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8 PADRE DAM MUNICIPAL WATER DISTRICT

EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTION 6103

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 PADRE DAM MUNICIPAL WATER
13 DISTRICT,

14 Plaintiff,

15 v.

16 GROSSMONT-CUYAMACA COMMUNITY
17 COLLEGE DISTRICT and DOES 1 through
100, inclusive,

18 Defendants.

Case No.

COMPLAINT FOR DECLARATORY
RELIEF; SPECIFIC PERFORMANCE; &
VIOLATION OF CIVIL CODE SECTION
1882.1

1 PLAINTIFF PADRE DAM MUNICIPAL WATER DISTRICT (hereinafter “PADRE DAM”)
2 alleges as follows:

3 **PARTIES**

4 1. PADRE DAM is and at all times mentioned herein was a subdivision of the State of
5 California organized as a Municipal Water District under the Municipal Water District Law of 1911
6 (California Water Code, §§ 71000 et seq.). PADRE DAM is a water district situated wholly within
7 the County of San Diego, State of California and provides water and sewer service to properties in
8 the general Santee, El Cajon, Lakeside, Flinn Springs, Harbison Canyon, Blossom Valley, Alpine,
9 Dehesa and Crest areas.

10 2. Defendant, Grossmont-Cuyamaca Community College District (hereinafter
11 “GROSSMONT COLLEGE”) is and at all times mentioned herein was a subdivision of the State
12 of California organized as a Community College District under the laws of the State of California.
13 GROSSMONT COLLEGE is a community college district situated wholly within the County of
14 San Diego, State of California and provides post-secondary educational services to residents in the
15 county.

16 3. PADRE DAM lacks information as to the true names and capacities of Defendants
17 DOES 1 through 25, inclusive, and each of them, and therefore sues said parties and entities by
18 such fictitious names. PADRE DAM will amend this Complaint to set forth the true names and
19 capacities of such fictitiously named Defendants when ascertained.

20 4. PADRE DAM is informed and believes that Defendants, DOES 1 through 25,
21 inclusive, are liable, in whole or in part, for the claims asserted by PADRE DAM in this Complaint,
22 and therefore joins those Defendants to this Complaint.

23 5. Venue is proper in this Court pursuant to California Code of Civil Procedure
24 sections 392 and 394, and also pursuant to Section D(1) of the Repair and Maintenance of Water
25 System and Facilities Agreement (hereinafter the “2015 Agreement”) between PADRE DAM and
26 GROSSMONT COLLEGE executed on May 8, 2015.

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28

GENERAL ALLEGATIONS

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2 6. GROSSMONT COLLEGE owns and operates Grossmont College which is located
3 at 8800 Grossmont College Drive, in El Cajon, California. PADRE DAM is informed and believes
4 and on that basis alleges that the Grossmont College Campus (hereinafter the “Campus”) is located
5 on a 135-acre mesa in northwest El Cajon, adjacent to the cities of Santee, La Mesa and San Diego.

6 7. The Campus is entirely within PADRE DAM’s service area and PADRE DAM has
7 provided water service to the Campus since the 1960’s.

8 8. PADRE DAM has historically owned and operated the water system and facilities
9 located on the Campus which are shown in Exhibit “1” attached hereto and incorporated herein by
10 reference (hereinafter “Water Facilities”).

11 9. The development of the Campus has continued over the last six decades. New,
12 expanded and improved facilities within the Campus have been completed which include but are
13 not limited to the Griffin Center, the campus’ student center; the Student and Administrative
14 Services Building; the Learning and Technology Resource Center; the Science Laboratory
15 Building; Digital Arts and Sculpture Building Complex; the Exercise Science and Wellness
16 Complex; and the Health and Sciences Complex. As part of the growth, roughly 38 water meters
17 were installed on the Campus with water lines serving the buildings and other uses as they came
18 into service over the years. Some of the improvements were constructed over the Water Facilities
19 without PADRE DAM’s knowledge or approval.

20 10. Over the years issues arose between PADRE DAM and GROSSMONT COLLEGE
21 related to access, maintenance, and encroachment of the Water Facilities. GROSSMONT
22 COLLEGE pursued multiple construction projects without Padre Dam's review, which created
23 encroachments on existing water mains and infrastructure causing access and maintenance
24 challenges. In general, GROSSMONT COLLEGE failed to keep Padre Dam informed of
25 developments and expansions of its Campus.

26 11. On or about July 23, 2008, the Parties entered into a Memorandum of Understanding
27 (hereinafter the “MOU”) to implement a discussion to resolve the issues relating to access and
28 maintenance of the Water Facilities on the Campus. A true and correct copy of the MOU is attached

1 hereto as Exhibit “2” and incorporated herein by reference.

2 12. As part of the MOU, GROSSMONT COLLEGE agreed to determine all areas
3 within the Campus that had water lines that did not meet the then current PADRE DAM standards
4 and to work with PADRE DAM to determine how all of the public water lines within the Campus
5 could be accessed and maintained to PADRE DAM’s standards.

6 13. As part of the MOU, GROSSMONT COLLEGE also agreed to work with PADRE
7 DAM regarding assessing access and maintenance for water lines on Campus and identifying and
8 pursuing options to assure continued safe and reliable operation of the Water System, and to grant
9 certain easement rights if a more global method to protect the Water System could not be reached.

10 14. As part of the MOU, GROSSMONT COLLEGE also agreed to grant easement
11 rights for the Grossmont HPSC project in accordance with PADRE DAM standards in the event
12 that a more global method to protect the public water system could not be reached.

13 **Repair and Maintenance of Water System & Facilities Agreement**

14 15. In or about 2015, the Parties entered into the 2015 Agreement. Section D(1) provides
15 that if any action is brought to interpret or enforce any term of the Agreement, the prevailing party
16 shall be entitled to recover all costs incurred, including reasonable attorneys’ fees, as determined
17 by the court. A true and correct copy of the 2015 Agreement is attached hereto as Exhibit “3” and
18 incorporated herein by reference.

19 **On-Site Facilities**

20 16. Under the terms of the 2015 Agreement, GROSSMONT COLLEGE agreed to
21 accept responsibility for maintaining and repairing the water facilities described in Exhibit "B" of
22 the 2015 Agreement and incorporated herein by reference (hereinafter the “On-site Facilities”).

23 17. Prior to GROSSMONT COLLEGE's acceptance of the On-site Facilities, a
24 representative of GROSSMONT COLLEGE was to accompany and witness PADRE DAM in the
25 testing of all valves and existing water lines to verify that all valves and existing water lines are in
26 good operable condition. Valves were to be replaced as noted in the inspections as well as piping
27 components found to be unacceptable by GROSSMONT COLLEGE at PADRE DAM's cost.

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1 18. Once the inspection was complete and repairs were made and the Master Water
2 Meter was installed, GROSSMONT COLLEGE was required to execute a Notice of Acceptance
3 within 60 days, and deliver to PADRE DAM its acceptance of the On-site Facilities. Thereafter,
4 GROSSMONT COLLEGE was to be solely responsible for the On-site Facilities as provided for
5 in the 2015 Agreement.

6 19. PADRE DAM agreed to assist GROSSMONT COLLEGE with repairing the On-
7 site Facilities after acceptance and as requested by GROSSMONT COLLEGE in both emergency
8 and scheduled situations and GROSSMONT COLLEGE would reimburse PADRE DAM for such
9 repairs to the On-Site Facilities.

