

Board of Trustees Agenda Item

Board Meeting Date: May 7, 2012

Title of Item: Proposed New Retirement Plan Effective June 30, 2012 – Necessary to Transition to CalPERS Retiree Health Coverage on July 1, 2012

Background and Analysis:

At the March 12, 2012 Board of Trustees meeting, the Board approved terminating its self-insured medical health plans and contracting with CalPERS Health Program for its medical health insurance plan coverage for eligible employees, retirees and dependents. The CalPERS Health Program is available to Community College Districts under the California Public Employees' Medical and Hospital Care Act ("PEMHCA"). In making this change, the District has estimated there will be significant savings.

In order to be eligible to be a qualified retiree for participation under the CalPERS Health Program, the District must be able to certify, in accord with PEMHCA regulations, that all participants are annuitants of the CalPERS or CalSTRS retirement program or another qualified retirement plan. Some current and future retired employees and former members of the Board of Trustees (and their eligible survivors) are not/will not be annuitants of the CalPERS or CalSTRS Retirement Program and must, therefore, be covered under another qualified retirement plan.

The District engaged outside legal counsel with special expertise in this area, Hanson Bridgett LLP. After careful review, the best alternative for another qualified retirement plan is a defined benefit plan under Internal Revenue Code section 401(a). Individuals who are eligible for District retiree medical coverage but are not receiving a benefit from CalPERS or CalSTRS would receive an annual annuity benefit, equal to \$1.00 per month, under the proposed qualified retirement plan. The new retirement allowance would exist only to the extent the PEMHCA rules make it necessary. Since the District will be required to certify to CalPERS that these individuals are annuitants under a District-sponsored qualified retirement plan, the District will file with the IRS for a determination that the new retirement plan satisfies the qualifications for a tax-qualified plan.

The Board is asked to consider and allow for comment on this new qualified retirement plan at this time.

Copies of the proposed Retirement Plan document and its related Trust Agreement are attached.

Recommendation: For information only

Submitted by:	Kevin McElroy, Vice Chancellor of Business Services
Additional contact names:	
Is backup provided?	Yes

THE FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

RETIREMENT PLAN

(Effective June 30, 2012)

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THE FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

RETIREMENT PLAN

(Effective June 30, 2012)

SECTION 1: ESTABLISHMENT AND PURPOSE OF THE PLAN

The Foothill-De Anza Community College District Retirement Plan (the "Plan") provides retirement benefits to eligible retirees of the Foothill-De Anza Community College District (the "District"). The Plan was established effective June 30, 2012. The Plan and the Trust Fund established under the Plan are intended to qualify under the applicable provisions of section 401 and related sections of the Internal Revenue Code (the "Code"). It also is intended that the Plan will be a governmental plan under Code section 414(d).

The District's primary retirement benefits are provided to employees through coverage under the CalPERS or the CalSTRS retirement systems. The Plan is intended to provide supplemental benefits under a retirement system sponsored by the District for those former employees and members of the Board of Trustees of the District who qualify for retiree medical benefits from the District and are not entitled to currently payable retirement allowances under either the CalPERS or CalSTRS retirement systems. The District's medical plan coverage will be provided through CalPERS under the California Public Employees Medical and Hospital Care Act ("PEMHCA") as of July 1, 2012. Previously such retiree medical benefits were provided under a self-insured plan sponsored by the District. It is intended that retirees and former District Board of Trustees members covered under this Plan meet the requirements for "annuitants" as defined in PEMHCA by receiving a "retirement allowance" under this Plan. The retirement allowance provided under this Plan is intended to be structured such that District retirees who qualified for District retiree medical benefits on June 30, 2012, but do not otherwise meet the PEMHCA requirements, as well as any current or future employees of the District who may terminate employment in the future and qualify for District retiree medical benefits but who do not otherwise meet the PEMHCA requirements, will meet the definition of an "annuitant" under PEMHCA by being provided a retirement allowance under this Plan. This Plan has been established so that the District can satisfy its obligations under certain memorandums of understanding between the District and the unions representing its workforce and through District policy with respect to retiree medical benefits.

SECTION 2: DEFINITIONS

Beneficiary is the Participant's Spouse or Domestic Partner (if any) who survives the Participant's death and is entitled to continuing retiree medical benefits under the District's retiree medical program and who is not an annuitant of CalPERS or CalSTRS.

CalPERS means the California Public Employee Retirement System, of which the District is a participating agency.

CalSTRS means the California State Teachers Retirement System, of which the District is a participating agency.

District means the Foothill-De Anza Community College District.

Code means the Internal Revenue Code of 1986, as amended from time to time, and all applicable rules and regulations issued thereunder pertinent to the tax qualification of this Plan and the tax-exempt status of the Trust Fund.

Contributions means amounts paid by the District to the Trust Fund to fund benefits under the Plan.

Domestic Partner means a domestic partner of a Participant, as defined by the District for purposes of all of its other employee benefit programs, at the date the Participant's benefits commence under the Plan or at the Participant's date of death, as applicable for eligibility for continuing retiree medical benefits under the District's retiree medical program.

Effective Date for this Plan, means June 30, 2012. In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Code, any contributions made incident to that initial qualification by the District must be returned to the District within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the District's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe. If the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Code, the District may terminate the Plan at that time with no further obligations under the Plan whatsoever.

Eligible Retiree means those current retired employees, survivors of retirees, qualified former elected members of the District's Board of Trustees hired prior to 1995 who retired from the District under a Board Policy that provided retiree medical benefits from the District, and survivors of such qualified former elected members of the District's Board of Trustees, who are listed on Appendix "A" hereto, and who were being provided benefits, or were eligible to be provided benefits but waived coverage, under the District's retiree medical program on June 30, 2012, but who are not currently receiving a retirement allowance from CalPERS or CalSTRS.

