

**FIFTH AMENDMENT TO AGREEMENT BETWEEN IMPERIAL IRRIGATION
DISTRICT AND SAN DIEGO COUNTY WATER AUTHORITY
FOR TRANSFER OF CONSERVED WATER**

THIS FIFTH AMENDMENT TO THE AGREEMENT BETWEEN IMPERIAL IRRIGATION DISTRICT AND SAN DIEGO COUNTY WATER AUTHORITY (the "Fifth Amendment") dated as of 12/21, 2009, by and between IMPERIAL IRRIGATION DISTRICT ("IID"), a California irrigation district and SAN DIEGO COUNTY WATER AUTHORITY ("Authority"), a California county water authority, amends that certain Agreement For Transfer of Conserved Water by and between Imperial Irrigation District and San Diego County Water Authority dated April 29, 1998, as amended by all previous amendments (the "Agreement").

BACKGROUND

- A. IID and the Authority are parties to the Agreement. Performance of the contractual obligations under the Agreement commenced in October 2003.
- B. This Fifth Amendment modifies certain specified provisions of the Agreement. This Fifth Amendment is to implement a settlement reached by IID and the Authority pursuant to the Dispute Resolution provisions of Article 17 of the Agreement, and reflected in a Settlement Agreement Resolving Dispute Regarding Base Contract Price of the IID/SDCWA Conserved Water Transfer Agreement approved and executed concurrently with this Fifth Amendment.
- C. All capitalized terms used and not otherwise defined herein shall have their respective meaning provided in the Agreement.
- D. The Recitals to this Fifth Amendment are a part of the terms of this Fifth Amendment.

TERMS

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration and intending to be legally bound hereby, the IID and the Authority agree to amend the Agreement as follows:

Article 1

Additional Definitions

Sections 1.1 of the Agreement is modified to add the following new definitions:

"(ei) GDPIPD Inflation Index – For each Calendar Year starting with Calendar Year 2016, the published value applicable to January 1 for that Calendar Year of the Gross Domestic Product Implicit Price Deflator published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business, minus the published value applicable to the January 1 for the Calendar Year one year prior divided by the published value

applicable to the January 1 for the Calendar Year one year prior. The GDPIPD Inflation Index ("I") for the year 'n' is calculated by the following formula:

$$I = \frac{\text{GDPIPD Inflation Index Jan. 1 Year 'n'} - \text{GDPIPD Inflation Index Jan. 1 Year 'n-1'}}{\text{GDPIPD Inflation Index Jan. 1 Year 'n-1'}}$$

"(ej) Termination Date – The end of the twelfth (12th) calendar month following the date of a Transfer Stoppage, unless such Transfer Stoppage has been overturned or modified or remedied to the satisfaction of IID and the Authority, or unless IID and the Authority have agreed to continue this Agreement notwithstanding the continuation of such Transfer Stoppage."

"(ek) Transfer Stoppage – The transfer of Conserved Water from IID to the Authority that is ordered to stop by virtue of an injunction or other order issued by a court or administrative agency."

Article 2

Price Modification

Section 5.2(a) is amended as follows:

The Amendment to Section 5.2(a) in the Revised Fourth Amendment involving the deletion of the Shortage Premium from the formula for calculation of the price during the Initial Pricing Phase, for the period from Agreement Year 1 to Agreement Year 15 only, is rescinded and cancelled and Section 5.2(a) shall read as it did prior to any amendments to the Agreement, but subject to new Section 5.2 (e) to 5.2(j) as set forth below.

Section 5.2(e) is amended as follows:

Notwithstanding Section 5.2(a) to 5.2(d) and Section 5.3, for the period from Agreement Year 1 (2003) through and including Agreement Year 32 (2034), new Section 5.2(e) to 5.2(j), as set forth below, shall control, and provide the exclusive means to establish, the price per acre foot for Conserved Water.

"5.2(e) Notwithstanding the provisions of § 5.2(a) to 5.2(d), the price per AF for Agreement Year 1 through Agreement Year 13, shall be as follows:

<i>Agreement Year</i>	<i>Calendar Year</i>	<i>Price per AF</i>
1	2003	\$258
2	2004	\$267
3	2005	\$276
4	2006	\$286
5	2007	\$296
6	2008	\$301
7	2009	\$347/\$353*
8	2010	\$405

9	2011	\$446
10	2012	\$491
11	2013	\$540
12	2014	\$594
13	2015	\$624

**(Six months at each price.)"*

"5.2(f) Notwithstanding the provisions of § 5.2(a) to 5.2(d), the price per AF for Agreement Year 14 through Agreement Year 32 shall be adjusted annually based on the annual GDPIPD Inflation Index as of January 1 in each Agreement Year, with any adjustments and settling up needed to be as set forth in Article 6 to the extent the published value applicable to January 1 of any year is not yet available to calculate the rate for any Authority payment to IID.

