to any permits and governmental approvals obtained in connection with the Project, including any requirements contained in the County MOU; and (iii) all other federal, state and local rules and regulations applicable to the Project; and

2.2.5 To engage in such other activities as may be necessary or appropriate for the purpose of supplying water to Project participants, including any expansion of the Project and/or the Project Facilities that is unanimously approved by the Members.

2.3 Limitations on Purpose. It is not intended by the Members that the Authority will provide capital funding for the Project or participate in any financing of the development and construction of the Project Facilities, it being understood that all Capital Investment is to be obtained by Cadiz and repaid solely from the Capital Recovery Charge that will be payable to Cadiz pursuant to the Facilities Lease. The foregoing limitation shall not prevent the Authority and the Members from advancing costs and expenses on a short term basis, subject to reimbursement by Cadiz and the Project participants or from funding reserve accounts for the operation and maintenance of the Project Facilities from the fees received in connection with the operation of the Project as described in Article 12. The Authority and the Members may participate in the funding of any future expansion or use of the Project Facilities subject to the requirements of Section 4.5.

2.4 Designated Agency. SMWD shall be the designated party pursuant to California Government Code Section 6509 and all powers exercised by the Authority pursuant to Article 4 shall be carried out in accordance with the restrictions and limitations that are placed on the exercise of such powers by SMWD.

2.5 Term. This Agreement shall become effective upon execution by each of the Members and shall remain in effect until terminated pursuant to the provisions of Article 14 (Withdrawal of Members) of this Agreement.

2.6 Separate Entity. The Authority shall be a public entity separate from the Members. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as otherwise provided in this Agreement or any agreement by which such property or other asset is contributed or conveyed to the Authority. The Members do not intend hereby to be, and shall not be, obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2.

ARTICLE 3 POWERS OF THE AUTHORITY

3.1 Enumerated Powers. The Authority shall possess the power in its own name to exercise any and all common powers of its Members reasonably related to the purposes of the Authority, including but not limited to the following powers, together with such other powers as are expressly set forth in the Act, but subject to the limitations contained in Section 2.3:

3.1.1 To take all acts as are necessary and appropriate to carry out the Project Objectives.

3.1.2 To perform other ancillary tasks relating to the Project and the implementation of the Project Objectives.

3.1.3 To obtain rights, permits and other authorizations for, or pertaining to, the Project and the Project Facilities, either directly or in cooperation with the Members and/or Cadiz.

3.1.4 To implement the terms of the GMMMP and the County MOU and coordinate with the County with respect to the County's continuing authority under the GMMMP to modify Project operations, including the right to suspend or limit the amount of Project Water that is extracted using the Project Facilities and made available to FVMWC for delivery to the Project participants.

3.1.5 To prioritize the storage and delivery of Project Water extracted using the Project Facilities in accordance with the rights of SMWD, the County and FVMWC as set forth in the Project Agreement and the County MOU.

3.1.6 In the Authority's own right, or as agent and on behalf of Members, to obtain access to third-party conveyance capacity pursuant to California Water Code Section 1810 or otherwise consistent with applicable law.

3.1.7 To exercise the common powers of its Members to develop, collect, provide and disseminate information concerning the Project to the Members and others, including but not limited to legislative, administrative and judicial bodies and the public generally.

3.1.8 To make and enter into and perform contracts and agreements as necessary for the full exercise of its powers.

3.1.9 To take possession of, lease and own the Project Facilities and to acquire such ancillary real and personal property assets as may be necessary to carry out the Project Objectives by lease, purchase or dedication, and to hold, enjoy, lease or sell, or otherwise dispose of, such assets.

3.1.10 Receive gifts, contributions and donations or property, funds, services and other forms of financial or other assistance from any persons, firms, corporations or governmental entities, or any other source.

3.1.11 To collect fees and assessments from the Project participants: (i) to pay those Project Operation and Maintenance Expenses that are incurred by the Authority; (ii) to pay the Capital Recovery Charge payable to Cadiz; and (iii) to accumulate operating and reserve funds for the purposes herein stated.

3.1.12 To invest money that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local Members, pursuant to California Government Code Section 53601, as it now exists or may hereafter be amended.

3.1.13 To apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid and assistance from the United States, the State or other public agencies or private entities necessary for the Authority's full exercise of its powers.

3.1.14 To employ, or otherwise contract for the services of, agents, officers, employees, attorneys, engineers, planners, financial consultants, technical specialists, advisors and independent contractors.