An error of fact resulting in the inclusion of an individual on Appendix A who was not eligible for coverage under the District's retiree medical program on June 30, 2012, or the exclusion of an individual from Appendix A who was eligible for coverage under the District's retiree medical program on June 30, 2012, shall not result in eligibility for coverage under this Plan or result in the improper exclusion from coverage under this Plan, respectively. Any such errors will be corrected as soon as practicable by the Plan Administrator.

Eligible Retiree also means any Employee or former Employee of the District who, at the time of retirement, is a(n):

- Confidential Employee (as defined in the Confidential Employees Handbook in effect when the Employee commenced employment as a Confidential Employee with the District); or
- Administrator (as defined in the Administrators Handbook in effect when the Employee commenced employment as an Administrator with the District); or
- Executive Administrator as determined by individual employment contract (to include Chancellor, President , and Vice Chancellor); or

- A bargaining unit member represented by any of the District-recognized bargaining units, including the Faculty Association; the Association of Classified Employees; the California School Employees Association and its Chapter 96, for Unit A (Skilled Trades and Crafts); the Teamsters Local 287; or the Operating Engineers Local 3;

and also

- (i) is a current Employee who was hired prior to 1997 and terminates employment from the District after June 30, 2012, with entitlement to retiree medical benefits under the 20-year service rule and does not initiate a pension benefit from CalPERS or CalSTRS within 120 days of termination because he is not eligible to initiate a benefit or he has elected to not initiate a benefit from CalPERS or CalSTRS; or
- (ii) is a former Employee who was hired prior to 1997 and has already terminated employment from the District on June 30, 2012, with entitlement to retiree medical benefits under the 20-year service rule and did not initiate a pension benefit from CalPERS or CalSTRS within 120 days of termination because he was not eligible to initiate a benefit or elected to not initiate a benefit from CalPERS or CalSTRS, and continues to remain eligible for coverage under the District's retiree medical program.

Eligible Retiree also means

- any Beneficiary of a current or former Employee of the District hired prior to 1997 as described in (i) or (ii) above; or
- any Beneficiary of a current or former Employee of the District hired on or after 1997 who terminates employment with the District when he is eligible for retiree medical coverage under the District's program, and following the death of the current or former Employee, his Beneficiary is not receiving a survivor annuity under CalPERS or CalSTRS.

An individual's status as an Eligible Retiree shall be determined solely by the Plan Administrator, and such determination shall be conclusive and binding upon all persons.

Employee means an individual employed by the District, who is on the regular payroll of the District as a non-retired employee, for whom the District withholds employment taxes, and for whom the District issues an IRS form W-2. Therefore, for example, a common-law employee for whom the District does not issue a form W-2 is not an Employee. An individual's status as an Employee shall be determined solely by the Plan Administrator, and such determination shall be conclusive and binding upon all persons.

Participant means an individual who meets the requirements for participation in the Plan as provided under Section 3 of the Plan.

Plan Administrator means the District or its designated agent.

Plan Year means the calendar year.

Spouse means the legally married spouse of a Participant at the date the Participant's benefits commence under the Plan or at the Participant's date of death, as applicable for eligibility for continuing retiree medical benefits under the District's retiree medical program.

Trust Agreement means the agreement entered into between the District and the Trustee pursuant to this Plan.

Trust Fund means all monies, securities, and properties of whatever character held by the Trustee pursuant to the Trust Agreement.

Trustee means such individual(s) or financial institution(s) as shall be designated in the Trust Agreement to hold in trust any assets of the Plan for the purpose of providing benefits under the Plan, and shall include any successor to the trustee initially designated thereunder.

SECTION 3: PARTICIPATION

(a) Eligibility and Commencement of Participation

Each Eligible Retiree shall be a Participant in this Plan beginning on the first day of the month coinciding with or next following the date he becomes an Eligible Retiree.

Notwithstanding any provision to the contrary, no key employee (as defined in Code section 416) may participate in this Plan. (The term key employee as defined in Code section 416 does not include an officer or employee of an entity referred to in section 414(d) (relating to governmental plans).)

All persons who are Eligible Retirees on the Effective Date shall become Participants in this Plan on that date.

(b) Termination of Participation

A person terminates Participation in this Plan on the earlier of : a) the date of death; the date of the person's rehire as an Employee by the District; or upon becoming an annuitant under CalPERS or CalSTRS without regard to benefits provided under this Plan.

(c) Rehire as an Employee

If an Eligible Retiree again becomes an Employee, he shall become a Participant in this Plan on the date that he again becomes an Eligible Retiree and is not otherwise an annuitant under CalPERS or CalSTRS.

(d) Plan is Binding

Upon becoming a Participant, each Eligible Retiree shall be bound by the terms of this Plan and the Trust Agreement including all amendments to the Plan and the Trust Agreement made in the manner authorized by the Plan or Trust Agreement. No amendment to this Plan or to the Trust Agreement shall reduce the benefits earned by any Participant prior to the time of amendment.

CONTRIBUTIONS TO FUND THE PLAN**(e) Contributions by the District**

From time to time, the District may contribute to fund the Plan the amount which the Plan Administrator determines is necessary or appropriate to fund the benefits provided under the Plan and any expenses thereof which are to be paid out of the Trust Fund.

Contributions shall be made to the Trust Fund. Such Contributions may be made on a monthly, quarterly, semiannual or annual basis, as the Plan Administrator deems necessary or desirable.

(f) Use of Forfeitures

Notwithstanding any provision of the Plan to the contrary, any amounts forfeited by Participants under the Plan shall be applied to reduce the contributions otherwise due from the District and shall not be used to increase the benefit of any Participant under the Plan.

(g) Valuation of Plan Benefits

The Plan Administrator shall engage an actuary to conduct periodic valuations of the Plan benefits and to advise the Plan Administrator in determining the amount of contributions to be made to the Plan by the District.