The calculation of the price adjustment shall use the following formula: the price per acre-foot for year 'n' is equal to 1 plus the GDPIPD for year 'n' times the price per acre-foot for year 'n-1'. An example for the price in Agreement Year 14 would be calculated as follows, assuming the January 1 GDPIPD value for January 1 in Agreement Year 14 is 110 and in Agreement Year 13 is 105. The GDPIPD Inflation Index for Agreement Year 14 is $(110-105)/105 = 0.0476$. Add 0.0476 to 1 equals 1.0476. Multiply 1.0476 times the price per acre foot in Agreement Year 13 of \$624 = \$653.70."

"5.2(g) (i) On or before December 31, 2009, the Authority shall pay IID Six Million Dollars (\$6,000,000.00).

(ii) If a Transfer Stoppage as a result of an order from the Superior Court, Sacramento County, in Judicial Council Coordinated Case No. 4353, or from United States District Court, Southern District of California, Case No. 09 CV 2233 BTM JMA, or any reviewing appellate court, California Supreme Court or United State Supreme Court has not occurred on or before September 30, 2010, then on or before October 1, 2010, the Authority shall pay IID Fifty Million Dollars (\$50,000,000.00) which IID covenants to use for the exclusive purpose of paying for capital expenses associated with creating Conserved Water from IID system conservation projects ("Exclusive Purpose") in a manner consistent with federal law for the use of tax exempt bonds. IID acknowledges that its covenant regarding the Exclusive Purpose for the use of the Fifty Million Dollars (\$50,000,000.00) is a material term relied upon by the Authority to enable the Authority to utilize tax-exempt bonds to make the payment.

Failure of IID to use the Fifty Million Dollars (\$50,000,000.00) for the Exclusive Purpose shall constitute a Default under Article 15 entitling the Authority to the Remedies identified in Article 16. IID shall cooperate and provide the Authority with routine assistance and information within its customary and ordinary course of business to enable the Authority to confirm that the Fifty Million Dollars (\$50,000,000.00) will be and was used only for the Exclusive Purpose."

"5.2(h) Should a Transfer Stoppage occur as a result of an order from the Superior Court, Sacramento County, in Judicial Council Coordinated Case No. 4353, or from United States District Court, Southern District of California, Case No. 09 CV 2233 BTM JMA, or any reviewing appellate court, California Supreme Court or United State Supreme Court on or before September 30, 2010, then the payment obligation of the Authority set forth in Section 5.2(g)(ii) above shall be suspended unless or until the Transfer Stoppage is lifted or the Termination Date occurs and the Agreement ends. The price per AF shall resume in accordance with the calendar year rate set forth in Section 5.2(e) above if the Transfer Stoppage is lifted prior to the Termination Date."

"5.2(i) Should a Transfer Stoppage occur as a result of an order of any reviewing appellate court or the California Supreme Court or the United States Supreme Court in review of the judgment or orders of the Superior Court, Sacramento County, in Judicial Council Coordinated Case No. 4353, or of the United States District Court, Southern District of California, Case No 09 CV 2233 BTM , after the payment by the Authority to the IID set forth in Section 5.2(g)(ii) above, and such Transfer Stoppage results in the occurrence of a Termination Date, then the IID and the Authority shall each have a right of first refusal as set forth below in Section 5.2(j). In addition, the IID shall pay to the Authority the following amount, as identified on the table set forth below.

<i>Transfer Stoppage Date</i>	<i>Amount of IID Repayment</i>
<i>2010</i>	<i>\$49,000,000</i>
<i>2011</i>	<i>\$32,000,000</i>
<i>2012</i>	<i>\$25,000,000</i>
<i>2013</i>	<i>\$20,000,000</i>
<i>2014</i>	<i>\$15,000,000</i>

2015	\$12,000,000
2016	\$9,000,000
2017	\$6,000,000
2018	\$5,000,000
2019	\$5,000,000
2020	\$5,000,000
2021-2034	\$0

"5.2(j)(i) Post Transfer Stoppage Termination, Right of First Refusal. Subject to the provisions of this section, following a Transfer Stoppage Termination arising from the issuance of an order referenced in this Section 5.2, for ten (10) years from the date of the Transfer Stoppage Termination, if IID wishes to initiate a transfer of Conserved Water to a third party or if the Authority wishes to acquire Conserved Water from a third party (each an "Offering Party", as applicable), ("PTS Transfers") then the other Party ("Responding Party") has a right of first refusal ("ROFR"). The Responding Party may compel the Offering Party to consummate the transfer of Conserved Water with the Responding Party on the same terms and conditions set forth in the proposed PTS Transfer.