3.1.15 To sue and to be sued in its own name.

3.1.16 To undertake any investigations, studies and matters of general administration.

3.1.17 To adopt rules, policies, regulations and procedures governing the operation of the Authority consistent with this Agreement.

3.1.18 To perform all other acts necessary or proper to carry out fully the purposes of this Agreement.

ARTICLE 4 MANAGEMENT

4.1 Managing Member. The Authority shall have a single "Managing Member" which shall be responsible for the day-to-day operation of the Authority and shall have general authority to carry out the powers of the Authority enumerated in Article 3 consistent with the Project Objectives. The Managing Member shall act through the Executive Director of the Authority, who shall be appointed by the Managing Member pursuant to Section 9.1. The Managing Member will also be the designated agency of the Authority pursuant to Section 2.4. The Executive Director will regularly report to the Board of Directors on the activities of the Authority and shall respond to inquiries or questions from the Board regarding Authority operations. The Authority may contract with third parties, including FVMWC pursuant to the Facility Operation Agreement, to carry out the actual operation and maintenance of the Project Facilities and certain other administrative and accounting functions under the supervision of the Managing Member. SMWD shall be the Managing Member of the Authority and shall serve in that capacity unless and until it withdraws as a Member of the Authority pursuant to Article 14 or there is unanimous agreement of the Members to transition the role of Managing Member to a successor public agency. The Managing Member shall not take any action on behalf of the Authority that is not authorized under this Agreement or is inconsistent with the Project Objectives.

4.2 Compensation of Managing Member. The Managing Member shall be entitled to reimbursement for all actual costs and expenses incurred by the Managing Member in carrying out its duties and obligations pursuant to Section 4.1, including a reasonable allocation of the salary and benefits of Managing Member's staff who provide services on behalf of the Authority. An estimate of all such actual costs and expenses shall be included in the annual budget of the Authority which is submitted by the Managing Member for approval of the Board. Such costs and expenses shall be treated as Project Operation and Maintenance Expenses. The Managing Member may further receive reasonable compensation for acting in such capacity in the form of

a management fee or allocation of general administrative overhead as mutually agreed between the Managing Member and the other Members of the Authority from time to time..

4.3 Actions Requiring Board Approval. Notwithstanding the authority granted pursuant to Section 4.1, the following actions shall require the approval of the Board of Directors: (a) the adoption and any change in the rules and regulations of the Authority; (b) the adoption of an annual budget for the operation of the Authority, including the authorization to hire employees and set salary and benefits for employees of the Authority; (c) the adoption of any supplemental fees and assessments necessary to address shortfalls or unanticipated expenses for which reserves are unavailable; (d) the adoption of funding targets for operational and maintenance reserves; and (e) any contract or agreement which delegates the duties of the Authority or the Managing Member to any third-party operator, including any change in the Facility Operation Agreement.

4.4 Actions Requiring Unanimous Board Approval. Notwithstanding any other provision of this Agreement, the following actions shall require the unanimous approval of the Board of Directors: (a) the termination or amendment of the Facilities Lease and/or the Facility Operation Agreement; (b) the payment of any compensation to the Managing Member other than as expressly set forth herein; (c) the issuance of any indebtedness by the Authority to fund construction, operation, or maintenance of the Project or the Project Facilities; and (d) any other amendment to the terms of this Agreement.

4.5 Project Expansion. The Managing Member will evaluate and consult with the Members concerning any proposal for the expansion of the Project, the Project Facilities and/or the Project Objectives. Prior to such proposal being submitted to the Board of Directors for approval, a detailed report will be prepared concerning the feasibility of the expansion, the financing options, the regulatory requirements, permits and approvals which are necessary for the proposal to be implemented and the proposed participants in such expansion. Within sixty (60) days of the approval of any expansion proposal by the Board of Directors, each Member shall have the option to accept or decline to participate in the expansion and the proposed financing thereof. Following the completion of such elections by the Members, the Managing Member shall prepare an amendment to this Agreement setting forth the rights and obligations of each Member that is participating in such expansion, which amendment shall not impose any additional burdens or limit any existing rights of those Members who do not participate in the expansion. Such amendment shall be subject to approval pursuant to Section 4.4(d), provided, however, that no non-participating Member shall unreasonably withhold such approval.

ARTICLE 5 MEMBERSHIP

5.1 Initial Members. The initial Members of the Authority shall be SMWD and FVMWC, as long as they have not, pursuant to the provisions hereof, withdrawn from this Agreement in accordance with the terms hereof.