(h) Trust Agreement and Payments to and From the Plan**(i) Trust Agreement**

The District has entered into a Trust Agreement with the Trustee under which the Trustee will receive and invest Contributions made under the Plan. The Trust Agreement may specifically provide, among other things, for the investment and reinvestment of the Trust Fund and the income thereof, the management of the Trust Fund, the responsibilities and immunities of the Trustee, removal of the Trustee and appointment of a successor, accounting by the Trustee and the disbursement of the Trust Fund.

Such Trust Agreement is incorporated by reference as a part of the Plan, and the rights of all persons hereunder are subject to the terms of the Trust Agreement. If there is a conflict between the terms of the Plan and the Trust Agreement, the terms of the Plan shall control.

The Trustee shall, in accordance with the terms of the Trust Agreement, accept and receive all sums of money paid to it from time to time by the District, and shall hold, invest, reinvest and manage such moneys and the increment, increase, earnings and income thereof for the exclusive benefit of the Participants and their Beneficiaries and for the payment of reasonable expenses of administering the Plan.

(ii) Contributions to the Plan

All Contributions to the Plan by the District shall be deposited with the Trustee, to be held and invested as part of the Trust Fund in accordance with the terms of the Trust Agreement.

(iii) Benefits Payments From the Plan

All benefits payable under the Plan shall be paid out of the Trust Fund by the Trustee pursuant to the directions of the Plan Administrator and the terms of the Trust Agreement. Expenses of the Plan and Trust shall be paid out of the Trust Fund to the extent provided by the terms of the Trust Agreement.

(i) Mistake of Fact

If due to a mistake of fact, a Contribution to the Trust Fund for any Plan Year exceeds the amount intended to be contributed, as soon as such mistake of fact is discovered the Plan Administrator shall notify the Trustee of the mistake. The Plan Administrator shall direct that the Trustee return such excess to the District, provided such return is made within one year of the date on which the Contribution is made. However, the Plan Administrator may direct that the funds be held by the Trustee in lieu of the next Contribution. Earnings attributable to the excess Contribution shall not be returned to the District. Losses attributable thereto must reduce the amount to be so returned.

(j) Contributions Conditioned on Initial Tax Qualification

All contributions to this Plan are expressly conditioned on the initial qualification of the Plan under section 401(a) of the Code. If the Plan is submitted to the Internal Revenue Service within the period prescribed by section 401(b) of the Code for a determination as to its initial qualification, and the Internal Revenue Service determines that the Plan is not so qualified, all such Contributions, together with all earnings thereon, shall be returned to the District within one (1) year following such determination by the Internal Revenue Service.

SECTION 4: VESTING

A Participant shall be 100% vested in the benefits provided under this Plan.

SECTION 5: PLAN BENEFITS

(a) Eligibility for Benefits

If an Employee terminates employment and has satisfied the requirements to be an Eligible Retiree, then (and only then) he shall be entitled to receive benefits under this Plan.

(b) Amount of Benefits

The benefit paid under this Plan shall be equal to an annual payment of \$12.

The retired District employees and members of the District's Board of Trustees who are listed on Appendix A shall receive the benefits that are listed for each such retired officer on Appendix A, beginning as of the Effective Date. These benefits are provided by the District pursuant to any prior memoranda of understanding between the unions representing District employees and the District and pursuant to prior District policy regarding eligibility for retiree medical coverage.

(c) When Payments Begin and Terminate

Payments shall begin under this Plan on the first day of the month coincident with or next following the date that the Participant retires from the District when meeting the requirements for an Eligible Retiree. In the event the minimum distribution provisions of section 401(a)(9) of the Code become applicable to a Participant, a "Minimum Required Distribution" shall be paid as of his Required Beginning Date. Such Minimum Required Distribution shall be an amount determined under the requirements of section 401(a)(9) of the Code and the regulations thereunder as in effect on the date such distributions are required to be paid. The provisions of this paragraph shall apply only to the extent required under section 401(a)(9) of the Code and applicable regulations.

Payments under this Plan shall terminate on the first day of the month after the death of the last to die of the Participant and his Beneficiary (if any).

(d) Payments to the Participant and Beneficiary

Benefits are payable to the Participant for life and on his death to the Beneficiary (if any) for that person's life, provided such Beneficiary makes any required contributions required to continue participation under the PEMHCA retiree medical coverage provided by the District.

(e) Incompetent Participant or Beneficiary.

If, in the opinion of the Plan Administrator, any individual becomes unable to properly handle property distributable to him under the Plan, the Plan Administrator may, in its sole discretion, make any arrangement for distribution on such individual's behalf that it determines will be beneficial to such individual, including, without limitation, distribution to such individual's guardian, conservator, spouse, domestic partner, or dependent.

(f) Unclaimed Benefits

If the Plan Administrator is unable to ascertain the whereabouts or identity of a Participant, Beneficiary or legal representative thereof, who is entitled to a distribution which is due or required to commence under this Plan, after having sent proper notification by registered mail to such person's last known address and when no claim for such benefits has been filed with the Plan Administrator before the end of five (5) years following the date distribution is due or required to commence, then, unless otherwise prohibited by law, the distribution otherwise payable shall be forfeited and such forfeiture shall be applied to reduce Contributions otherwise made to this Plan. In the event that the Participant (or Beneficiary) requests a distribution after a forfeiture has occurred, the amount of such forfeiture shall be restored.

SECTION 6: FORM OF BENEFIT

The only form of retirement benefit that will be paid under this Plan is an annual benefit payment for life to the Participant and an annual benefit payment for life to his Beneficiary (if any), so long as such Beneficiary continues to make payments required to maintain medical coverage under the District-sponsored PEMHCA program.

SECTION 7: DEATH BENEFITS**(a) Death After Commencement of Benefits**

If a Participant dies after he has begun to receive benefits under this Plan, then his Beneficiary (if any) shall receive a benefit under this Plan equal to the Participant's benefit, provided the Beneficiary makes any payments required to maintain retiree medical coverage for such Beneficiary under the PEMHCA program sponsored by the District. This benefit shall be paid through the earlier of: (i) the month of the death of the Beneficiary; or (ii) the month in which the Beneficiary loses PEMHCA coverage, including loss of coverage through the failure to make any required payment to maintain PEMHCA coverage.

