

Memorandum

To: Salton Sea Authority Board of Directors
From: G. Patrick O'Dowd, Executive Director / General Manager
Date: March 23, 2023
Re: Agreement for the provision of non-tributary water to the Salton Sea Authority and Torres Martinez Desert Cahuilla Indians through a public private partnership

Item No: V.A.4

GENERAL:

On May 26, 2022, this Board approved a letter of intent re: provision for non-tributary Colorado River Water to Torres Martinez Desert Cahuilla Indians and the Salton Sea Authority through a Public Private Partnership. Under this cover you will find the final agreement culminating that transaction, which is identical in all material respects to the originally approved agreement therefor. It has already approved by CVWD and reviewed by the Salton Sea Authority Executive Committee and, as is customary, has been signed by the Salton Sea Authority Executive Director.

RECOMMENDATION:

The Salton Sea Authority Staff recommends that the Salton Sea Authority Board acknowledge the signing of this agreement, receive this document and file it for historical record.

**AGREEMENT FOR THE PROVISION OF NON-TRIBUTARY WATER TO THE
SALTON SEA AUTHORITY AND TORRES MARTINEZ DESERT CAHUILLA
INDIANS THROUGH A PUBLIC PRIVATE PARTNERSHIP**

This Agreement for the Provision of Non-Tributary Water (this “**Agreement**”), dated as of March _____, 2023 is entered into by and among the **Salton Sea Authority**, a California joint powers authority (“**Authority**”), the **Torres Martinez Desert Cahuilla Indians**, a federally recognized Native American tribe (“**Torres Martinez**” or “**TMDCI**”), **Cadiz, Inc.**, a public company and its wholly-owned subsidiary, **Fenner Valley Mutual Water Company**, a California Mutual Water Company (collectively “**Cadiz**”), and the **Coachella Valley Water District**, a County Water District (“**CVWD**”) (each a “**Party**” and together the “**Parties**”). Capitalized terms used in this Agreement have the meanings given to such terms herein.

RECITALS

WHEREAS, the Salton Sea, California’s largest lake, occupies approximately 370 square miles in Imperial and Riverside counties in southeastern California and is sustained primarily by agricultural drainage flows from roughly 600,000 acres of farmland. Since the early 2000s, inflows to the Salton Sea have been significantly affected by voluntary water conservation efforts intended to benefit the nation’s water supply security;

WHEREAS, the Salton Sea and federal Colorado River management operations are intertwined with extended drought conditions on the Colorado River and management of water supply reservoirs having direct, adverse impacts on the Salton Sea including a reduction of inflow to the Sea and increases in toxic dust from exposed Salton Sea playas surrounding it;

WHEREAS, long-term deliveries of Colorado River water are being threatened with significant curtailment without corresponding commitments to protect the Salton Sea against exposed Salton Sea playa that may total as much as 100,000 acres in the future due to drought, conservation agreements and regulatory actions;

WHEREAS, the Salton Sea Authority is a Joint Powers Authority established under California law in 1993 to protect public health, the environment and economic vitality of the Salton Sea and the surrounding region, comprised of the Torres Martinez Desert Cahuilla Indian Tribe, Coachella Valley Water District, Imperial County, Imperial Irrigation District, and Riverside County; The Authority desires to acquire new high-quality water from sources of supply that are non-tributary to the Colorado River (“**non-tributary**”) in support of its objective of attaining a sustainable Salton Sea;

WHEREAS, the TMDCI’s reservation is comprised of 24,000 acres, approximately in and around the Salton Sea and the Tribe has a unique interest in protecting its aboriginal homeland. TMDCI has also identified a need for supplemental water to satisfy existing health and sanitation needs including but not limited to suppression of fugitive dust, to support economic development and tribal self-sufficiency, and to mitigate water quality impairment of local groundwater wells used for domestic use;

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WHEREAS, Cadiz holds certain water, water rights and storage rights in trust for the benefit of its shareholders, including the right to extract up to 2.5 million acre-feet of groundwater and to apply it for beneficial use on 35,000 acres of land in eastern Mojave Desert and generally within Southern California under a public private partnership with the Santa Margarita Water District (“**SMWD**”) and in accordance with terms and conditions established by the County of San Bernardino (“**County**”) and desires to make non-tributary supplemental water available to CVWD without cost at specified points of delivery as may be agreed upon for the benefit of Torres Martinez and the Authority; and

WHEREAS, a Final Environmental Impact Report (“**FEIR**”) for a water conservation project (“**Cadiz Water Project**”) was certified, and pursuant to authorizations issued by the County when fully implemented, it will provide a firm water supply of 50,000 AFY for a period of fifty (50) years, and up to one million acre-feet of storage, using a proposed 43-mile pipeline to be constructed to convey water supply into the Colorado River Aqueduct (“**CRA**”) and an existing 220-Mile Pipeline (“**Northern Pipeline**”) that runs northwesterly from Cadiz and crosses the Los Angeles Aqueduct and State Water Project (“**SWP**”) facilities.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEDICATION AND PROVISION OF WATER

1.1 Offer of Dedication. Cadiz shall irrevocably dedicate its interest in 5,000 AFY of groundwater that may be appropriated by the Cadiz Water Project pursuant to the terms and conditions previously established by the County, for beneficial use by Torres Martinez and the Authority at no cost. This dedication will include up to 1,500 AFY to Torres Martinez and up to 3,500 AFY to the Authority for beneficial use as may be determined in their individual discretion. Cadiz may meet up to 500 AFY of this obligation by installing alternative reasonable and feasible technology that causes water quality standards at Torres Martinez groundwater wells to meet all California Drinking Water Standards for domestic use. The entirety of these actions in support of the dedication will be at the sole cost and expense of Cadiz and at no cost to Torres Martinez and the Authority.