5.2 New Members. Any Member of the Authority must be a public agency (as defined by the Act) or a mutual water company (as defined by California Government Code

Section 6525), each having powers common to all other Members. Additional Members may join in this Agreement and become a Member upon: (a) the recommendation of the Managing Member to admit the new Member and approval of the Board of Directors by at least seventy (70) percent of the votes held among all Directors as specified in Article 8 (Voting); (b) the admission of the new Member as a Project participant and member of FVMWC; (c) payment of a pro rata share of all previously incurred costs that the Board of Directors determines have resulted in a benefit to the proposed new Member, and are appropriate for assessment on the proposed new Member; and (d) execution of a written agreement subjecting the proposed new Member to the terms and conditions of this Agreement.

ARTICLE 6 BOARD OF DIRECTORS AND OFFICERS

6.1 Formation of the Board of Directors. The Members of the Authority shall be represented by a Board of Directors.

6.2 Duties of the Board of Directors. Subject to the provisions of the Act, the Board shall be the policymaking body of the Authority. The Board shall have oversight over the business and affairs of the Authority as carried out by the Managing Member and shall have the exclusive authority to approve such items as are reserved to the Board pursuant to Article 4.

6.3 Directors. The initial Board shall consist of three (3) Directors and three (3) Alternate Directors, each of which shall be a member of the governing board of the appointing Member. Each Member shall appoint one Director and one Alternate Director to the Board. The Managing Member shall appoint one additional Director and one additional Alternate Director. Alternate Directors shall have no vote, and shall not participate in any discussions or deliberations of the Board, if the Director is present. If a Director is not present, or if a Director has a conflict of interest which precludes participation by the Director in any decision-making process of the Board, the Alternate Director appointed to act in his or her place shall assume all rights of the Director, and shall have the authority to act in his or her absence, including casting votes on matters before the Board. Each Director and Alternate Director shall be appointed prior to the initial meeting of the Board, as set forth in Section 7.1, and reappointed at the first Board meeting following December 1 of each year.

6.4 Removal. A Director may be removed during his or her term or reappointed for multiple terms at the pleasure of the Member that appointed him or her. No individual Director may be removed in any other manner, including by the affirmative vote of the other Directors.

6.5 Vacancies. A vacancy shall occur when a Director resigns, or is removed by his or her appointing Member, or when he or she ceases to hold office within the Member that appointed him or her. Upon the vacancy of a Director, the Alternate Director shall serve as Director until a new Director is appointed by the Member. Members shall submit any changes in Director or Alternate Director positions to the Board and other Members in writing and signed by an authorized representative of the Member.

6.6 Officers. The executive officers of the Authority shall include the Executive Director, a Secretary and a Treasurer. The Treasurer will be the treasurer of the Managing Member in accordance with the requirements of California Government Code section 6505.5.

6.7 Appointment of Officers. The Secretary shall be appointed annually by, and serve at the pleasure of, the Board. The Executive Director and Treasurer shall be appointed annually in accordance with the terms of this Agreement. Officers shall be elected or appointed, as applicable, at the first Board meeting, and thereafter at the first Board meeting following December 1 of each year. An Officer may serve for multiple consecutive terms. Any Officer may resign at any time upon written notice to the Board. The Secretary may be removed and replaced by an affirmative decision of the Board and the Executive Director and Treasurer may be removed and replaced by an affirmative decision of the Managing Member.

6.8 Principal Office. The principal office of the Authority shall be established by the Board, and may thereafter be changed by the affirmative vote of the Board.

ARTICLE 7 DIRECTOR MEETINGS

7.1 Initial Meeting. The initial meeting of the Board shall be held at such place and time as is determined by the Members.

7.2 Time and Place. The Board shall meet at least once per year, at a date, time and place set by the Board, and at such other times as may be determined by the Board.

7.3 Special Meetings. Special meetings of the Board may be called by the Executive Director or by any Director in accordance with the provisions of California Government Code Section 54956.

7.4 Conduct. All meetings of the Board, including special meetings, shall be noticed, held and conducted in accordance with the Ralph M. Brown Act, California Government Code Sections 54950 *et seq.* The Board may use teleconferencing in connection with any meeting in conformance with and to the extent authorized by applicable law.

7.5 Local Conflict of Interest Code. The Board shall adopt a local conflict of interest code pursuant to the provisions of the Political Reform Act of 1974, California Government Code Sections 81000-91014.