(b) Death Before Commencement of Benefits

If an Employee dies before he has begun to receive benefits under this Plan and he was eligible to retire from the District on or before the date of death and would have then become an Eligible Retiree at that time, and, if his Beneficiary is eligible for benefits in accordance with the District's retiree medical program, then his Beneficiary (if any) shall receive a benefit under this Plan equal to the Participant's benefit, provided the Beneficiary makes any payments required to maintain retiree medical coverage for such Beneficiary under the PEMHCA program sponsored by the District. This benefit shall be paid through the earlier of : (i) the month of the death of the Beneficiary; or (ii) the month in which the Beneficiary loses PEMHCA coverage, including loss of coverage through the failure to make any required payment to maintain PEMHCA coverage. If a Participant dies before he has begun to receive benefits under this Plan and he would not have been an Eligible Retiree had he retired from the District on or before the date of death, then no benefits shall be paid to any person under this Plan.

SECTION 8: ADMINISTRATION OF THE PLAN**(a) General**

Each fiduciary shall discharge his/her duties solely in the interest of the Participants and Beneficiaries and for the exclusive purpose of providing such benefits as are provided herein to such persons, or defraying reasonable expenses of administering the Plan. Each fiduciary, in carrying out such duties and responsibilities, shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use.

A fiduciary may serve in more than one fiduciary capacity and may employ one or more persons to render advice with regard to his fiduciary responsibilities. If the fiduciary is serving as such without compensation, all expenses reasonably incurred by such fiduciary shall be paid from the assets of the Plan.

A fiduciary may allocate and delegate any of his responsibilities for the operation and administration of the Plan to the extent consistent with the California Constitution.

(b) District

The District shall supply such full and timely information for all matters relating to the Plan as the Plan Administrator and the Trustee may reasonably require for the effective discharge of their respective duties.

(c) Trustee

The Trustee, in accordance with the Trust Agreement, shall have exclusive authority and discretion to manage and control the assets of the Plan except that the Plan Administrator may in its discretion employ at any time and from time to time qualified investment manager(s) to direct the Trustee with respect to all or a designated portion of the assets comprising the Trust Fund.

(d) Plan Administrator

The Plan Administrator shall have plenary authority to administer the Plan.

The Plan Administrator shall have power to construe the Plan and to determine all questions that may arise thereunder relating to (a) the eligibility of individuals to participate in the Plan and (b) the amount of benefits to which any Participant or Beneficiary may become entitled hereunder, and (c) any other issues that may arise under the Plan. All disbursements by the Trustee, except for the ordinary expenses of administration of the Trust Fund or the reimbursement of reasonable expenses at the direction of the District, as provided herein, shall be made upon, and in accordance with, the written directions of the Plan Administrator. When the Plan Administrator is required in the performance of its duties hereunder to administer or construe, or to reach a determination, under any of the provisions of the Plan, it shall do so on a uniform, equitable and non-discriminatory basis.

The Plan Administrator shall establish rules and procedures to be followed by the Participants and Beneficiaries in filing applications for benefits and for any other matters required in order to establish their rights to benefits in accordance with the Plan.

The Plan Administrator may employ such counsel, accountants, and other agents as it shall deem advisable. The District shall pay, or cause to be paid from the assets of the Plan, the reasonable compensation of such counsel, accountants, and other agents and any other expenses incurred by the Plan Administrator in the administration of the Plan and the Trust Agreement.

If the Plan Administrator is a District officer or employee, the District shall indemnify the Plan Administrator to the maximum extent allowed by law against any and all claims, loss, damage, expense and liability arising from any act or failure to act relating to the Plan Administrator's duties and powers unless the same is determined by a court of competent jurisdiction to be solely the result of the Plan Administrator's gross negligence or willful misconduct.

(e) Claims Procedures

The Plan Administrator shall receive all claims filed for benefits under the Plan. Upon receipt, the Plan Administrator shall review the claims and determine whether the claimant is entitled to receive any benefits pursuant to such claim. The Plan Administrator shall notify the claimant in writing of any adverse decision with respect to

his claim within ninety (90) days after its submission. The notice of any adverse decision shall be written in a manner calculated to be understood by the claimant and shall include:

- (i) The specific reason or reasons for the denial;
- (ii) Specific references to the pertinent Plan provisions on which the denial is based;
- (iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation why such material or information is necessary; and
- (iv) An explanation of the Plan's claim review procedures.

If the circumstances require an extension of time for processing the initial claim, a written notice of the extension shall be furnished to the claimant before the end of the initial ninety (90) day period. In no event shall such extension exceed a period of ninety (90) days from the last day of the initial ninety (90) day period. The extension notice shall indicate the circumstances requiring an extension of time.

In the event a claim for benefits is denied or if the Plan Administrator has given no response to such claim within the time period set out in the above paragraph (in which case the claim for benefits shall be deemed to have been denied), the claimant or his duly authorized representative, at the claimant's sole expense, may appeal the denial by submitting written notice of such appeal to the Plan Administrator within ninety (90) days of the receipt of written notice of the denial or sixty (60) days from the date such claim is deemed to be denied. Upon request, the Plan Administrator will provide the claimant the right of a hearing with respect to any finding of fact or determination within thirty (30) days of receipt of the notice of appeal. In pursuing such appeal the claimant or his duly authorized representative:

- (v) may, upon request, review all documents, records and other information relating to the claim; and
- (vi) may submit written comments, documents, records, and other information relating to the claim.