1.2 Completion of Dedication. Cadiz’s dedication will be deemed complete each year when, in its discretion, it makes supplemental water available to CVWD for conveyance at one of two designated points of delivery: (i) the CRA or (ii) the SWP south of the San Francisco/San Joaquin Bay Delta. The quality of the supplemental water will be consistent with the receiving waters at the point of delivery and otherwise as specified by CVWD and further subject to CVWD’s terms and conditions on acceptance. Neither Torres Martinez nor the Authority will incur any cost from Cadiz making supplemental water available to them at the designated points of delivery. Arranging for the acceptance and conveyance of supplemental water into and via the State Water Project and the Colorado River Aqueduct shall be the sole responsibility of Cadiz. This Agreement shall not be construed to require CVWD to assume responsibility for the conveyance, storage or exchange of non-tributary supplemental water for

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beneficial uses within CVWD, including Torres Martinez and the Authority or to receive the dedicated supplemental water in a manner that will result in harm to CVWD.

1.3 Additional Supplemental Water. In addition to the supplemental water dedicated to Torres-Martinez and the Authority described herein, within one year of the mutual execution of this Agreement, Cadiz will establish a program to make available additional supplemental water for disadvantaged and severely disadvantaged communities in California. Cadiz will exercise good faith in exploring additional opportunities whereby this supplemental non-tributary groundwater appropriated by the Cadiz Water Project may be provided for the direct benefit of disadvantaged communities in the Coachella Valley, via exchange for Colorado River water, to retail public water suppliers with the consent of CVWD. Supplemental water delivered for the express benefit of disadvantaged communities will be provided by Cadiz at price no greater than the actual cost incurred by Cadiz. For the purposes of this Agreement, “actual cost” is defined as the full cost of extracting and transporting the water to the agreed point of delivery.

ARTICLE 2 CONVEYANCE FACILITY FUNDING

2.1 Main Extension. Cadiz shall provide or arrange up to five million dollars (\$5,000,000) in non-reimbursable funding to assist the extension of CVWD conveyance facilities to the place of use at the location designated by Torres Martinez consistent with CVWD design, environmental review, planning and engineering requirements. This funding also may be used by Torres Martinez or its designee in connection with any matching grant and State and Federal infrastructure program.

ARTICLE 3 TURN-BACK OF SUPPLEMENTAL WATER

3.1 Turn Back Option. Torres Martinez and/or the Authority, may, in their reasonable discretion, determine that they would seek to make a portion of the dedicated supplemental water available for alternative beneficial uses (“**Turn-Back**”). In such case, Torres Martinez and the Authority must provide reasonable notice to Cadiz and tender the unused quantity of Turn-Back for offering to third parties, in an amount of up to 1,500 AFY for Torres Martinez and up to 3,500 AFY for the Authority. Upon receipt of the notice, Cadiz will exercise good faith and best efforts to offer and market the Turn-Back to third parties. The proceeds of any transaction for Turn-Back to be tendered to Torres Martinez or the Authority will be the net proceeds after subtracting (i) the incremental costs incurred by Cadiz in completing the transaction, plus 10% and (ii) for Torres Martinez, the annual operations and maintenance costs of groundwater well-head treatment, if any; and for the Authority, actual costs incurred as defined in Section 1.3 above.

ARTICLE 4 GENERAL PROVISIONS

4.1 Conditions Precedent. The Parties’ obligations are subject to negotiating and entering into mutually acceptable agreements with the appropriate parties. In addition, other than

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as set forth in Section 4.2 below, the obligations set forth herein are subject to the following express conditions precedent: (i) compliance with all state and federal applicable laws, including but not limited to the California Environmental Quality Act, the National Environmental Policy Act; (ii) the delivery of non-tributary water into the CRA via the 43-Mile proposed pipeline; and (iii) the delivery of water from Cadiz for beneficial use in California via the 220-Mile Northern Pipeline.