10 20. GROSSMONT COLLEGE further agreed to assume all risks of loss related to
11 failure of the On-site Facilities, which occurred as a result of GROSSMONT COLLEGE working
12 on, over and near and/or encroaching upon the On-site Facilities.

13 21. GROSSMONT COLLEGE agreed to continue to be responsible for installation,
14 maintenance, testing, and repair of backflow prevention devices required by PADRE DAM.

15 22. GROSSMONT COLLEGE also agreed to continue testing the required backflow
16 prevention devices annually and to forward copies of all test results, maintenance, and repair reports
17 to Padre Dam.

18 23. PADRE DAM agreed, at no additional expense to GROSSMONT COLLEGE, to
19 verify all of the existing meters within the Campus were functional and to leave the existing meters
20 for GROSSMONT COLLEGE to use as it saw fit. PADRE DAM agreed to remove the monthly
21 use charges associated with those meters.

22 24. PADRE DAM agreed, at the request of GROSSMONT COLLEGE, it would service
23 the existing meters and GROSSMONT COLLEGE agreed it would reimburse PADRE DAM for
24 such repairs.

25 **Padre Dam Facilities**

26 25. Under the terms of the 2015 Agreement, PADRE DAM agreed at its own expense,
27 to continue to be responsible for maintaining and repairing the water facilities depicted in Exhibit
28 "C" of the 2015 Agreement (hereinafter the "Padre Dam Facilities"). PADRE DAM is not

1 responsible for any losses, damages, maintenance or repair related to water facilities located within
2 the roads and parking lots on the Campus, including parking stalls that were placed over the Padre
3 Dam Facilities on land owned by GROSSMONT COLLEGE.

4 26. GROSSMONT COLLEGE granted PADRE DAM and its approved agents and
5 representatives a nonexclusive license to access and enter upon the Campus at all reasonable times
6 to inspect, maintain and repair the Padre Dam Facilities.

7 27. GROSSMONT COLLEGE further agreed not to encroach or make improvements
8 upon, or otherwise access or tamper with, the Padre Dam Facilities unless otherwise agreed to in
9 writing and signed by both Parties.

10 28. In exchange, PADRE DAM agreed to install “an 8” x 3” compound master water
11 meter” (hereinafter the “Master Water Meter”) at the entrance to the Campus. GROSSMONT
12 COLLEGE granted PADRE DAM and its approved agents and representatives a nonexclusive
13 license to access and enter upon the Grossmont Campus at all reasonable times to install, inspect,
14 maintain, and repair the Master Water Meter.

15 29. GROSSMONT COLLEGE agreed to be responsible for all monthly operational
16 charges associated with the newly installed Master Water Meter.

17 30. In reliance on the obligations set out in the 2015 Agreement, in early February 2018,
18 PADRE DAM installed the Master Water Meter.

19 31. After the Master Water Meter was installed in 2018, GROSSMONT COLLEGE
20 contended that the meter was not providing sufficient water pressure to the Campus due to the
21 backflow prevention device for the Master Water Meter.

22 32. Thereafter, PADRE DAM removed the backflow prevention device for the Master
23 Water Meter, and worked with GROSSMONT COLLEGE to find a solution to the lack of pressure
24 on the Campus. PADRE DAM has certain minimum standards and requirements regarding the
25 services it provides its customers. Specifically with regard to pressure requirements, PADRE DAM
26 is required to provide a minimum of 20 psi per CA CCR Title 22 §64602, Water Agency Standards
27 (WAS) Standard Specifications 4.1.11, and PADRE DAM’s Comprehensive Facilities Master Plan
28 (CFMP) Chapter 5.1. PADRE DAM has confirmed that at the 8” x 3” compound master meter, if

1 in service, meets and/or exceeds PADRE DAM's minimum pressure and flow requirements.

2 33. Beginning in or about November 2022, PADRE DAM attempted to complete the
3 testing of all valves and existing water lines, and make any necessary repairs and/or replacements,
4 but was delayed by GROSSMONT COLLEGE declining to provide a time for the inspections to
5 occur and/or providing delayed responses to PADRE DAM's communications.

6 34. On or before April 23, 2023, PADRE DAM completed testing of all valves and
7 existing water lines which are part of the On-Site Facilities to verify that all valves and existing
8 water lines are in good operable condition. PADRE DAM replaced valves that were as noted in the
9 inspections, as well as piping components, found to be unacceptable by GROSSMONT COLLEGE
10 by September 1, 2023.

11 35. As required by the 2015 Agreement, PADRE DAM requested to have a
12 representative of GROSSMONT COLLEGE present during the testing of all valves and existing
13 water lines, but GROSSMONT COLLEGE waived this requirement and declined to have its
14 representative(s) present during the inspections. PADRE DAM made this request twice, at a
15 meeting prior to the inspections and while on the Campus on the date the inspections were
16 performed, and GROSSMONT COLLEGE declined to participate in the inspection both times.

17 36. Despite the fact that the inspection was completed and required repairs were made,
18 GROSSMONT COLLEGE has failed and refused to execute a Notice of Acceptance. Per the terms
19 of the 2015 Agreement, GROSSMONT COLLEGE was required to execute the Notice of
20 Acceptance on or before October 31, 2023. Despite requests from PADRE DAM, GROSSMONT
21 COLLEGE continues to refuse to execute the Notice of Acceptance.

22 **Fire Flow Issues**

23 37. In or about 2019, 4 years after execution of the 2015 Agreement and more than 1
24 year following installation of the Master Water Meter, GROSSMONT COLLEGE raised for the
25 first time complaints that the Master Water Meter would not provide sufficient pressure to meet the
26 fire flow requirement imposed on GROSSMONT COLLEGE by the Fire Marshal. GROSSMONT
27 COLLEGE requested that PADRE DAM assist it with meeting the fire flow requirement imposed
28 by the Fire Marshall.

1 38. PADRE DAM is informed and believes and on that basis alleges that in or about
2 mid-2019, the Fire Marshal communicated fire flow requirements of 4,750 GPM for a minimum
3 duration of four hours (“Fire Flow Requirement”) to GROSSMONT COLLEGE.

4 39. PADRE DAM is informed and believes and on that basis alleges that
5 GROSSMONT COLLEGE requested a modification of the Fire Flow Requirement but the Fire
6 Marshall was unable to grant the modification because the largest building on the Campus does not
7 have a fire suppression sprinkler system.

8 40. PADRE DAM is informed and believes and on that basis alleges that in or about
9 2021, GROSSMONT COLLEGE caused a technical memorandum to be prepared by Michael
10 Baker International (“GCC Water Study”) to assess fire flow requirements for proposed
11 improvements to the Campus.

12 41. PADRE DAM is informed and believes and on that basis alleges that the GCC Water
13 Study recommended that the Fire Flow Requirement be met by PADRE DAM adjusting the
14 operating conditions for its Grossmont Tank. Specifically, the GCC Water Study recommended
15 that Padre Dam increase the level of the Grossmont Tank from its current normal operating range
16 of between 24-50 feet, to a new operating range of 39-65 feet— thereby increasing the amount of
17 water held in the tank by nearly 432,000 gallons.