The claimant shall be notified of the decision on review within sixty (60) days of receipt of the request for review or thirty (30) days following the hearing, unless circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred and twenty (120) days after receipt of a request for review. If such an extension of time is required, written notice of the extension shall be furnished to the claimant before the end of the original sixty (60) day period. The notice of decision on review shall be made in writing, shall be written in a manner calculated to be understood by the claimant, and shall include specific references to the provisions of the Plan on which such denial is based. If the decision on review is not furnished within the time specified above, the claim shall be deemed denied on review.

(f) Records

All acts and determination of the Plan Administrator shall be duly recorded and all such records together with such other documents as may be necessary in exercising its duties under the Plan shall be preserved for no less than six (6) years. Such records and documents shall at all times be open for inspection and for the purpose of making copies by any person designated by the District. The Plan Administrator shall provide such timely information, resulting from the application of its responsibilities under the Plan, as needed by the District for the effective discharge of its duties.

SECTION 9: BENEFIT LIMITATIONS

The limitations of section 415(b) of the Code and section 401(a)(17) of the Code are incorporated herein. The limitations of section 415(b) shall be applied by aggregating the benefits paid under this Plan, by CalPERS or by CalSTRS, and by any other defined benefit plan maintained by the District that covers Participants in this Plan. To the extent that the limitations of section 415(b) would be exceeded by paying benefits under this Plan, such benefits shall not be paid and the District shall make up such benefits in accordance with a plan established under Code section 415(m).

SECTION 10: GENERAL PROVISIONS**(a) Governing Law**

The Plan shall be construed, regulated and administered according to the laws of the State of California, and shall also be construed to the maximum extent possible in accordance with the Code in order for the Plan to be tax qualified.

(b) Construction

The headings and subheadings in the Plan have been inserted for convenience of reference only and shall not affect the construction of the provisions hereof. In any necessary construction the masculine shall include the feminine and the singular the plural, and vice versa.

(c) Plan Administration Expenses

The expenses of administering this Plan and the Trust Fund may be paid from the Trust Fund.

(d) Participant's Rights

No Participant in the Plan shall acquire any right to be retained in the District's employment by virtue of the Plan, nor, upon his dismissal, or upon his voluntary termination of employment, shall he have any right or interest in and to the Trust Fund other than as specifically provided herein. Except as otherwise specifically provided herein, the District shall not be liable for the payment of any benefit provided for herein; all benefits hereunder shall be payable only from the Trust Fund.

(e) Prohibition Against Assignment and Alienation of Benefits

No right or claim to, or interest in, any part of any payment from this Plan shall be subject to anticipation, alienation, sale, transfer, assignment, mortgage, pledge,

garnishment, encumbrance, hypothecation, commutation, garnishment, charge, or any other process of any court except to such extent required by law. No benefit payable from this Plan to any person shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, except to such extent required by law. Any attempt to anticipate, alienate, sell, transfer, assign, mortgage, pledge, garnish, encumber, charge, or levy against any benefit under this Plan shall be void, except as required by law. No portion of the benefits payable under this Plan shall be subject to the bankruptcy estate of any Participant or Beneficiary in the Plan, except as required by law.

(f) Merger, Consolidation or Transfer

In the event of the merger or consolidation of the Plan with another plan or transfer of assets or liabilities from the Plan to another plan, each then Participant or Beneficiary shall not, as a result of such event, be entitled on the day following such merger, consolidation or transfer under the termination of the Plan provisions to a lesser benefit than the benefit he/she was entitled to on the date prior to the merger, consolidation or transfer if the Plan had then terminated.

(g) Counterparts

The Plan and the Trust Agreement may be executed in any number of counterparts, each of which shall constitute but one and the same instrument and may be sufficiently evidenced by any one counterpart.

(h) Provisions Applicable During Periods of Military Service

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided as required by section 414(u) of the Code.

(i) Providing Information

A Participant and his Beneficiary may be required to furnish such information as may be required by the Plan Administrator in the administration of the Plan. If the Plan Administrator determines that a Participant or his Beneficiary furnished erroneous information, the Plan Administrator may make such adjustment in any benefit payable hereunder as it deems appropriate to correct such error.

SECTION 11: MODIFICATION AND TERMINATION OF THE PLAN

(a) Amendment of the Plan

The District shall have the right at any time to modify, alter or amend the Plan in whole or in part, subject to the following limitations: (1) the duties, powers and liability of the Trustee hereunder shall not be increased without its written consent;(2) no such modification, alteration or amendment shall have the effect of (i) reverting to the District any part of the principal or income of the Trust Fund (except as otherwise provided in the Plan or the Trust Agreement); (ii) decreasing a Participant's accrued benefit; (iii) directly or indirectly decreasing the vested percentage of a Participant's benefits or (iv)

permitting any part of the corpus or income of the Trust Fund to be used for, or diverted to, purposes other than the exclusive benefit of the Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. In any event and without limitation of any type, the District shall have the right to make any modifications, alterations or amendments necessary or appropriate to maintain the tax qualification of the Plan. To the extent that the District makes modifications to the Plan in accordance with any memorandum of understanding between the District and any of the unions representing the District's employees, such modifications shall supersede and override any "vested rights" that any person may otherwise have under California law with respect to benefits under this Plan.

(b) Termination of the Plan

In accordance with the requirements of a tax qualified plan, the District has established this Plan with the expectation that it will be continued, but continuance is not a contractual or other obligation of the District and no employee of the District shall have any vested right to continuance of the Plan or to continuance of contributions thereto. The District reserves the right at any time to terminate the Plan. To the extent the termination of the Plan is undertaken in accordance with any memorandum of understanding between the District and any of the unions representing the District's employees, such termination shall supersede and override any "vested rights" that any person may otherwise have with respect to benefits under this Plan. In the event of termination of the Plan, the Plan Administrator shall direct the Trustee to compute the value of the Trust Fund as of the date of termination. The vested accrued benefits of the Participants and Beneficiaries affected by the termination, as determined by the Plan Administrator, shall continue to be administered as a part of the Trust Fund or distributed in a lump sum to such Participants or Beneficiaries, as deemed appropriate by the Plan Administrator in its sole discretion.