ARTICLE 8 VOTING

8.1 Quorum. A quorum of any meeting of the Board shall consist of at least three (3) Directors or such larger number as constitutes a majority of the Directors appointed. In the absence of a quorum, any meeting of the Directors may be adjourned by a vote of a majority of Directors present, but no other business may be transacted. For purposes of this Article, a Director shall be deemed present if the Director appears at the meeting in person or telephonically, provided the telephone appearance is consistent with the requirements of the Ralph M. Brown Act.

8.2 Director Votes. Voting by the Board shall be made on the basis of one vote for each Director. A Director, or an Alternate Director when acting in the absence of his or her Director, may vote on all matters of Authority business unless disqualified because of a conflict of interest pursuant to California law or the local conflict of interest code adopted by the Board.

8.3 Affirmative Decisions of the Board of Directors. Except as otherwise specified in this Agreement, all affirmative decisions of the Board shall require the affirmative vote of the majority of all appointed Directors (whether present or not); provided, that if a Director is disqualified from voting on a matter before the Board because of a conflict of interest, the Alternate Director appointed by the applicable Member shall be entitled to vote on the matter, but if the Alternate Director is disqualified from voting on the matter because of a conflict of interest, that Director and Alternate Director shall be excluded from the calculation of the total number of Directors that constitute a majority.

ARTICLE 9 EXECUTIVE DIRECTOR AND STAFF

9.1 Appointment. The Executive Director of the Authority shall be the General Manager of the Managing Member or his or her appointee, subject to the prior approval of the Managing Member's governing board. The Executive Director's compensation, if any, shall be determined by the Board.

9.2 Duties. The Executive Director shall be the chief executive officer of the Authority and shall act as the representative of the Managing Member to carry out the duties and obligations of the Managing Member pursuant to Article 4.

9.3 Staff. The Executive Director may employ, on behalf of the Authority, such full- or part-time employees, assistants and independent contractors who may be necessary from time to time to accomplish the purposes of the Authority, subject to the approval of the Board. A written agreement shall be entered between the Authority and a Member or other public agency or private entity contracting to provide such service, and that agreement shall specify the terms on which such services shall be provided, including without limitation the compensation, if any, that shall be made for the provision of such services. All of the (a) privileges and immunities from liability, (b) exemptions from laws, ordinances and rules, (c) pension, relief, disability, workers' compensation and other benefits which apply to officers, agents or employees of any of the Members when performing functions for their respective Members, shall apply to such persons to the same degree and extent while they are engaged in the performance of any of the functions and duties under this Agreement. None of the officers, agents or employees appointed by the Authority shall be deemed, by reason of their employment by the Authority, to be employed by any of the Members, or by reason of their employment by the Authority, to be subject to any of the requirements of such Members.

9.4 Term and Termination. The Executive Director shall serve until he or she resigns or is removed by the Managing Member.

**ARTICLE 10
RULES AND REGULATIONS**

If deemed appropriate and necessary, the Board may cause to be drafted, approved and amended rules and regulations to govern the day-to-day operations of the Authority.

**ARTICLE 11
ACCOUNTING PRACTICES**

11.1 General. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted public agency accounting practices. The Authority shall maintain strict accountability of all funds and report of all receipts and disbursements of the Authority. Subject to the oversight of the Authority, FVMWC will provide certain collection and accounting services to the Authority under the terms of the Facility Operation Agreement.

11.2 Fiscal Year. The fiscal year for the Authority shall run concurrent with the fiscal year of the Managing Member.

11.3 Appointment of Auditor; Duties. The Auditor of the Authority shall be appointed in the manner, and shall perform such duties and responsibilities, as specified in the Act.

**ARTICLE 12
GENERAL FINANCIAL MATTERS**

12.1 Annual Budget. The Managing Member, in cooperation with FVMWC, shall prepare an annual budget of the expected costs and expenses related to the operation and maintenance of the Project Facilities and the Administrative Costs of the Authority. Such budget shall specify those costs and expenses that will be: (i) incurred by FVMWC pursuant to the Facility Operation Agreement; (ii) incurred directly by the Authority; or (iii) incurred by SMWD, the County or any other third party entitled to reimbursement. The budget will further break down the costs and expenses into the following categories: Fixed O&M Costs, Variable O&M Costs, Administrative Costs, MWD Fees, Capital Recovery Charges, and to the extent not covered in the foregoing categories, all costs and expenses related to GMMMP oversight and compliance by the Authority, SMWD and the County ("Total Project Costs"). The budget shall include detail on the calculation of Fixed O&M Costs and Variable O&M Costs, as well as any reserves included in those categories.