18 42. PADRE DAM’s Rules and Regulations, among other things, set out the rates, fees
19 and charges to be paid by PADRE DAM customers in exchange for service. Additionally, the
20 Rules and Regulations require that the costs associated with providing service to a particular
21 development—whether it be public or private, residential, commercial or governmental—be borne
22 by the owner of that development.

23 43. PADRE DAM determined that it could not agree to adjusting its normal operating
24 conditions, because doing so would result in water quality issues that cannot be reasonably
25 mitigated and/or were cost prohibitive. Under Proposition 218, PADRE DAM cannot require its
26 ratepayers to subsidize the cost associated with operating the Grossmont Tank at a higher level as
27 requested by GROSSMONT COLLEGE.

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1 49. The taking of water from any fire hydrant, blow-off valve, or other PADRE DAM
2 Facility or connection to a PADRE DAM facility, to which a PADRE DAM authorized metering
3 device has not been installed by PADRE DAM is considered water theft.

4 50. Under its Rules and Regulations, upon discovering a theft of water or tampering
5 with PADRE DAM property, PADRE DAM may also pursue the following remedies or other
6 remedies available at law or equity including but not limited to charging the customer or perpetrator
7 a civil fine of \$1,000 for each occurrence, which amount is a reasonable estimation of the damages
8 that PADRE DAM suffers for an act of water theft.

9 51. On or about February 13, 2023, PADRE DAM submitted a Claim for Damages to
10 GROSSMONT COLLEGE in compliance with GROSSMONT COLLEGE policies and the
11 California Government Claims Act (Gov. Code, §§ 810 et seq.). A true and correct copy of the
12 Claim for Damages is attached hereto as Exhibit “4” and incorporated herein by reference.

13 **FIRST CAUSE OF ACTION**
14 **(DECLARATORY RELIEF)**

15 52. PADRE DAM re-alleges and incorporates by reference the allegations set forth in
16 Paragraphs 1 through 51, as though fully set forth herein.

17 53. An actual controversy has arisen and now exists between PADRE DAM and
18 GROSSMONT COLLEGE concerning their respective rights and obligations under the 2015
19 Agreement and/or PADRE DAM’s obligation to provide water service to the Campus, including
20 but not limited to:

21 (a) Whether PADRE DAM has satisfied its obligations under the 2015 Agreement and
22 whether GROSSMONT COLLEGE is required to execute a Notice of Acceptance of the On-site
23 Facilities;

24 (b) Whether PADRE DAM installed “an 8" x 3" compound master water meter” at the
25 entrance to the Campus as required by the terms and conditions of the 2015 Agreement;

26 (c) Whether the Master Water Meter meets and/or exceeds PADRE DAM’s minimum
27 pressure and flow requirements;

28 (d) Whether PADRE DAM tested all of the valves and existing water lines within the

1 On-Site Facilities and verified that all of valves and existing water lines are in good operable
2 condition;

3 (e) Whether under the terms and conditions of the 2015 Agreement PADRE DAM was
4 required to provide sufficient water to meet the Fire Flow Requirement first communicated to
5 PADRE DAM by GROSSMONT COLLEGE four years after execution of the Agreement;

6 54. PADRE DAM contends that PADRE DAM has satisfied its obligations under the
7 2015 Agreement; PADRE DAM installed “an 8” x 3” compound master water meter” at the
8 entrance to the Campus as required by the terms and conditions of the 2015 Agreement; the Master
9 Water Meter meets and/or exceeds PADRE DAM’s minimum pressure and flow requirements;
10 PADRE DAM tested all of the valves and existing water lines within the On-Site Facilities and
11 verified that all of valves and existing water lines are in good operable condition; GROSSMONT
12 COLLEGE is required to execute a Notice of Acceptance of the On-site Facilities; under the terms
13 and conditions of the 2015 Agreement PADRE DAM was not required to provide sufficient water
14 to meet the Fire Flow Requirement; and GROSSMONT COLLEGE is required to provide and/or
15 pay for any facilities required to meet the Fire Flow Requirements applicable to the developments
16 on the Campus and other GROSSMONT COLLEGE water pressure needs for the Campus in excess
17 of PADRE DAM’s minimum standards for service.

18 55. PADRE DAM is informed and believes and on that basis alleges that
19 GROSSMONT COLLEGE contests each of the contentions.

20 56. PADRE DAM requests a judicial determination of its rights under the 2015
21 Agreement and obligations to provide water service to the Campus.

22 57. Such a declaration is necessary and appropriate at this time.

23 **SECOND CAUSE OF ACTION**
24 **(SPECIFIC PERFORMANCE)**

25 58. PADRE DAM re-alleges and incorporates by reference the allegations set forth in
26 Paragraphs 1 through 57, as though fully set forth herein.

27 59. Pursuant to the 2015 Agreement, upon completion of the inspection and repair of
28 valves and existing water lines that are part of the On-site Facilities by PADRE DAM,

1 GROSSMONT COLLEGE was required to execute a Notice of Acceptance of the On-site Facilities
2 and to grant PADRE DAM and its approved agents and representatives a nonexclusive license to
3 access and enter upon the Campus at all reasonable times to inspect, maintain and repair the Padre
4 Dam Facilities.

5 60. To date, GROSSMONT COLLEGE has not executed the Notice of Acceptance of
6 the On-site Facilities and has not granted PADRE DAM and its approved agents and representatives
7 a nonexclusive license to access and enter upon the Campus at all reasonable times to inspect,
8 maintain and repair the Padre Dam Facilities. PADRE DAM is informed and believes and on that
9 basis alleges that GROSSMONT COLLEGE refuses to and will not execute the Notice of
10 Acceptance and/or grant PADRE DAM and its approved agents and representatives a nonexclusive
11 license to access and enter upon the Campus at all reasonable times to inspect, maintain and repair
12 the Padre Dam Facilities as required by the 2015 Agreement.

13 61. PADRE DAM seeks an order and/or judgment requiring GROSSMONT COLLEGE
14 to execute the Notice of Acceptance, to accept sole responsibility for the On-site Facilities as
15 provided for in the 2015 Agreement; to assume all risks of loss related to failure of the On-site
16 Facilities, and to grant PADRE DAM and its approved agents and representatives a nonexclusive
17 license to access and enter upon the Campus at all reasonable times to inspect, maintain and repair
18 the Padre Dam Facilities as required by the 2015 Agreement.

19 **THIRD CAUSE OF ACTION**

20 (VIOLATION OF SECTION 1882.1 OF CIVIL CODE)

21 62. PADRE DAM re-alleges and incorporates by reference the allegations set forth in
22 Paragraphs 1 through 61, as though fully set forth herein.

23 63. In violation of Civil Code section 1882.1 and Section 1.4—1.4.2 of PADRE DAM's
24 Rules and Regulations, PADRE DAM is informed and believes and thereon alleges that
25 GROSSMONT COLLEGE took water from a PADRE DAM facility or connection to a PADRE
26 DAM facility, to which an authorized metering device was not installed, by tampering with PADRE
27 DAM property and without paying PADRE DAM's charges for such water taken.
28

1 the On-site Facilities; accept sole responsibility for the On-site Facilities as provided for in the 2015
2 Agreement; assume all risks of loss related to failure of the On-site Facilities; and grant PADRE
3 DAM and its approved agents and representatives a nonexclusive license to access and enter upon
4 the Campus at all reasonable times to inspect, maintain and repair the Padre Dam Facilities as
5 required by the 2015 Agreement;

- 6 2. That PADRE DAM be awarded reasonable attorneys' fees costs of suit; and
7 3. For such other and further relief as this Court deems just and proper.