Upon termination of the Plan, the right of each Participant to his accrued benefit under the Plan shall, to the extent funded, be one hundred percent (100%) vested and non-forfeitable. Upon a partial termination of the Plan (as defined under IRS rulings and regulations that govern defined benefit retirement plans that are tax qualified), the right of each person affected by such partial termination to such person's accrued benefit under the Plan shall, to the extent funded, be one hundred percent (100%) vested and non-forfeitable. Upon termination or partial termination of the Plan, the Trust shall continue until the Trust Fund or the appropriate portion thereof has been distributed as provided in this section.

(c) Allocation of Trust Fund Upon Termination of the Plan

Upon termination of the Plan, the assets of the Trust Fund shall be allocated among those Participants and Beneficiaries in the ratio that the present value of the accrued benefit of each such person on the effective date of such termination bears to the present value of the accrued benefits of all such persons on the effective date of such termination; provided that the assets allocated to any person shall in no event exceed the present value of such person's accrued benefit under the Plan as of such date.

The Plan Administrator shall direct the Trustee to distribute to each Participant and Beneficiary such person's allocable share of the assets of the Trust Fund in the form of an individual annuity contract issued by an insurance company selected by the Plan

Administrator or in the form of a single distribution of cash, as may be determined by the Plan Administrator. At its sole discretion, the Plan Administrator may allow each Participant and Beneficiary to choose between receiving an individual annuity contract or a single cash distribution. Any single cash distribution shall be the present value of the appropriate individual life annuity, calculated on the basis of actuarial assumptions that are recommended by the Plan's actuary.

In the case of a partial termination of the Plan, the provisions of this Section shall be applied to those Participants and Beneficiaries who are affected by such partial termination.

If after all assets held in the Trust Fund are distributed pursuant to this Section (so the percent value of Participants and Beneficiary's benefits have been paid and all plan and Trust Fund expenses have been paid), there are assets remaining in the Trust Fund, such remaining assets shall be paid to the District.

(d) Limitation of Obligations

Notwithstanding any other provision hereof, the District shall have no obligation to continue to make contributions to the Plan after the Plan's termination. Neither the District nor any other person shall have any liability or obligation to provide benefits hereunder after the termination of the Plan. Upon termination of the Plan, all Participants, Beneficiaries and other persons who may claim an interest therein shall look solely to the Trust Fund for their benefits. In the event of a partial termination of the Plan, this Section shall apply only with respect to those Participants, Beneficiaries, and other persons who are affected by such partial termination.

ADOPTION OF PLAN

To record the adoptions of the Plan as set forth herein, the District has caused its authorized representative to execute this document on this ____ day of _____, 2012.

FOOTHILL-DE ANZA COMMUNITY COLLEGE
DISTRICT

By: _____

(Title)

APPENDIX "A"

Eligible Retirees Eligible to Participate in Plan As of the Effective Date

[Insert List of Those Receiving Benefits Under District's Plan on 6/30/12 Who Are Not Currently
Receiving a CalPERS or CalSTRS Benefit]

TRUST AGREEMENT
FOR THE FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
RETIREMENT PLAN
(Effective June 30, 2012)

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TRUST AGREEMENT
FOR THE FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
RETIREMENT PLAN

(Effective June 30, 2012)

SECTION 1. ESTABLISHMENT AND PURPOSE OF THE TRUST

The Foothill-De Anza Community College District Retirement Plan (the "Plan"), was established effective June 30, 2012 to provide retirement benefits to eligible retirees of the Foothill-De Anza Community College District. The Plan and the Trust Fund established pursuant to this Trust Agreement are intended to qualify under the applicable provisions of section 401 and related sections of the Internal Revenue Code. Under the Plan, all assets must be held in trust and may be used only for the exclusive benefit of the Participants and their Beneficiaries. This Trust Agreement shall be effective June 30, 2012.

SECTION 2. DEFINITIONS AND CONSTRUCTION

Definitions

Beneficiary means any person or entity entitled to receive benefits which are payable upon or after a Participant's death pursuant to the provision of the Plan.

Code means the Internal Revenue Code of 1986, as amended from time to time, and all applicable rules and regulations issued thereunder pertinent to the tax qualification of the Plan and the tax-exempt status of the Trust Fund.

District means the Foothill-De Anza Community College District.

Effective Date means June 30, 2012.

Participant means a Participant in the Plan as determined under Section 2 of the Plan.

Plan means the Foothill-De Anza Community College District Retirement Plan as amended from time to time.

Plan Administrator means the person or persons with authority to administer the Plan.

Plan Year means the calendar year.

Trust means the legal entity resulting from the Trust Agreement between the District and the Trustee.

Trust Agreement means this instrument, as amended from time to time.

Trust Fund means all monies, securities, and properties of whatever character held by the Trustee pursuant to this Trust Agreement.

Trustee means the individual(s) or financial institution(s) designated in the Trust Agreement to

Trustee to hold in trust under this Trust Agreement, and the Trustee shall establish and maintain a Trust Fund which shall hold all contributions made under the hold in trust any assets of the Plan for the purpose of providing benefits under the Plan, and shall include any successor to the trustee initially designated hereunder.

SECTION 3. ESTABLISHMENT OF THE TRUST FUND

(a) Establishment of the Trust Fund

As of the Effective Date, the District shall contribute one hundred dollars (\$100.00) to the terms of the Plan, together with any income, gains or profits and taking account of any losses. All investments under the Plan shall be titled in the name of the Trust and shall be deemed part of the Trust Fund.

(b) Exclusive Benefit of Participants

The Trust Fund shall be maintained for the exclusive benefit of Participants and their Beneficiaries and in accordance with the terms of the Plan and governing California and federal law. No part of the Trust Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of such Participants and Beneficiaries, except as is provided in section 3(d) below and sections 4 and 12 of the Plan.