12.2 Revenue Collection. FVMWC will be responsible for the billing and collection of the Total Project Costs from the Project participants using the information provided in the annual budget. To the extent that any of the foregoing amounts is payable directly by Cadiz pursuant to the Project Agreement, then FVMWC shall further be responsible for the billing and collection of such amounts from Cadiz. Pursuant to the terms of the Facility Operation Agreement, FVMWC will pay the sums collected to the appropriate party, with Cadiz receiving the Capital Recovery Charges, MWD and MWDOC receiving the MWD Fees, the Authority receiving that portion of the costs and expenses incurred directly by the Authority, SMWD and the County

receiving reimbursement for GMMMP compliance and enforcement costs incurred separate from the Authority, and FVMWC retaining the amount applicable to costs incurred by FVMWC.

12.3 Annual Reconciliation. The Authority shall perform an annual reconciliation of the Total Project Costs within sixty (60) days of the end of each fiscal year. To the extent that the payments made by the Project participants exceed the actual costs incurred during the fiscal year, then such excess shall be applied to the reserves and used to reduce the costs payable by the Project participants in the next fiscal year. To the extent that the payments made by the Project participants are insufficient to meet the actual costs incurred during the fiscal year, then the Authority and FVMWC shall cooperate to undertake a supplemental assessment of the Project participants to fund such deficiency.

12.4 No Member Funding Required. Except for amounts properly payable by a Member in connection with their participation in the Project as invoiced by FVMWC, no Member shall be required to fund any portion of the costs and expenses of the Authority or the Project Operation and Maintenance Expenses.

12.5 Member Advances. In the event that a Member advances funds on behalf of the Authority to cover short term working capital requirements, such Member advances shall be promptly repaid upon the receipt of revenue from the Project participants in accordance with Section 12.2. Such Member advances shall accrue interest at the then current annual rate paid by the Local Agency Investment Fund (California Government Code Section 16429.1 et seq.). All Member advances shall be subject to prior approval of the Board.

ARTICLE 13 LIABILITIES

13.1 Liability. In accordance with California Government Code Section 6507, the debt, liabilities and obligations of the Authority shall be the debts, liabilities and obligations of the Authority alone, and not the Members.

13.2 Indemnity. Funds of the Authority may be used to defend, indemnify and hold harmless the Authority, each Member (including the Managing Member), each Director and any officers, agents and employees of the Authority for their actions taken within the course and scope of their duties while acting on behalf of the Authority. Other than for gross negligence or intentional acts or omissions, to the fullest extent permitted by law, the Authority agrees to save, indemnify, defend and hold harmless each Member, any Director and any officers, agents and employees of the Authority from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney fees and costs, court costs, interest, defense costs and expert witness fees, where the same arise out of, or are in any way attributable in whole or in part, to negligent acts or omissions of the Authority or its employees, officers or agents or the employees, officers or agents of any Member, while acting within the course and scope of such indemnitee's relationship with the Authority.

ARTICLE 14
WITHDRAWAL OF MEMBERS; TERMINATION

14.1 Withdrawal of SMWD. SMWD shall have the right to withdraw from this Agreement in the event that the Project Agreement is terminated for any reason. SMWD shall further have the right to withdraw from this Agreement in the event that SMWD assigns its rights to participate in the Project to another public agency, which has become a Member of the Authority, or identifies a successor public agency that is willing to serve as the Managing Member; provided, however, that such successor meets the requirements of a new Member pursuant to Section 5.2. In the event of a withdrawal by SMWD, SMWD will reasonably cooperate with FVMWC and any other Members of the Authority at the time of such withdrawal to transition the responsibility of SMWD as the Managing Member to a successor entity and thereby avoid any unnecessary disruption to the day to day operations of the Project Facilities. Notwithstanding the foregoing, any successor to SMWD must be qualified and agree to assume all obligations of SMWD with respect to the oversight of GMMMP compliance.

14.2 Withdrawal of Members. Except as set forth in Section 14.1, no Member shall have the right to withdraw from the Authority without the consent of the other Members.

14.3 Rescission or Termination of the Authority. This Agreement may be rescinded and the Authority terminated by unanimous written consent of all Members, except during the outstanding term of any indebtedness of the Authority that has been approved by the Members in accordance with Section 4.3. Any such decision to terminate the Authority shall include a written plan for the payment of all outstanding debts, liabilities and obligations of the Authority and the distribution of all assets of the Authority, including the Project Facilities.

