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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SANTA CLARA**
14 **DOWNTOWN COURTHOUSE**

15 Foothill-De Anza Association of
16 Classified Employees,

17 Petitioner,

18 v.

19 Foothill-De Anza Community College
20 District, a government entity,

21 Respondent.

) **CASE NO. 22CV404986**
)
) **RESPONDENT’S OPPOSITION BRIEF**
) **OPPOSING PETITION FOR WRIT OF**
) **MANDATE; DECLARATION OF COUNSEL**

)
) Amd. Petition Filed: April 25, 2023
) Trial: May 6, 2024 @ 1:30 p.m.
) Dept: 18

) Hon. Helen E. Williams

)
) [NO FILING FEE REQUIRED PER
) GOVERNMENT CODE SECTION 6103]

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24 To the Court and Petitioner Foothill-De Anza Association of Classified Employees (ACE) and its
25 counsel of record, Respondent Foothill-De Anza Community College District submits the following brief
26 in opposition of the First Amended Petition for Writ of Mandate, filed on or about April 25, 2023.

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I. INTRODUCTION

The parties are Petitioner Foothill-De Anza Association of Classified Employees (hereinafter “Petitioner” or “ACE”), an exclusive representative of one group of classified employees of the District, and Respondent Foothill-De Anza Community College District, a public community college district and employer of both the employees represented by Petitioner at all times relevant to this case, and the non-classified short-term employees that are the subject of the instant dispute. The matter before the Court is based on Petitioner’s request for a writ of mandate to compel Respondent District, a public agency, to perform a legal and ministerial duty. (See C.C.P. § 1085.) In amending its pleadings, Petitioner has abandoned all alternative theories, and has plead a violation premised solely upon California Education Code § 88003(c). Specifically, the First Amended Petition (FAP) and Petitioner’s initial brief (Pet. Brief) now rests solely on Petitioner’s prayer that Respondent be compelled to “cease and desist its hiring short-term employees in violation of California Education Code §88003(c),” with accompanying declaratory relief.

As discussed in more detail below, Petitioner’s FAP, opening brief, and the factual basis plead by Petitioner fail to establish any clear and ministerial duty that was breached by the Respondent. Despite continuing to argue various theories relating to collective-bargaining rights and/or the composition of the bargaining unit – matters not governed by Education Code but by the Educational Employment Relations Act (Govt. Code §§ 3540 *et seq.*) – Respondent affirmatively abandoned all claims to enforce collective-bargaining rights by conceding, *inter alia*, that the subject matter of this petition is “clearly outside the jurisdiction of PERB.” (Pet. Opp. to 2d Amd. Demurrer, pp. 6-7; dated Jul. 10, 2023.) Similarly, despite conceding that “this Court has original jurisdiction because **the dispute is strictly one of statutory construction,**” Petitioners allege and submit irrelevant facts to argue “that the Respondent, through its use of short-term employees, has violated Education Code section 88003(c).” However, Petitioner provides no actual legal authority to support the statutory construction theory advanced in the FAP. Accordingly, Petitioner’s first and only cause of action for writ of mandate to compel performance of a ministerial duty pursuant to Code of Civil Procedure section 1085 must fail, and the writ must not issue.

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1 **II. FACTUAL BACKGROUND**

2 *1. The Nature of the Employer and Classification of Employees*

3 Respondent District is a community college district organized under and governed by a Board of
4 Trustees, charged with maintaining the operations and directing the resources and personnel of the
5 community college district for the purposes of providing educational programs and opportunities for the
6 surrounding communities. (Educ. Code § 70902.) The District is “an administrative agency created by
7 statute and invested only with the powers expressly conferred by the Legislature and cannot exceed the
8 powers granted to [it].” (*El Camino Community College Dist. v. Superior Court* (1985) 173 Cal.App.3d
9 606, 612.) The Legislature has provided that a community college district is authorized to “initiate and
10 carry on any program, activity, or may otherwise act in any manner that is not in conflict with or
11 inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which
12 community college districts are established.” (Educ. Code § 70902(a).) As interpreted by California
13 courts, this broad authority permits community college districts to act without express legislative
14 permission so long as the district does not act in conflict with any law or regulation. (See *SEIU, Local 715*
15 *v. Bd. of Trs. of the W. Valley/Mission Cmty. College Dist.* (1996) 47 Cal.App.4th 1661, 1665.)