(c) No Reversion to the Employer

Except as provided in section 3(d) below and sections 4 and 12 of the Plan, it shall be impossible, at any time, for any part of the Trust Fund, other than such part as is required to pay taxes and administrative expenses, to be returned to, or revert to, the District, to be recoverable by the District, or to be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and their Beneficiaries.

(d) Reversion if IRS Does Not Issue Favorable Determination Letter

All contributions made to the Trust Fund prior to the issuance of a letter from the Internal Revenue Service ("IRS") that the Plan is tax qualified under section 401(a) of the Code are expressly conditioned on the initial qualification of the Plan under section 401(a) of the Code. If the Plan is submitted to the IRS within the period prescribed by section 401(b) of the Code for a determination as to its initial qualification, and the IRS determines that the Plan is not so qualified, all such contributions, together with all earnings thereon, shall be returned to the District within one (1) year following such determination by the IRS.

(e) Receipt of Contributions

The Trustee shall receive all contributions made under the Plan. However, the Plan Administrator may elect to have all contributions paid directly to a custodian or insurance company engaged by the District to receive contributions. The Trustee shall not be responsible in any way for the administration of the Plan and shall be under no duty to determine whether the amount of any contribution is in accordance with the Plan or to collect or enforce payment of any contribution.

(f) Distributions

Distributions from the Trust Fund shall be made by the Trustee only to such persons, in such manner, at such times, and in such amounts as the Plan Administrator shall direct in writing from time to time. The Plan Administrator may also direct in writing the payment or reimbursement of expenses of administering the Plan or this Trust Agreement. The Trustee shall be fully protected in making payments in accordance with directions of the Plan Administrator without ascertaining whether such payments are in compliance with the terms of the Plan. All payments of benefits under the Plan shall be made solely and exclusively from the assets of the Trust Fund as they may exist at the time or times of payment, and no person shall be entitled to look to any other source for such payments.

SECTION 4. DUTIES AND POWERS OF THE TRUSTEE

(a) General Powers of the Trustee

The Trustee shall have all of the powers necessary or desirable to perform properly the duties herein set forth.

(b) Investment Powers of the Trustee

Notwithstanding any Plan provisions that give the exclusive authority and discretion to the Trustee to manage and control the assets of the Plan, the District and the Trustee acknowledge and agree that the Trustee shall be directed with respect to all investments. Such direction shall be pursuant to the Plan and shall be either by the Plan Administrator or by investment managers chosen pursuant to the Plan.

(c) Agents

With the prior written approval of the Plan Administrator, and subject to applicable state law, the Trustee may employ such counsel, accountants, brokers, actuaries and other agents and provide for such clerical, accounting, actuarial and other services as the Trustee may deem advisable to perform its duties under this Trust Agreement, or as may be directed by the Plan Administrator.

(d) Settlement of Claims

With the prior written approval of the Plan Administrator, the Trustee shall have the power and authority to settle, compromise or submit to arbitration, any claims, debts or damages due or owing to or from the Trust Fund; to commence or defend suits or legal or administrative proceedings whenever, in its judgment, any interest of the Trust Fund so requires, and to represent the Trust Fund in all suits or legal or administrative proceedings in any court of law or equity or before any other body or tribunal. The Trustee shall inform the District and the Plan Administrator as soon as possible about any such claims, debts or damages, and shall fully cooperate with the District and the Plan Administrator with respect to any suits or legal or administrative proceedings that result from or arise out of such claims, debts or damages.

(e) Accounting

(i) The Trustee shall keep appropriate and accurate accounts of, and records reflecting all transactions concerning the Trust Fund, including but not limited to contributions, gains, losses, expenses, and distributions of benefits. However, if the Plan Administrator elects to have all contributions paid directly to a custodian or insurance company to receive contributions, then the Trustee shall be entitled to rely on the records of accounts provided to it by such custodians or insurance companies, and by the District, with respect to contributions, gains, losses, expenses, distributions of benefits and all other transactions involving the Trust Fund. The Trustee shall be entitled to be reimbursed for its actual and reasonable expenses incurred in preparing any accounting.

(ii) The Trustee shall furnish the Plan Administrator a written account of the transactions concerning and status of the Trust Fund at such times and from time to time as agreed to with the Plan Administrator, but no less than annually, as soon as practical after the close of the Plan Year. The Trustee and Plan Administrator shall agree on the format and contents of such accounting. At any time, the Plan Administrator may (but is not required to) engage an independent certified public accountant to examine the Plan's financial statements or internal control procedures. If the Plan Administrator engages an independent accountant, the Plan Administrator shall require that such engagement provide that the examination be made according to generally accepted auditing standards (or according to other agreed-upon procedures that the Trustee approves in writing), and that the Trustee is entitled to rely upon the accountant's examination and opinion and all reports relating to the examination.

(iii) Except as otherwise ordered by a court having jurisdiction, no person other than the Plan Administrator may require an accounting by the Trustee.

(iv) Notwithstanding anything in this Trust Agreement to the contrary, the Trustee shall have the right at any time to petition any appropriate court for a settlement of the Trust Fund's accounts or for the court's instructions in executing the Trustee's obligations under the Trust Fund created by this Trust Agreement.

(f) Compensation

The Trustee shall be paid such compensation and expenses that are agreed to, from time to time, by it and the Plan Administrator.

(g) Fiduciary Standards

The Trustee shall discharge its duties under this Trust Agreement solely in the interest of the Participants and Beneficiaries of the Plan and in accordance with governing state and federal law and the terms of the Plan and the Trust Agreement. Such duties shall be discharged for the exclusive purpose of providing benefits to the Participants and Beneficiaries and paying expenses of the Plan. In addition, the Trustee shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and as defined by applicable state law.

(h) Limitation on Liability

For any Trustee who is or was an employee of the District:

(i) The Trustee shall not be responsible for any act or omission, unless such act or omission is a breach of the fiduciary standards set forth in section 4(g) above.