14.4 Distribution of Assets Following Termination. Upon termination of this Agreement, any reserves or surplus money on-hand shall be returned by FVMWC to the Project participants in the same proportion as such Project participants have funded such reserves or surplus, in accordance with California Government Code § 6512. The Board shall first offer any assets of the Authority for sale to the Members on terms and conditions determined by the Board. If no such sale to Members is consummated, the Board shall offer the assets of the Authority for sale to any non-member for good and adequate consideration. Any sale or disposition of the Project Facilities shall be subject to the terms and limitations of the Facilities Lease and the rights of Cadiz and its secured lenders thereunder. The net proceeds from any sale of the Project Facilities shall be distributed among the Project participants.

ARTICLE 15
MISCELLANEOUS PROVISIONS

15.1 SMWD Priority Rights. Nothing contained in this Agreement shall prevent SMWD from enforcing and exercising its priority right to take delivery of Project Water and make use of the Project Facilities as set forth in the Project Agreement.

15.2 No Predetermination or Irretrievable Commitment of Resources. Nothing herein shall constitute a determination by the Authority or any of its Members that any action, including

without limitation actions relating to the Project, shall be undertaken or that any unconditional or irretrievable commitment of resources shall be made, until such time as any required compliance with all local, state, or federal laws, including without limitation the CEQA, or permit requirements, as applicable, has been completed.

15.3 Notices. Notices to a Director or Member hereunder shall be sufficient if delivered to the official business address of the Member. Delivery may be accomplished by U.S. Postal Service, private mail service or electronic mail (provided that if by electronic mail, a confirmation of receipt is provided by the recipient).

15.4 Amendments to Agreement. This Agreement may be amended or modified at any time only by subsequent written agreement approved and executed by all of the Members.

15.5 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Members. Except for the Project Agreement, the Facility Operation Agreement, the County MOU, the Facilities Lease, the Water Lease, and any other documents described in the Project Agreement, there are no oral understandings or agreements related to the subject matter of this Agreement that are not set forth in writing herein.

15.6 Severability. Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any applicable Federal law or any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions hereof shall not be affected thereby, provided however, that if the remaining parts, terms, or provisions do not comply with the Act, this Agreement shall terminate.

15.7 Reorganization of the Authority. Should the participation of any Member be determined to be or become invalid, contrary to law, or in excess of that Member's authority by final decision of a court, by subsequent act of the Legislature or opinion of the Attorney General of California, specifically applicable to the Member, or otherwise as all Members determine to be sufficient, the Members shall cooperate in good faith and make every reasonable effort to reorganize or formulate another entity in which all the Members may participate and carry out the Project and the purpose of the Authority in a manner similar to that herein provided for; provided, however, if such effort is unsuccessful, or pending such reorganization, the validity of this Agreement as to the remaining Members shall be not be affected thereby.

15.8 Assignment. Except as otherwise provided in this Agreement, the rights and duties of the Members related to the subject matter of this Agreement may not be assigned or delegated without the written consent of all other Members. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void.

15.9 Binding on Successors. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members.

15.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

15.11 Singular Includes Plural. Whenever used in this Agreement, the singular form of any term includes the plural form and the plural form includes the singular form.

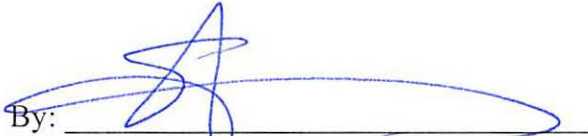
15.12 Member Authorization. The governing bodies of the Members have each authorized execution of this Agreement, as evidenced by their respective signatures below.

[signature page follows]


IN WITNESS WHEREOF, the Members hereto have executed this Agreement by authorized officials thereof on the dates indicated below.

SANTA MARGARITA WATER DISTRICT

DATED: November 24, 2014

By: 
Title: Sandra F. Jacobs, Board President


APPROVED AS TO FORM:


By: 
Title: General Counsel

Address: 26111 Antonio Parkway
Rancho Santa Margarita, CA 92688
FENNER VALLEY MUTUAL WATER
COMPANY

DATED: November 24, 2014

APPROVED AS TO FORM:

By: 
Title: Scott Slater, President

By: 
Title: General Counsel

Address: 550 South Hope, #2850
Los Angeles, CA 90071