16 Of the express powers granted by Legislature through the Education Code, a community college
17 district may generally offer educational programs and support by employing “academic” employees,
18 defined as persons employed in academic positions, and non-academic employees, including “classified”
19 employees defined as any person employed by a community college district in a “classified position” in
20 the classified service. (Educ. Code §§ 87001(a); 87001.5.) Academic employees (commonly referred to
21 as “faculty”) may be employed in any type of service for which minimum qualifications have been
22 established by the Board of Governors of the California Community Colleges. (Educ. Code § 87001;
23 87356.) Academic employees (“faculty”) are the instructors, counselors, librarians, and other learned
24 professionals that deliver educational content to District students, and are not represented by Petitioner.
25 Rather, Petitioner is an exclusive representative “for white collar classified employees for the District,”
26 one (1) of five (5) defined sections of the classified service at the District. (FAP, ¶¶ 9-11; Taylor Decl. ¶
27 4-8; Exh. A-E.)

1 Among the mandatory provisions of the Education Code that must be implemented, the District
2 “shall fix and prescribe the duties to be performed by all persons in the classified service and other
3 nonacademic positions of the community college district. (Emphasis added.)” (Educ. Code § 88009.)

4 Contrary to ACE’s position, the Legislature thus very clearly recognized that every position not defined
5 by the board of governors as an academic (“faculty”) position *and* not otherwise specifically excluded
6 according to the provisions of Section 88003 is part of the classified service. (Educ. Code § 88004.)

7 Exclusions from the classified service include those employees designated as: 1) substitutes; 2) short-
8 term; 3) apprentices; 4) professional experts; and 5) students employed part-time. (Educ. Code § 88003.)

9 As relevant here, “short-term” employees are defined by the Education Code to mean:

10 The governing board of a community college district shall employ persons for positions
11 that are not academic positions. The governing board of a community college district,
12 except where Article 3 (commencing with Section 88060) or Section 88137 applies, shall
13 classify all those employees and positions. The employees and positions shall be known as
14 the classified service. Substitute and short-term employees, employed and paid for less
15 than 75 percent of a college year, shall not be a part of the classified service.

16 [...]

17 “Short-term employee,” as used in this section, means a person who is employed to perform
18 a service for the community college district, upon the completion of which, the service
19 required or similar services will not be extended or needed on a continuing basis. Before
20 employing a short-term employee, the governing board of a community college district, at
21 a regularly scheduled meeting of the governing board of the community college district,
22 shall specify the service required to be performed by the employee pursuant to the
23 definition of “classification” in subdivision (a) of Section 88001, and shall certify the
24 ending date of the service. The ending date may be shortened or extended by the governing
25 board of the community college district, but shall not extend beyond 75 percent of a school
26 year.

27 [...]

28 “Seventy-five percent of a college year” means 195 working days, including holidays, sick
leave, vacation, and other leaves of absences, irrespective of number of hours worked per
day.

(Educ. Code § 88003(a); (c); (d).)

Accordingly, the District holds the sole authority to fix and prescribe the duties of employees in
non-academic non-classified service positions, and employees that are not employed and paid for more
than 195 working days are excluded from the classified service. As indicated above, Petitioner represents
a subset of classified employees.

2. The Nature of Petitioner and Terms of Employment

1 Petitioner Association is an exclusive representative within the meaning of Government Code
2 Section 3540.1(e). Accordingly, Petitioner is entitled to negotiate terms and conditions of employment, as
3 defined within the scope of representation recognized in Government Code Section 3543.2, for
4 represented classified personnel. Petitioner is not entitled to negotiate regarding terms and conditions for
5 other employees outside the bargaining unit, including academic (“faculty”) personnel and/or non-
6 classified personnel employed under the exclusions of Education Code Section 88003, i.e. non-classified
7 substitutes, short-term employees, apprentices, or professional experts. (*Healdsburg Union High School*
8 *District* (1984) PERB Decision No. 375E; pp. 41-42.) However, as Petitioner conceded, this writ
9 represents a question of statutory rather than contractual interpretation, and no contractual provisions
10 between the parties may annul, replace, or set aside the terms of the Education Code. (*San Mateo City*
11 *School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 864-865; *Board of Education v.*
12 *Round Valley Teachers Assn.* (1996) 13 Cal.4th 269, 287-288.) Similarly, Petitioner has introduced no
13 evidence of collectively negotiated rights concerning non-classified personnel.