8 **AS TO THE THIRD CAUSE OF ACTION** (Violation of Section 1882.1 of Civil Code):

- 9 1. For compensatory damages in an amount according to proof with interest thereon;
10 2. For treble damages under Civil Code section 1882.2;
11 3. For attorney fees pursuant to Civil Code section 1882.2
12 4. For costs of suit; and
13 5. For such other and further relief as this Court deems just and proper.

14 Dated: December 12, 2023

BEST BEST & KRIEGER LLP


15
16
17 By: 
18 JAMES B. GILPIN
19 WHITNEY R. SARAKA
20 DAVID E. LLOYD
21 Attorneys for Plaintiff
22 PADRE DAM MUNICIPAL WATER
23 DISTRICT
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25
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27
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Exhibit 1

EXHIBIT "A" COMBINED FACILITIES at GROSSMONT COMMUNITY COLLEGE

Exhibit A - Combined Facilities

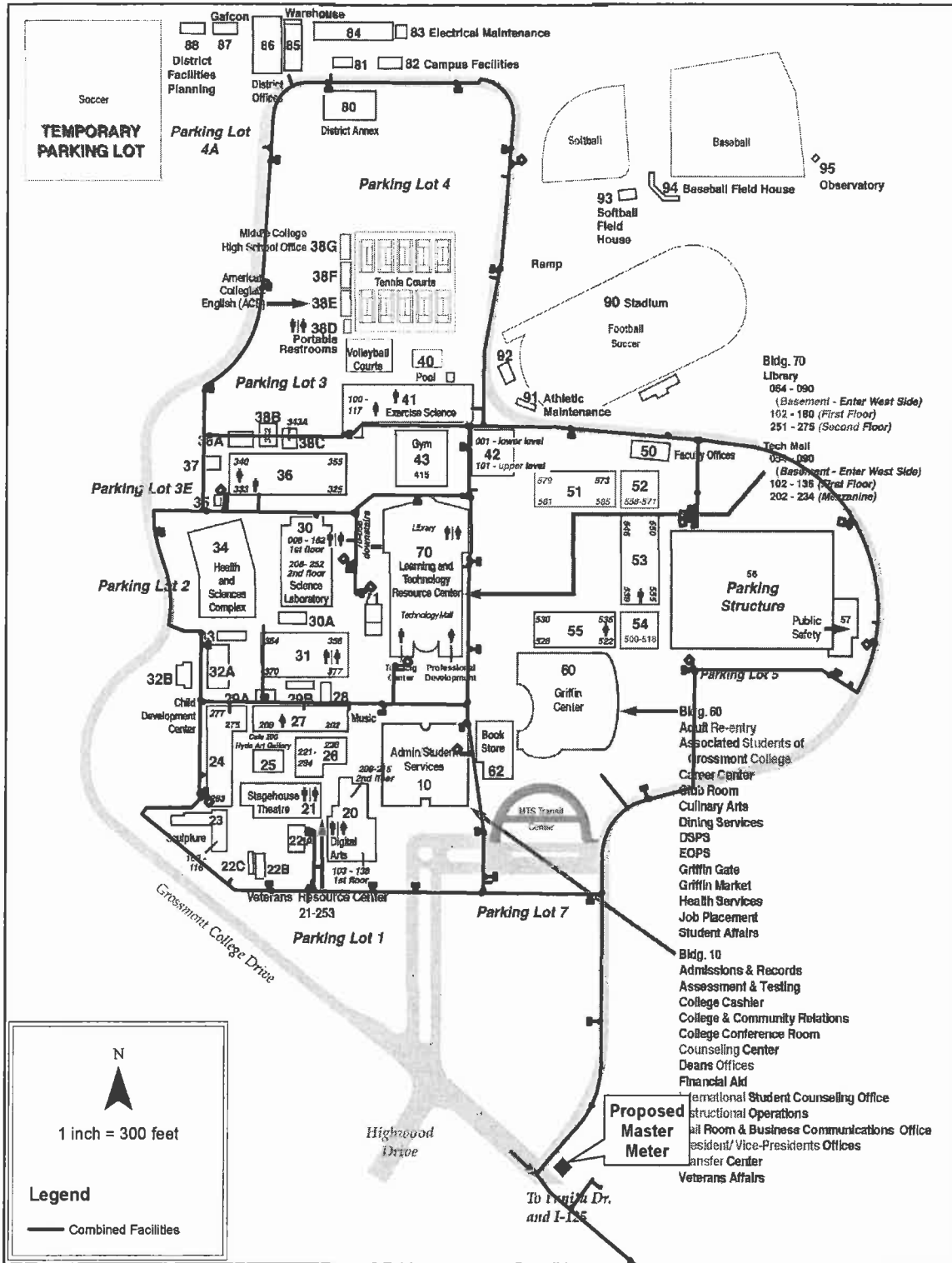


Exhibit 2

MEMORANDUM OF UNDERSTANDING
BETWEEN
GROSSMONT-CUYAMACA COMMUNITY COLLEGE DISTRICT
AND
PADRE DAM MUNICIPAL WATER DISTRICT

Purpose: This Memorandum of Understanding (MOU) is made and entered into between **Grossmont Cuyamaca Community College District (GCCCCD)** and **Padre Dam Municipal Water District (PDMWD)** to implement a discussion to resolve the issues relating to access and maintenance of existing PDMWD water lines residing on the Grossmont College Campus. At this time all issues relating to the resolution are not fully defined, however this MOU will provide the basis of understanding of the feasible alternatives available to both parties. In addition, to expedite the approval of plans for the Grossmont Health/Physical Science Complex (HSPC) project that is currently scheduled for construction, this MOU will serve as guarantees to grant easement rights for the new water loop for this specific project in the event that other more global agreements cannot be reached.

GCCCCD agrees to:

- Meet with PDMWD to determine the areas on the campus where access to existing water lines are obstructed.
- Determine all areas within the campus that have water lines that do not meet current PDMWD standards.
- Work with PDMWD to determine how all public water lines within the campus can be accessed and maintained to PDMWD standards.
- Identify options including providing PDMWD easements, privatization of the water system PDMWD maintenance agreements and/or a combination of such resolutions that are mutually beneficial and feasible for both parties.
- Work with PDMWD to actively pursue recommended options to assure the continued safe and reliable operation of the water system.
- Grant easement rights for the Grossmont HPSC project in accordance with PDMWD standards in the event that a more global method to protect the public water system cannot be reached.

I understand and agree to the items listed above.