4.2 Good Faith. The Parties will exercise good faith to fulfill the purpose and intent of this Agreement and public private partnership through each of the identified actions. Specifically, they will coordinate their efforts to comply with all applicable law and to implement the Agreement to deliver water to Torres Martinez and the Authority. Cadiz will cause an investigation and analysis of the Torres Martinez groundwater wells and make a recommendation as to whether a reasonably feasible treatment option is available and if so, make a good faith proposal on an implementation strategy. If agreed upon by Torres Martinez, Cadiz will implement the identified groundwater treatment strategy

4.3 Dispute Resolution. In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the Party claiming a dispute shall give the other Party or Parties to the dispute reasonable written notice of said dispute and the parties to the dispute shall meet to attempt to resolve the dispute using the services of a mutually agreed upon mediator. The initial mediation shall take place within thirty (30) days of the date of the written notice of the existence of the dispute. The mediator shall be a retired judge or an attorney with significant experience with water matters. The costs of the mediation shall be shared equally by the parties. If the dispute is not resolved within thirty (30) days of the meeting with the mediator or sixty (60) days of the date of the written notice of the existence of the dispute, whichever is less, or if either Party is unsatisfied with the result of the mediation, either Party may take legal action to endeavor to resolve said dispute. The prevailing Party in any proceeding to resolve such action or dispute after the mediation shall be entitled to have and recover from the other Party all costs and expenses, including reasonable expenses, attorneys' fees and costs incurred in such proceedings, provided such prevailing Party participated in good faith in the mediation process.

4.4 Notices. Any notice or delivery to be given under this Agreement shall be in writing and may be effected by personal delivery, by certified U.S. postage prepaid, return receipt requested, or by FedEx or similar overnight courier service postage prepaid, and shall be deemed communicated as of mailing verification of delivery. Notices shall be sent to the following addresses:

For CVWD:

Attn: General Manager
75-515 Hovley Lane East
Palm Desert, CA 92211
jbarrett@cvwd.org

For Cadiz:

Attn: Scott Slater, CEO

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550 South Hope Street, Suite 2850
Los Angeles, CA 90071
sslater@cadiz.com

For Torres Martinez:

Torres Martinez Desert Cahuilla Indians
Attn: Tribal Chair
66725 Martinez Rd,
Thermal, CA 92274

With a copy to:

Thomas Weathers, Esq.
The Law Offices of Thomas Eagle Weathers, P.C.
1000 Fourth St., Suite 425
San Rafael, CA 94901

For the Authority:

Attn: Executive Director / General Manager
82995 Hwy 111, Suite 200
Indio, CA 92201
gpodowd@saltonseas.com

4.5 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby so long as the original intention remains; and in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which shall be legal, valid and enforceable.

4.6 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which shall constitute one and the same instrument.

4.7 Governing Law. The terms and conditions of this Agreement shall be governed and construed under the laws of the State of California.

4.8 Entire Agreement. This Agreement and the exhibits hereto contain all of the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements between the Parties or any of them with respect to the subject matter hereof are merged herein and replaced by this Agreement.

4.9 Captions. The headings and captions used in this Agreement are included for convenience only and shall be irrelevant to the construction of any provision of this Agreement.

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4.10 Amendment. The provisions of this Agreement may be modified or amended in whole or in part only by the Parties by a written instrument duly executed.

4.11 Assignment. The rights and obligations set forth herein may not be assigned without the express written consent of the remaining Parties, such consent shall not be unreasonably withheld. Notwithstanding the foregoing, an assignment of Cadiz' rights and obligations under this Agreement to a wholly-owned subsidiary or transfer in connection with a merger, name change or restructuring, are all expressly exempted from this provision and shall not require the consent of the other Parties to this Agreement.

4.12 Term. Unless terminated in accordance with Section 4.13, the term of this Agreement will be the later of: (i) 50 (fifty) years from the Date of Execution or (ii) the expiration of the San Bernardino County Groundwater Management, Monitoring and Mitigation Plan applicable to the withdrawal of groundwater by Cadiz.

4.13 Termination. This Agreement shall expire upon the term set forth in Section 4.13 or by the mutual written consent of all Parties. In addition, the Agreement may be terminated at the election of the Torres Martinez after: (i) providing written notice to Cadiz of a material breach of the Agreement and in response Cadiz fails to cure and perform its duties under this Agreement as may be required within a reasonable time or (ii) Cadiz fails to secure the required regulatory approvals to enable and in fact commences construction of the 43-Mile Pipeline connecting its property to the Colorado River Aqueduct within 3 (three) years of the Date of Execution.

4.14 Date of Execution. The Date of Execution shall mean the date at which the last signature is affixed to the signature page below.

4.15 Miscellaneous. Time is of the essence. Unless the context clearly requires otherwise, plural words include the singular and singular words include the plural; the masculine, feminine, and neuter genders are each deemed to include the others; the words "shall" "will" "must" or "agrees" are mandatory; the words "may" or "should" are permissive; the word "or" is not exclusive; the words "includes" and "including" are not limiting; and defined terms may or may not be capitalized herein. Any waiver for a breach of any condition, term, or provision of this Agreement must be in writing and signed by the waiving party.

[Signature page follows]

March 6, 2023

IN WITNESS WHEREOF, the Parties hereto have set forth their signatures as of the date and at the place first written above.

Torres Martinez Desert Cahuilla Indians

By: _____

Name: _____

Title: _____

Cadiz, Inc.

By: _____

Name: _____

Title: _____

Salton Sea Authority

By: _____ 

Name: G. Patrick O'Dowd

Title: Executive Director/GM

Coachella Valley Water District

By: _____

Name: _____

Title: _____

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