14 3. *Related District Policies*

15 Community college district governing boards are responsible for employing staff and delegating
16 various duties to a chief executive officer and to other employees and committees. (Educ. Code §
17 70902(b).) Further, the governing board of a community college district is authorized to adopt rules by
18 majority vote delegating its authority to “the district’s chief executive officer or any other employee or
19 committee as the governing board may designate.” (Educ. Code § 70902(d).) However, the Board may
20 “not delegate any power that is expressly made non-delegable by statute.” (Id.)

21 Petitioner has argued that the District has violated Education Code Section 88003(c) “because the
22 short-term employees began employment prior to Board approval, which is not allowed by the plain
23 language of the law.” (Pet. Brief, p. 8.) Relevant to this allegation, the District maintains Board Policy
24 2430 (“Delegation of Authority to Chancellor”; Taylor Decl. ¶ 9; Exh. F) and Board Policy 4125
25 (“Authorization to Offer Employment”; Taylor Decl. ¶ 10; Exh. G), which broadly delegate to the
26 District’s Chancellor the authority to “execut[e] all decision of the Board requiring administrative action,”
27 including the authority to “authorize employment and other personnel action items pending Board
28

1 ratification....” Excluded from this authority is the ability to authorize employment for select executive
2 leadership positions, none of which are at issue in this matter. (Id.)

3 As reflected on the face of the Board Policies, the delegation of authority has been maintained in
4 effect since adoption by the Board in the 1960’s. As reflected in the plain language of Education Code
5 Section 88003, the authority to authorize employment of short-term personnel has not been “expressly
6 made non-delegable by statute,” as no language indicates any such legislative intent. Accordingly, the
7 District’s policies comport with the statutory authority and intent of the Education Code.

8 **III. LEGAL STANDARD**

9 The writ action initiated by Petitioner is a procedural method to compel a public agency to perform
10 a legal and usually ministerial duty. (See CCP § 1085; *Jones v. Omnitrans* (2004) 125 Cal.App.4th 273,
11 278.) Petitioner must show: (1) a clear, present and ministerial duty on the part of the respondent, and (2)
12 a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (*California*
13 *Ass’n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.)
14 A ministerial duty is an act that a public officer is obligated to perform in a prescribed manner required
15 by law when a given state of facts exists. (*Transdyn/Cresci JV v. City and County of San Francisco* (1999)
16 72 Cal.App.4th 746, 752.) “A ministerial act is an act that a public officer is required to perform in a
17 prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment
18 or opinion concerning such act's propriety or impropriety, when a given state of facts exists. Discretion,
19 on the other hand, is the power conferred on public functionaries to act officially according to the dictates
20 of their own judgment.” (*Id.*, citing *Rodriguez v. Solis* (1991) 1 Cal. App. 4th 495, 501-502.)

21 Petitioner’s claim is premised on the interpretation and enforcement of a statute, citing *California*
22 *Public Records v. County of Stanislaus* (2016) 246 Cal App 4th 1432 for the general proposition that a
23 statute may be enforced via writ of mandate. However, the cited authority challenged a legislative act on
24 the basis that it was manifestly an abuse of discretion. (*Id.* at 1442-1443.) Cases are not authority for
25 arguments or theories that were not considered. Petitioner’s claim is also premised on the specific actions
26 taken by the Board on August 1, 2022, during which the Board exercised its discretionary legislative
27 authority to ratify the employment of several short-term employees, an action Petitioner alleges to be in
28 violation of Education Code Section 88003(c).