(ii) The Trustee shall not be responsible for any act or omission of any accountant, counsel, or agent that is selected and monitored in accordance with its fiduciary duty pursuant to sections 4(c) and 4(g) above.

(iii) The Trustee shall not be responsible for any selection, decision, or instruction made by the District or the Plan Administrator.

(i) Indemnification

For any Trustee who is or was an employee of the District, the Trustee's duty under this Trust Agreement shall be treated as official duties, and the Trustee shall be entitled to relief from liability, and defense and indemnification, to the same extent as provided for any government officer or employee in the conduct of his official duties.

SECTION 5. REPLACEMENT OF THE TRUSTEE

(a) Replacement of the Trustee

(i) The District may remove and replace the Trustee at any time and from time to time with a written notice to the Trustee of removal and replacement. Except where necessary to protect the rights and benefits of Plan participants and beneficiaries, the District shall give 60 days written notice of removal and replacement to the Trustee.

(i) In the event another entity or person replaces the Trustee, the Trustee shall take all necessary and appropriate steps to transfer to its successor trustee the entire Trust Fund as soon as possible. The Trustee may undertake a reasonable accounting of the Trust Fund prior to such transfer but such accounting shall not cause unreasonable delay in any transfer of the Trust Fund.

(ii) The replacement of the Trustee shall not result in the termination of this Trust Agreement. A successor Trustee shall have the same powers and duties as those herein conferred upon the Trustee.

(b) Resignation of the Trustee

The Trustee may resign at any time by giving sixty (60) days advance written notice to the Plan Administrator and the District.

**SECTION 6. AMENDMENT OF THE TRUST AGREEMENT
AND TERMINATION OF THE TRUST FUND**

(a) Term of the Trust Agreement

This Trust Agreement shall continue as long as the Plan is in full force and effect. If the Plan ceases to be in full force and effect, this Trust Agreement shall thereupon terminate unless expressly extended by the District.

(b) Amendment of the Trust Agreement

(i) Any and all amendments to this Trust Agreement which may be required or suggested by the IS for the purpose of the approval of the Plan under the Code as a tax-qualified plan may be made retroactively to the extent permitted by law. Such amendments shall be made by the District with the written consent of the Trustee.

(ii) This Trust Agreement may otherwise be amended by the District with the written consent of the Trustee, but may only be amended if there is no reduction in the then existing benefits of any Participant or Beneficiary as a result of such amendment. This Trust Agreement may also be amended to change the party that serves as Trustee without the consent of the then Trustee.

(iii) Amendments to this Trust Agreement shall be made by the District.

(c) Termination of the Trust Fund

The District reserves the right to terminate the Trust Fund at any time for any reason. Upon termination of the Trust Fund, the District shall determine the manner in which the assets of the Trust Fund shall be disposed of in accordance with the terms of the Plan. On the termination of the Trust Fund, all assets held therein shall be paid to the Plan Participants and Beneficiaries in accordance with the terms of the Plan governing benefits upon termination in Section 12.

SECTION 7. MISCELLANEOUS

(a) Reliance

The parties hereto shall be protected in acting upon any notice, resolution, request, consent order, certificate, report, opinion, statement or other document which they reasonably believed to be genuine and to have been signed by the proper party or parties or by a person or persons authorized to act on its behalf.

(b) Person Dealing with the Trustee

No person dealing with the Trustee shall be under any obligation to inquire into the validity, expediency or propriety of any action by the Trustee or of any exercise by it of any of the powers conferred upon it by this Trust Agreement. The execution by the Trustee of any instrument, document or paper in connection with the exercise of any of the powers enumerated herein shall, of itself, be conclusive evidence to all persons of the authority of the Trustee to execute the same and to exercise the powers incident thereto.

(c) Advice of the Plan Administrator

If at any time or times the Trustee is in reasonable doubt as to the course which it should follow in any matter relating to the administration of this Trust Agreement, it may request the Plan Administrator to advise it with respect thereto, and it shall be protected in relying upon the advice or direction which may be given it by the Plan Administrator in response to such request.

(d) Anti-Alienation

No right or claim to, or interest in, any part of any payment from the Plan or Trust Fund shall be subject to anticipation, alienation, sale, transfer, assignment, mortgage, pledge, garnishment, encumbrance, hypothecation, commutation, charge, or any other process of any court except to such extent required by law. No benefit payable from the Plan or Trust Fund to any person shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, except to such extent required by law. Any attempt to anticipate, alienate, sell, transfer, assign, mortgage, pledge, garnish, encumber, charge, or levy against any benefit under the Plan or Trust Fund shall be void, except as required by law. No portion of the benefits payable under this Plan or Trust Fund shall be subject to the bankruptcy estate of any Participant or Beneficiary in the Plan, except as required by law.

(e) Notices

All orders, requests, directions and instructions of the Plan Administrator to the Trustee shall be in writing, signed by a person authorized to act on its behalf. Unless the Trustee knows or has reason to know (through its exercise of its fiduciary duties or otherwise) that the direction constitutes a breach of the Plan Administrator's duties or responsibilities under the Plan, the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, directions and instructions. In the absence of knowledge of, or reason to know, that the direction constitutes such a breach, the Trustee shall be entitled to rely conclusively on such direction, and shall have no further duty to make any investigation or inquiry before acting upon any such direction of the Plan Administrator.

(f) Law

This Trust Agreement is made in the State of California, and shall be construed in accordance with the laws thereof

(g) Invalidity

In the event any provision of this Trust Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, and this Trust Agreement shall thereafter be construed and enforced as if said illegal or invalid provision had never been included therein.

EXECUTION OF TRUST

The parties have caused this Trust Agreement to be executed by their representatives to be effective as of the day and year first above written.

FOOTHILL-DE ANZA COMMUNITY COLLEGE
DISTRICT

_____, 2012

(signature)

(name)

(title)

TRUSTEE

_____, 2012

(signature)

(name)

(title)