Sue Rearic
Vice Chancellor-Business Services
Grossmont-Cuyamaca
Community College District



Doug Wilson
General Manager
Padre Dam Municipal Water District

7/23/08

Date

07/18/08

Date

Exhibit 3



Jul 08, 2015 09:31 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$0.00

PAGES: 10

RECORDING REQUESTED BY:
Padre Dam Municipal Water District

MAIL RECORDED DOCUMENT TO:
Padre Dam Municipal Water District
P.O. Box 719003
Santee, CA 92072-9003
Attn: Right of Way

10
NF

Above Space for Recorder's Use

EXEMPT FROM FILING FEES PURSUANT TO GOV. CODE § 6103

- 386-071-09
- 386-071-02
- 386-071-01
- 386-072-01
- 386-072-04

**REPAIR AND MAINTENANCE OF WATER SYSTEM AND FACILITIES
AGREEMENT BETWEEN PADRE DAM MUNICIPAL WATER
DISTRICT AND GROSSMONT-CUYAMACA COMMUNITY COLLEGE
DISTRICT ON BEHALF OF GROSSMONT COLLEGE**

This Repair and Maintenance Agreement (“Agreement”), is made this 8th day of May, 2015, (“Effective Date”) by and between the **PADRE DAM MUNICIPAL WATER DISTRICT**, a municipal water district organized and operating under the Municipal Water District Law of 1911, Water Code section 71000 et seq.(“Padre Dam”), and **GROSSMONT-CUYAMACA COMMUNITY COLLEGE DISTRICT ON BEHALF OF GROSSMONT COLLEGE (“GCCCD”)**, 8800 Grossmont College Drive, El Cajon, CA 92020-1799. GCCCD and Padre Dam are sometimes referred to individually as “Party” or collectively as “Parties.”

RECITALS

WHEREAS, Padre Dam is a municipal water district existing and operating under and pursuant to the Municipal Water District Law of 1911, Water Code Section 71000, et seq. Padre Dam owns and operates a water system and facilities, hereinafter referred to as “Facilities”, situated on land owned by GCCCD, more particularly described in **Exhibit “A”** (“Combined Facilities”) attached hereto and incorporated herein by reference;

WHEREAS, the Parties entered into a Memorandum of Understanding executed on July 23, 2008, wherein GCCCD agreed to work with Padre Dam regarding assessing

access and maintenance for water lines on Campus and identify and pursue options to assure continued safe and reliable operation of the water system, and to grant certain easement rights if a more global method to protect the public water system could not be reached;

WHEREAS, Padre Dam, at its own expense now desires to install an 8" x 3" compound master water meter at the entrance of the college and to accept responsibility for maintaining and repairing certain Facilities within the roads and parking lots at the Campus; and

WHEREAS, GCCCD desires to accept responsibility for maintaining and repairing certain on-site Facilities described in **Exhibit "B"** attached hereto and incorporated herein by reference ("On-site Facilities"); to assume all risks of loss related to GCCCD's work and construction upon, over or near said On-site Facilities; and to acknowledge that GCCCD will not construct other improvements on, over or near Padre Dam's Facilities depicted in **Exhibit "C"** attached hereto and incorporated herein by reference (Padre Dam's Facilities);

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions for each Party's responsibilities with respect to the Facilities;

NOW, THEREFORE, the parties mutually agree to the terms and conditions set forth herein, as follows:

A. GCCCD and Padre Dam

1. GCCCD will accept responsibility for maintaining and repairing the On-site Facilities described on **Exhibit "B."**

2. GCCCD will assume all risks of loss related to failure of the On-site Facilities, which may occur as a result of GCCCD working on, over and near and/or encroaching upon the On-site Facilities described on Exhibit "B."

3. GCCCD will not encroach or make improvements upon, or otherwise access or tamper with, Padre Dam's Facilities depicted in Exhibit "C," unless otherwise agreed to in writing and signed by both Parties. If Padre Dam determines that such unauthorized actions are likely to, or have occurred, Padre Dam may take any reasonably necessary actions to avoid, mitigate or repair the unauthorized actions or related damage to Padre Dam's Facilities, including but not limited to moving Padre Dam's Facilities, and GCCCD will reimburse Padre Dam for any costs and fees incurred related thereto.

4. GCCCD will continue to be responsible for installation, maintenance, testing, and repair of backflow prevention devices required by Padre Dam. GCCCD shall continue testing devices annually and copies of all test results, maintenance, and repair reports shall be forwarded to Padre Dam.

5. Padre Dam will, at its own expense, install an 8" x 3" compound master water meter at the entrance to the Campus. GCCCD will be responsible for all monthly operational charges associated with the newly installed 8" x 3" compound master water meter. GCCCD hereby grants Padre Dam and its approved agents and representatives a nonexclusive license to access and enter upon the Campus at all reasonable times to install, inspect, maintain, and repair the master water meter.

6. Padre Dam will, at no additional expense to GCCCD, verify all existing meters are functional and leave the existing meters for GCCCD to use as it sees fit. Padre Dam will remove monthly use charges associated with those meters. Padre Dam will at GCCCD request, service the existing meters and GCCCD will reimburse Padre Dam for such repairs.

7. Padre Dam will, at its own expense, maintain and repair damage to Padre Dam's Facilities located within the roads and parking lots on the Campus, except that Padre Dam will not be responsible for any losses, damages, maintenance or repair related to parking stalls that are placed over Padre Dam's Facilities situated on land owned by GCCCD. GCCCD hereby grants Padre Dam and its approved agents and representatives a nonexclusive license to access and enter upon the Campus at all reasonable times to inspect, maintain and repair Padre Dam's Facilities.

8. Prior to GCCCD's acceptance of such On-site Facilities depicted in Exhibit "B" and with the installation of the master meter, a representative of GCCCD shall accompany and witness Padre Dam in the testing of all valves and existing water lines to verify that all valves and existing water lines are in good operable condition. Valves shall be replaced as noted in the inspections as well as piping components found to be unacceptable by GCCCD. This shall be at Padre Dam's cost. Once inspection is complete and repairs are made, GCCCD will execute the Notice of Acceptance within 60 days, attached as Exhibit "D," and deliver to Padre Dam its acceptance of the On-site Facilities, and thereafter GCCCD shall be solely responsible for the On-site Facilities as provided for in this Agreement.

9. Padre Dam will assist GCCCD with repairing On-site Facilities after acceptance and as requested by GCCCD in both emergency and scheduled situations and GCCCD will reimburse Padre Dam for such repairs to the facilities depicted in Exhibit "B."

B. Indemnification

GCCCD agrees to indemnify, protect, save, defend and hold harmless Padre Dam, its officials, officers, directors, employees, agents, contractors and volunteers from any and all claims, costs, demands, causes of action, losses, injury, liabilities, expenses or damages of any nature to property and persons, including injury or death of any person, damage to property, or interference with use of facilities, arising out of or in any way connected with the following: (1) the negligent acts, errors, or omissions or willful conduct of GCCCD, its agents, officers, employees, consultants or independent contractors hired by GCCCD, or arising out of or in any way connected

with GCCCD working on, over and near and/or encroaching upon Padre Dam's Facilities pursuant to this Agreement; or (2) the failure or condition of the On-site Facilities as depicted in Exhibit "B." GCCCD shall reimburse Padre Dam and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only exception to GCCCD's responsibility to protect, save, defend and hold Padre Dam harmless is due to the sole negligence or willful misconduct of Padre Dam. This indemnification provision shall apply to all liability regardless of whether any insurance policies are applicable and shall survive expiration or termination of this Agreement.

Padre Dam agrees to indemnify, protect, save, defend and hold harmless GCCCD, its officials, officers, directors, employees, agents, contractors and volunteers from any and all claims, costs, demands, causes of action, losses, injury, liabilities, expenses or damages of any nature to property and persons, including injury or death of any person, damage to property, or interference with use of facilities, arising out of or in any way connected with the following: (1) the negligent acts, errors, or omissions or willful conduct of Padre Dam, its agents, officers, employees, consultants or independent contractors hired by Padre Dam, or arising out of or in any way connected with the Padre Dam's installation of a compound master meter and removal of other meters on campus pursuant to this Agreement; or (2) the failure of the Padre Dam Facilities in the Roads and Parking Lots as depicted in Exhibit "C." Padre Dam shall reimburse GCCCD and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only exception to Padre Dam's responsibility to protect, save, defend and hold GCCCD harmless is due to the sole negligence or willful misconduct of GCCCD. This indemnification provision shall apply to all liability regardless of whether any insurance policies are applicable and shall survive expiration or termination of this Agreement.