1 Whether the statutory provisions “impose a ministerial duty, for which mandamus will lie, or a
2 mere obligation to perform a discretionary function is a question of statutory interpretation.” (*AIDS*
3 *Healthcare Foundation v. Los Angeles County Department of Public Health* (2011) 197 Cal.App.4th 693,
4 701.) Even where mandatory language appears on the face of a statute creating a ministerial duty, “the
5 duty is discretionary if the [public officer/entity] must exercise significant discretion to perform the duty,”
6 requiring that “in addition to examining the statutory language, we must examine the entire statutory
7 scheme to determine whether the [public officer/entity] has discretion to perform a mandatory duty.” (*Id.*)

8 Turning to established rules of statutory construction, the words of the statute must be construed
9 in context. (*Katz v. Los Gatos-Saratoga Jt. Union High Sch. Dist.* (2004) 117 Cal.App.4th 47, 54; *Dyna-*
10 *Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) This is equally true under
11 the Education Code: “The basic rule is that sections of the Education Code bearing on the same subject
12 must be read and construed together where possible.” (*Certificated Employees Council v. Monterey*
13 *Peninsula Unified Sch. Dist.* (1974) 42 Cal.App.3d 328, 333.) Further, in determining legislative intent,
14 the Courts first look to the statutory language itself. (*Katz, supra* 117 Cal.App.4th at 54; *Mejia v. Reed*
15 (2003) 31 Cal.4th 657, 663.) Where the statutory language is clear and unambiguous, there is no need to
16 further examine the statutory construction, nor is it necessary to resort to other indicia of the Legislatures
17 intent. (*Katz, supra* at 54; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) Absurd results are to be
18 avoided. (*Katz, supra*, at 54; *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272; *see also* Civ. Code §
19 3542 (mandating that interpretation must be reasonable).)

20 Within that context, “in addition to examining the statutory language, [the Court] must examine
21 the entire statutory scheme to determine whether the [entity] has discretion to perform a mandatory duty.”
22 (*AIDS Healthcare, supra.*) Writ relief generally “may not be invoked to control an exercise of discretion,
23 i.e., to compel an official to exercise discretion in a particular way.” (*Ridgecrest Charter School v. Sierra*
24 *Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 1002.) In other words, “the writ will not lie to
25 control discretion conferred upon a public officer or agency.” (*People ex rel. Younger v. County of El*
26 *Dorado* (1971) 5 Cal.3d 480, 491.) Petitioner has alleged no abuse of discretion on the part of the District,
27 its Chancellor, or the Board of Trustees, but has simply alleged that the Board violated the statute because
28 “the short-term employees began employment prior to Board approval, which is not allowed by the plain

1 language of the law.” (Pet. Brief, p. 8.) This is alleged to have impacted Petitioners ability to “track the
2 length of time short-term employees are employed and no way for ACE to know if the duties are being
3 performed on a continuing basis.” (Id.) No statutory source is identified for a duty to assist Petitioner in
4 “tracking” non-classified employment.

5 **IV. LEGAL ARGUMENT**

6 **A. Petitioner Has Failed to Identify a Ministerial Duty Violated by Respondent**

7 As indicated above, a “ministerial act is an act that a public officer is required to perform in a
8 prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment
9 or opinion concerning such act's propriety or impropriety, when a given state of facts exists. (Emphasis
10 added.)” (*Rodriguez, supra* at 501-502.) In other words, a ministerial act must be performed upon the
11 occurrence of a specific set of facts. Petitioner alleges that by ratifying employment decisions on August
12 1, 2022, a violation occurred. Petitioner similarly alleges that by employing short-term employees beyond
13 the end of a college year, some violation occurred. However, the material facts alleged by Petitioner fail
14 to establish any clear, present, and ministerial duty on the part of the Respondent. Further, the offered
15 opinion and hearsay declarations of various ACE unit employees – in whose shoes Petitioner now stands
16 – is irrelevant to the legal question presented, inadmissible, and otherwise provides virtually no material
17 facts upon which any alleged violation may be sustained. (Evid. Code § 1200.)

18 Petitioner’s entire theory rests upon Education Code § 88003 subsection (c) as if read in a vacuum,
19 and completely fails to harmonize the terms of the statutory scheme bearing upon the same subject, an
20 interpretation that directly conflicts with long-established rules of statutory interpretation. Petitioner
21 alleges that the District violated § 88003(c) when the Board “approved multiple temporary employees for
22 an entire year.” (Pet. Brief, p. 7.) Yet the limitation created by the statute – that the employment “ending
23 date may be shortened or extended [...] but shall not extend beyond 75 percent of a school year” – is
24 explained and defined by the surrounding subsections. As clearly indicated in Education Code section
25 88003(a): “Substitute and short-term employees, **employed and paid for less than 75 percent of a**
26 **college year, shall not be a part of the classified service**. (Emphasis added.)” (*Id.*) Reading subsection
27 (a) and (c) together, a short-term employee that is employed and paid for more than 75-percent of a college
28 year becomes part of the classified service; subsection (c) is declarative of this limitation, because the

1 Board possesses no authority to employ a non-classified employee for a period longer than dictated by
2 statute. Similarly, in the following subsection (d), 75 percent of a school year is defined to mean “195
3 working days, including holidays, sick leave, vacation, and other leaves of absences, irrespective of
4 number of hours worked per day.” (Educ. Code § 88003(d); see also *California Sch. Employees Assn. v.*
5 *Trona Joint Unified Sch. Dist.* (1977) 70 Cal. App. 3d 592, 596.)

