

MEMORANDUM OF UNDERSTANDING BETWEEN THE PARTIES TO THE AMENDED AND RESTATED JOINT POWERS AGREEMENT CREATING THE WATER CONSERVATION AUTHORITY FOR THE PURPOSE OF CLARIFYING FUNDING OBLIGATIONS OF THE PARTIES UNDER SECTION 17 OF THE AGREEMENT

WHEREAS, the signatories to this Memorandum of Understanding (“MOU”) are all parties to that AMENDED AND RESTATED JOINT POWERS AGREEMENT CREATING THE WATER CONSERVATION AUTHORITY (“JPA Agreement”), dated for reference purposes as July 18, 2019, between and among the Otay Water District, the Helix Water District, the Grossmont-Cuyamaca College District (“College District”), the San Diego County Water Authority, Sweetwater Authority, and the City of San Diego;<sup>1</sup> and

WHEREAS, the primary purpose of the JPA Agreement is to provide a framework, governance and funding for the establishment and operation of a Water Conservation Garden (“Garden”), which is located at 12122 Cuyamaca College Drive West in the City of El Cajon, California; and

WHEREAS, on or about March 3, 2024 the Authority terminated its Operations Agreement with the Friends of the Water Conservation Garden (“Friends”), the former operator of the Garden, because of Friends’ pending insolvency and anticipated bankruptcy; and

WHEREAS, the Authority, per its obligations under Articles 14 and 15 of the JPA Agreement, has continued to fund and operate the Garden since terminating the Operations Agreement with Friends with the understanding that a different long term governance and funding approach to the Garden may be needed; and

WHEREAS, in July of 2024, each of the Member Agencies, other than the College District (which owns the land on which the Garden is situated), submitted Notices to Withdraw from the JPA on June 30, 2025, per Section 17 of the JPA Agreement so as to provide such agencies the ability, but not the obligation, to withdraw from the Authority on July 1, 2025 if the Parties are unable to reach a mutually acceptable long-term funding and governance structure for the Garden; and

WHEREAS, during meetings that occurred during the summer and fall of 2024, including meetings by an ad-hoc committee of the Authority Board formed to evaluate options for the long term management and funding of the Garden, it became apparent to the Parties that additional time beyond June 30, 2025 would be needed to keep the Garden open to the public while continuing to negotiate the best long term funding and governance structure for the Garden, the Member Agencies, and the public; and

WHEREAS, one option discussed by the Parties and the ad-hoc committee is for the College District to take over the operations of the Garden, but the College District has indicated it needs additional time (at least two years) to conduct due diligence and planning as to the feasibility of the College District directly operating the Garden if the decision of the Authority Board is to transfer operations to the College District;

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<sup>1</sup> These “Member Agencies” of the Authority, are sometimes referred to individually as “Party” and collectively as “Parties” herein. Though a current Member Agency, and a Party to the JPA Agreement, the City of San Diego has indicated it will withdraw from the Authority on June 30, 2025 per its previously submitted notice of intent to withdraw from the Authority (hereinafter “Withdrawal Notice”). It is therefore not a Party to this MOU.

WHEREAS, the Parties all desire the Garden continue to operate under the governance of the JPA until at least June 30, 2027 thereby providing the Member Agencies sufficient time to conduct the due diligence and planning required to chart a future path for the Garden while continuing to provide public access for this important regional asset while evaluating alternative governance structures.

WHEREAS, the College District has indicated it cannot commit the financial and manpower resources that will be needed to initiate planning for the transfer of the Garden to the College District until such time as the Authority Board votes to transfer the Garden to the College District.

WHEREAS, the College District has requested that if the Board of the Authority intends to transfer the operation of the Garden to the College District, that : (a) the Authority Board provide the College District two years written notice of that intent; (b) the Authority member agencies withdraw the notices of intent to withdraw that were previously tendered by all of the Member Agencies other than the College District.

NOW, THEREFORE, the following is agreed to by and between the parties:

1. The Parties agree that filing of a Withdrawal Notice per Section 17 of the JPA Agreement does not mandate that a Member Agency who timely provided such notice actually withdraw from the JPA on June 30 of the fiscal year in which the notice was provided. While a Member Agency can withdraw from the Authority on June 30 of the fiscal year in which the Withdrawal Notice is provided per the JPA Agreement, the Member Agency is not required to do so. The Member Agencies—other than the City of San Diego which intends to withdraw from the Authority on June 30, 2025—hereby agree to rescind their previously submitted notices of intent to withdraw from the Authority on or before June 30, 2025, while reserving the right to submit a notice of intent to withdraw in the future per the terms of the JPA Agreement, subject to the requirements of paragraph 3 below.
2. The Parties to this MOU desire to have the Authority continue to fund and operate the Garden per the JPA Agreement, as it may be amended from time to time, until June 30, 2027, unless the Parties to this MOU all agree to amend or terminate the JPA Agreement prior to that time.
3. The Parties to this MOU agree that any notice to withdraw submitted by a member agency shall not be effective until at least June 30, 2027, and the Member Agencies agree to be bound by the terms of the JPA Agreement, as they may be amended from time to time, until June 30, 2027.
4. The Parties to this MOU agree to continue to fund the obligations of the JPA per Article 15 of the JPA Agreement—subject to adjustments that may be required per Section 15.E of the JPA Agreement in the event of withdrawal by one or more current members of the JPA on June 30, 2025—until June 30, 2027.
5. The Parties further agree that references to the Friends in the JPA Agreement are of no further legal effect since the Friends entity is in bankruptcy and will soon be dissolved. Thus, the Parties agree that references to Friends in the JPA Agreement are superfluous, and the Parties agree to

continue to fund the Garden per Article 14.A of the JPA Agreement<sup>2</sup> through June 30, 2027 in the manner prescribed in Article 15 of the JPA Agreement.

6. This MOU is interpretive of the provisions of the existing JPA Agreement and the existing obligations of the Member Agencies thereunder. The Parties to the MOU do not intend, by virtue of their approval of the MOU, to in any way modify or revise the terms of the JPA Agreement. Approval of this MOU requires unanimous Authority Board approval by all Authority Board members other than the representative of the withdrawing City of San Diego. This MOU may be terminated or amended in the future by unanimous approval of the signatories thereto. If a Member Agency ceases to be a party to the JPA Agreement, it shall automatically be deemed to have withdrawn from this MOU.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU by authorized officials thereof on the date indicated below.

SIGNATURE PAGE

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<sup>2</sup> Article 14.A of the JPA Agreement independently imposes on the Authority an obligation to “[p]rovide or cause to be provided a Water Efficient Demonstration Garden and related facilities.”