C. Insurance

Prior to performing any work described in this Agreement, GCCCD and Padre Dam shall obtain and maintain general liability and automobile liability insurance policies in amounts approved in writing by both GCCCD and Padre Dam. GCCCD or Padre Dam may in its discretion request copies of the applicable certificates and endorsements of said policies as well as additional insurance policies, if necessary.

D. Miscellaneous

1. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the actions shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between

the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the court.

2. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Padre Dam and GCCCD. No third-party beneficiaries are implied or intended by this Agreement.

3. This Agreement constitutes the entire agreement and understanding between Padre Dam and GCCCD and supersedes all other offers, negotiations and other agreements concerning the subject matter contained herein, whether written or oral. There are no representations or undertakings of any kind not set forth in this Agreement.

4. If any section or part of this Agreement is found by a court of competent jurisdiction to be unenforceable or invalid, that section or part, shall be stricken from this Agreement and the remainder shall remain in full force and effect according to its terms.

5. Time is of the essence for each and every term in this Agreement.

6. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

7. All Exhibits and Recitals referenced in this Agreement and attached hereto are hereby incorporated by this reference into this Agreement.

8. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

9. This Agreement may be signed in counterparts, each of which shall constitute an original.


E. Term

This Agreement shall become effective on the date of final approval by Padre Dam.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by a duly authorized officer on the day and year first above written.

PADRE DAM MUNICIPAL WATER DISTRICT

GROSSMONT-CUYAMAC COLLEGE
DISTRICT ^{✓ COMMUNITY}

By:  Date 7/6/15
Name: Allen Carlisle
Title: CEO/General Manager

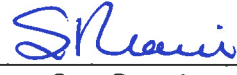
By:  Date 5-8-15
Name: Sue Rearic
Title: Vice Chancellor - Business Services