(ii) IID Exclusions. The IID has the right to exclude from the ROFR, PTS Transfers to CVWD on terms consistent with the terms and the quantities of the IID/CVWD Acquisition Agreement, the amendment to the 1988 IID/MWD Transfer Agreement and the amendment to the 1989 Approval Agreement, PTS Transfers to DWR for the purpose of Salton Sea restoration or environmental benefit, and PTS Transfers to MWD but only on the terms and the quantities set forth in the IID/CVWD Acquisition Agreement and the IID/MWD Acquisition Agreement ('IID Excluded Transfers'), other than terms relating to price and matters involved in the reason for the Transfer Stoppage Termination, if any. Within five (5) days of the IID Board approval of a contract for an IID Excluded Transfer, the IID shall deliver to the Authority a copy of the contract and any other information necessary to demonstrate satisfaction of the exclusion qualifications. The Authority shall have thirty (30) days from such notice to approve or file an objection with the Administrative Committee. Failure to timely file an objection shall be deemed approval. If a timely objection is filed, the proposed excluded transfer shall not commence until the objection is finally resolved pursuant to the provisions in Article 17.

(iii) Authority Exclusions. *The Authority has the right to exclude from the ROFR, PTS Transfers involving acquisitions in response to an Event Constituting An Emergency ('Authority Excluded Acquisition'). Within five (5) days of the Authority Board approval of a contract for an Authority Excluded Acquisition, the Authority shall deliver to the IID a copy of the contract and any other information necessary to demonstrate satisfaction of the exclusion qualifications. The IID shall have thirty (30) days from such notice to approve or file an objection with the Administrative Committee. Failure to timely file an objection shall be deemed approval. If a timely objection is filed, the proposed excluded acquisition shall not commence until the objection is finally resolved by the Administrative Committee within two (2) days.*

(iv) Notice of PST. *Unless the PTS Transfer is an Excluded Transfer or Acquisition, the Offering Party must give written notice of the PTS Transfer to the Responding Party immediately after the earlier of: (A) the execution of the Contract or Term Sheet for the Proposed Post-Transfer Stoppage Transaction, or (B) the approval of the Proposed Post-Transfer Stoppage Transaction by the Offering Party's Board. The notice must include a copy of the contract, term sheet or firm offer, such other additional information as is necessary to confirm that the PTS Transfer satisfies the Eligibility Criteria set forth in section 5.1(f), (other than as to Contractual Contingencies), and a per acre-foot valuation.*

(v) Response to Notice to PTS Transfer: Meet and Confer. *The Responding Party may exercise its ROFR by giving written notice of such exercise within ninety (90) days from the date that the Offering Party gives notice of the PTS Transfer. If the Responding Party does not timely exercise its ROFR within the ninety (90) day period (unless extended by mutual agreement) then the ROFR expires as to the noticed PTS Transfer, including any extensions thereto, provided that if the extension proposes materially different terms than those previously noticed by the Offering Party, then the Responding Party's ROFR shall be triggered and the proposed extension and terms thereof shall again be subject to the notice and exercise provisions of this section.*

(vi) Termination of ROFR. *The ROFR terminates upon the earlier of: (A) the expiration of ten (10) Years from the date of the Transfer Stoppage or (B) the transfer or acquisition of 200,000 acre-feet per year by the IID and/or the Authority under a transaction or transactions meeting the definition of an Eligible Transaction(s).*

(vii) Eligible Transactions Definition Modification. The definition of Eligible Transactions for purposes of PTS Transfers only shall exclude Sections 5.1(f)(iv), (v) and (x), and shall include any matter necessary to resolve the reason for the Transfer Stoppage Termination."

"5.2(k) On January 1, 2035, the price per AF for Agreement Year 33 to Agreement Year 45 shall be calculated as if Section 5.2(e) to (j) of the Fifth Amendment were never in effect."

Section 15.2(c) is modified and replaced with the following:

15.2(c) Warranties and Representations. Any warranty, representation, or other statement made by or on behalf of the IID and contained (i) in this Agreement or (ii) in any other document furnished in compliance with or in reference to this Agreement, including information provided by IID pursuant to Section 5.2(g)(ii) without limitation, is on the date made or provided, or later proves to be false, misleading or untrue in any material respect.

IN WITNESS WHEREOF, IID and Authority have executed this Fifth Amendment as of the day and year first written above.

IMPERIAL IRRIGATION DISTRICT

By 


Its GENERAL MANAGER

SAN DIEGO COUNTY WATER
AUTHORITY

By 

Its GENERAL MANAGER

APPROVED AS TO FORM:


Daniel S. Hentschke
General Counsel
San Diego County Water Authority