EXHIBIT "A" COMBINED FACILITIES at GROSSMONT COMMUNITY COLLEGE

Exhibit A - Combined Facilities

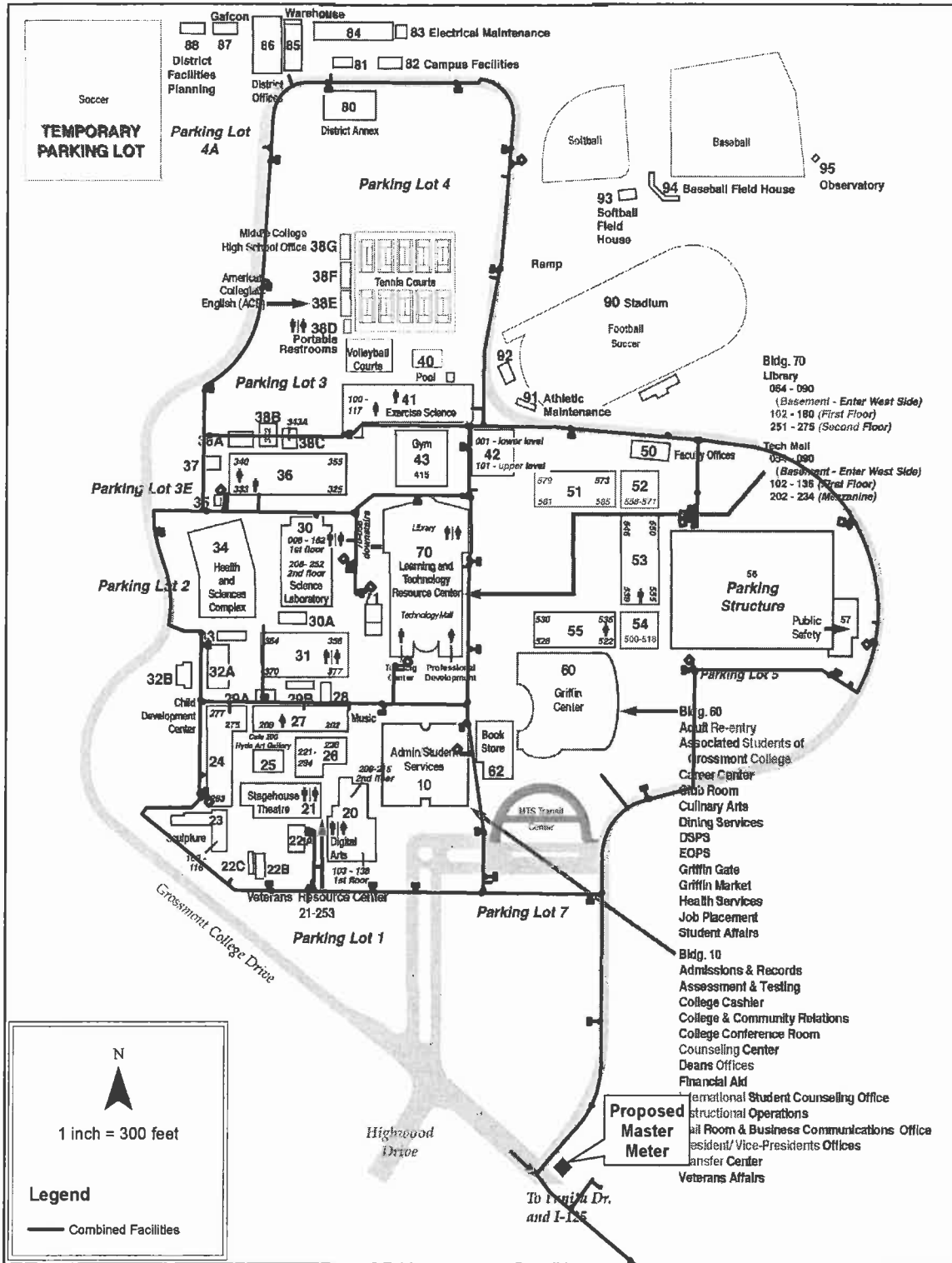


EXHIBIT "B" ON-SITE FACILITIES at GROSSMONT COMMUNITY COLLEGE

Exhibit B - On Site Facilities

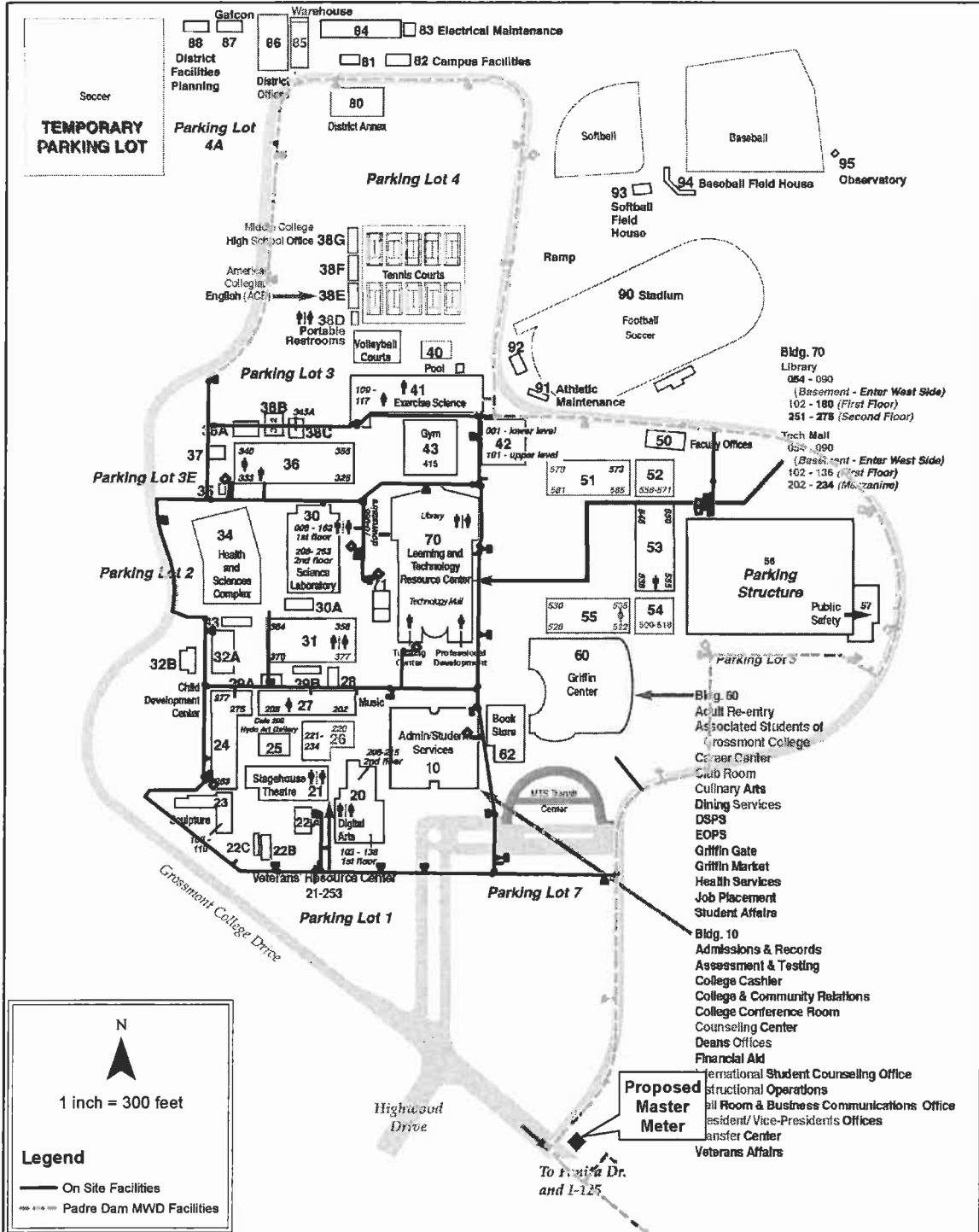


EXHIBIT "C"

PADRE DAM'S FACILITIES IN ROADS AND PARKING LOTS

at

GROSSMONT COMMUNITY COLLEGE

Exhibit C - Padre Dam Facilities

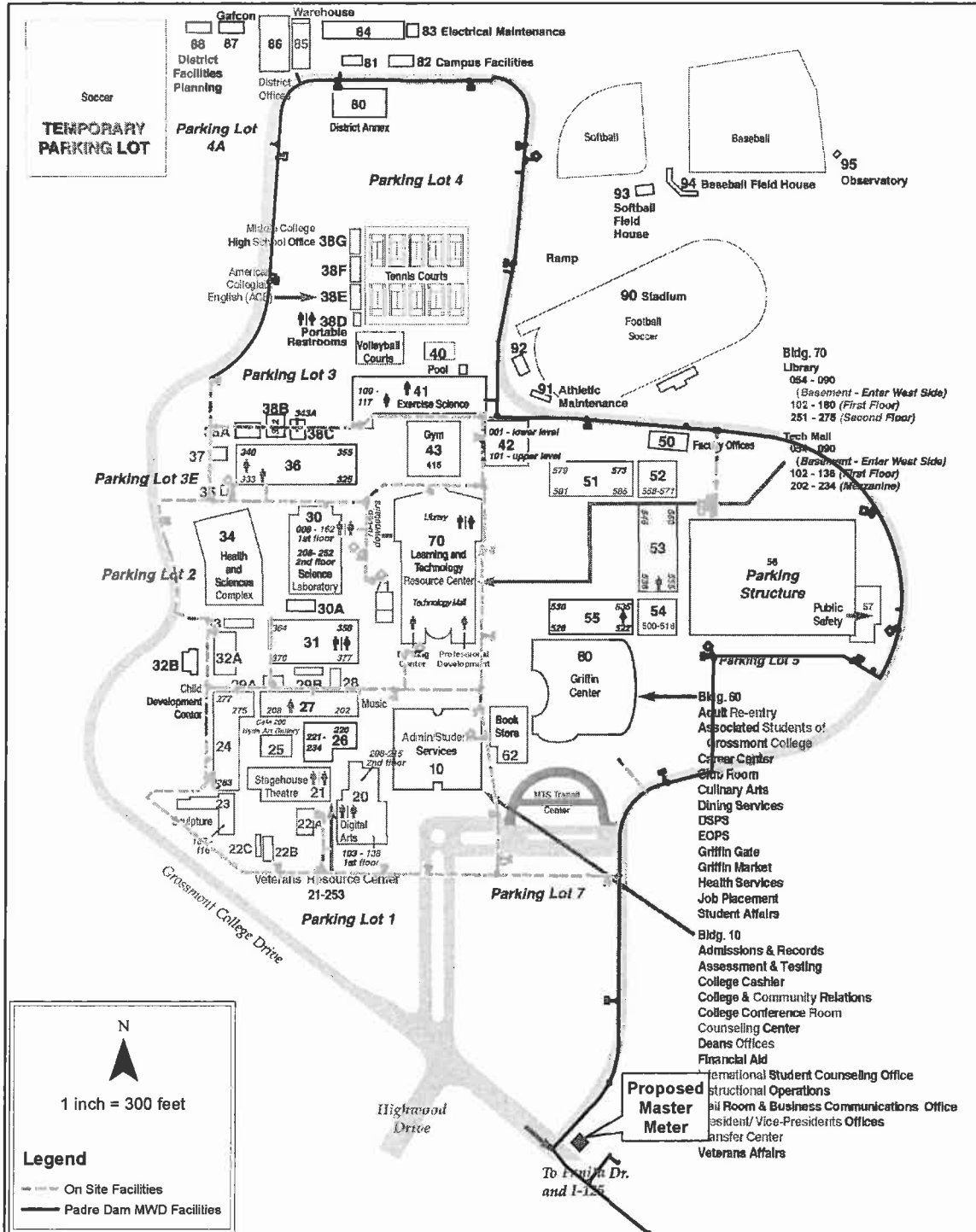


EXHIBIT "D"
NOTICE OF ACCEPTANCE

NOTICE OF ACCEPTANCE
of
On-site Facilities
at
Grossmont Community College

GROSSMONT-CUYAMACA COMMUNITY COLLEGE DISTRICT has reviewed and inspected the On-site Facilities and acknowledges that it is satisfied with and accepts the condition of the On-site Facilities, "AS IS," without express or implied warranties.

GROSSMONT - CUYAMACA COMMUNITY COLLEGE DISTRICT

By: _____ Date _____

Name: _____

Title: _____

Exhibit 4



Paula C. P. de Sousa
Partner
(619) 525-1328
paula.desousa@bbklaw.com

File No. 60025.00201

February 13, 2023

**VIA E-MAIL [LYNN.NEAULT@GCCCD.EDU]
BY HAND DELIVERY**

Grossmont-Cuyamaca Community College District
Chancellor's Office
Attn: Dr. Lynn Ceresino Neault
8880 Grossmont College Drive
El Cajon, CA 92020

**Re: Government Claims Act Letter re: Grossmont-Cuyamaca College
District's Unlawful Use of Water From An Unmetered Connection**

Dear Chancellor Neault:

Our firm serves as general counsel for Padre Dam Municipal Water District ("Padre Dam"). We are submitting this letter on behalf of Padre Dam, which shall serve as a claim pursuant to the California Government Claims Act (Gov. Code, section 900 et seq.) and Grossmont-Cuyamaca College District ("GCCCD") Board Policy 3810 and Administrative Procedure 3810. Although Padre Dam and GCCCD are engaged in discussion to resolved the matters at issue in this claim (as described in more detail below), Padre Dam is submitting this claim to preserve its rights pursuant to the Government Code Claims Act, and GCCCD Policy. To the extent applicable to Government Code claims, we have also enclosed the attached completed GCCCD claims form.

On February 14, 2022, Padre Dam discovered that GCCCD had made unapproved aboveground alterations to Padre Dam utility infrastructure and was using water through an unmetered connection to service the Main Chiller Plant building on the Grossmont College campus in violation of Padre Dam Rules and Regulations. Following a review of its records, Padre Dam believes that GCCCD used water through this unmetered connection from as early as 2017 to the date of this letter, and that the use of unmetered water is ongoing. While Padre Dam representatives and representatives from GCCCD¹ have been in discussions regarding the unmetered connection, the parties have not been able to resolve the issue to date.

GCCCD did not pay, and has not paid, Padre Dam for the water used from this unmetered connection. Further, GCCCD's use of water from this unmetered connection is ongoing. Accordingly, Padre Dam seeks to recover the value of such water, and any fees or charges owed to Padre Dam pursuant to its Rules and Regulations, through this claim. Padre Dam's damages

¹ Ken Emmons (Senior Director Districtwide Facilities), Jim Davies and James Bray (Gafcon), and John Lemmo (Counsel to GCCCD).

Grossmont-Cuyamaca Community College District
Chancellor's Office
February 13, 2023
Page 2

exceed the threshold for unlimited civil cases, and thus any lawsuit brought to seek recovery of such damages would not be a limited civil case.

Please send all notices related to this claim to the following address:

Paula C. P. de Sousa
General Counsel for Padre Dam Municipal Water District
Best Best & Krieger LLP
655 W. Broadway
15th Floor
San Diego, CA 92101

Copy to:

Kyle Swanson, CEO/ General Manager
Padre Dam Municipal Water District
P.O. Box 719003
Santee, CA 92072

As stated above, Padre Dam and GCCCD representatives have been discussing unmetered connection and the value of water of water used by GCCCD since inception of the unmetered connection. We are happy to continue discussing the information in this letter further and look forward to GCCCD's timely response to this claim consistent with the Government Claims Act and Administrative Procedure 3810.

Sincerely,



Paula C. P. de Sousa
of BEST BEST & KRIEGER LLP

PdS:wc

cc: Kyle Swanson, Padre Dam CEO/General Manager (via email only)
John Lemmo, Counsel for GCCCD (via email only)

**GROSSMONT-CUYAMACA COMMUNITY COLLEGE DISTRICT
CLAIM FOR DAMAGES**

DIRECTIONS: Complete and send to: Grossmont-Cuyamaca Community College District, 8800 Grossmont College Drive, El Cajon, CA 92020

Name of Claimant: Padre Dam Municipal Water District
(Injured or damaged party) (Last) (First) (Middle)
N/A N/A N/A
(Date of Birth) * (Social Security No.)* (CA Drivers License No.)

Home Address: N/A
(Number/Street) (City/State/Zip Code) (Area Code & Phone No.)
 Business Address: P.O. Box 719003, Santee, CA 92072
(Number/Street) (City/State/Zip Code) (Area Code & Phone No.)
(619) 448-3111

Claimant receives or is eligible for SSDI or Medicare* Yes N/A No

Directions: Indicate to which address you wish notices sent. Home Business X

When Did Injury or Damage occur? February 14, 2022 Monday Unknown
(Month/Day/Year) (Day of Week) (Time of Day)

Where Did Injury or Damage Occur? Main Chiller Plant, Grossmont College, 8800 Grossmont College Dr, El Cajon, CA 92020
(School site, street address, intersecting streets, or other locations)

How Did Injury or Damage Occur? Padre Dam provides water to Grossmont College. During a field visit to the campus on 2/14/22,
(Describe accident or occurrence in complete detail/attach additional pages if needed)

Padre Dam discovered that GCCCD had made unapproved aboveground alterations to a Padre Dam fire flow main to create an unmetered connection to supply water to at least the Main Chiller Plant. Padre Dam believes such use has occurred since 2017.

Names, Addresses and Phone Numbers of Witnesses, Doctors, Hospitals or persons who may have information regarding Your Injury or Damages: Lewis Clapp, Padre Dam Engineering Manager (619) 258-4640 and Jeff Moneda, Director of Engineering and Planning for Padre Dam, (619) 258-4627. Address for both: P.O. Box 719003, Santee, CA 92072.

Names of School Employees Involved: To be determined.

Police Report Number: There was no police report filed.

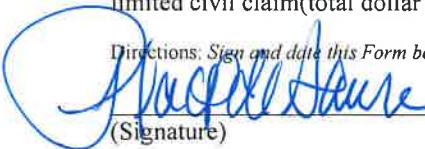
What Action or Inaction of District Employee(s) Caused Your Injury or Damages? District employees or their agents made illegal alterations to Padre Dam infrastructure and used water through an unmetered connection without payment since at least 2017.

What Injuries or Damages Did You Suffer? District has not paid for any water used through the unmetered connection. Padre Dam is entitled to payment for the volume of water used, related fees and charges per its rules, and costs of repairing its altered infrastructure.

State the amount of the claim if it is less than \$10,000 .

Include the estimated amount of any prospective injury, damage or loss insofar as it may be known at the time the claim is presented and list the basis for the computation of the amount claimed:

If the dollar amount of the claim is more than \$10,000, no dollar amount will be stated but please indicate whether the claim is a limited civil claim (total dollar amount less than \$25,000): Limited Civil Case: Yes X No

Directions: Sign and date this Form below. If the signer is not the Claimant, indicate the relationship of the signer to the Claimant (parent, attorney etc.) and address.
 February 13, 2023 General Counsel, 655 W Broadway, 15th Floor, San Diego, CA 92101
(Signature) (Date) (Relationship if not Claimant and address)

Directions: Attach and include, with this Form, any bills for medical treatment or expenses/estimates for personal property damage.
 *RESPONSES REQUIRED FOR FEDERAL MEDICARE SECONDARY PAYER REPORTING
 Note: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to CA Penal Code Sec 72)