6 Accordingly, an interpretation that considers subsections (a), (c), and (d) indicates that any short-
7 term employee that is employed and paid for less than 75-percent of a college year is excluded from the
8 classified service, but becomes part of the classified service if employed and paid for more than 195
9 working days. Petitioner’s interpretation would substitute “calendar days” for the term the Legislature
10 employed – “working days” – and would completely disregard the requirement that the short-term
11 employee be “employed and paid” for that period. While Petitioner has argued that the Board’s action to
12 authorize individuals to perform paid service during the college year is violative of the statute, Petitioner
13 has failed to allege that the personnel authorized on August 1, 2022, were “employed **and paid**” for 195
14 **or more** working days.

15 Similarly, the District had no ministerial duty to adopt and authorize employment in the manner
16 asserted by Petitioner, nor any ministerial duty to revoke and/or reauthorize employment at subsequent
17 meetings of the Board in order to confine employment to 75% of the calendar days in a year. Respondent
18 has, for more than 60 years, delegated authority to the Chancellor, subject to ratification by the Board, to
19 authorize employment. (Taylor Decl. ¶¶ 9-10; Exh. F-G.) Petitioner has further failed to allege or prove
20 that the Board failed to exercise its legislative discretion in an appropriate manner when the personnel
21 transactions were ratified on August 1, 2022, submitting only baseless allegations without legal support
22 for the proposition that the Legislature meant “calendar days” when it specified “working days” under the
23 plain language of the statute. Accordingly, Petitioner has failed to allege that the District has been anything
24 other than compliant with the scope of Education Code Section 88003.

25 Based on the foregoing, Petitioner has failed to establish the existence of a “ministerial act” that
26 any District officer was “required to perform in a prescribed manner in obedience to the mandate of legal
27 authority and without regard to his own judgment or opinion concerning such act’s propriety or
28 impropriety.” (*Rodriguez, supra* at 501-502.) The District has at all times observed and complied with its

1 own internal policies and practices regarding short-term staffing, and the statutory requirements and
2 limitations imposed by the Education Code.

3 **B. Petitioner Has Failed to Establish Any “Continuing Basis” Violation**

4 The FAP and Petitioner’s opening brief allege that the District has violated Education Code §
5 88003(c) because “[s]hort-term employees cannot perform work that is needed on a continuing basis and,
6 as can be seen from the evidence provided, the District continuously hires short-term employees to
7 perform the permanent work of ACE that is needed on a continuous basis.” (Pet. Brief, p. 6.) This assertion
8 is also without merit and, if accepted, would result in absurdity.

9 As written and as applied to the material facts alleged by Petitioner, the language in Education
10 Code § 88003(c) is exceedingly simple: “a person who is employed to perform a service for the community
11 college district, upon the completion of which, the service required or similar services will not be extended
12 or needed on a continuing basis.” (Id.) First, Petitioner misstates and conflates the concept of “permanent
13 work of ACE,” which rings of a forfeited PERB pleading theory rather than the facial interpretation of the
14 statute. Nowhere in Section 88003 does the statute reference bargaining units, or the delegation of work
15 to positions inside and outside of a bargaining unit; those are collective bargaining concepts subject to
16 EERA. The Education Code provides one clear rule and one simple metric: any work is either “academic”
17 work or non-academic work. (Educ. Code §§ 87001(a); 87001.5; 88003; 88004.) If it is non-academic
18 work, the District may employ classified employees or non-classified employees, the difference between
19 which is whether the work is needed “on a continuing basis,” which is measured by the 75% threshold.

20 At least two prior cases have interpreted the same (or parallel) statute and determined that the 75%
21 metric measured against the “college year” imposes a mandatory duty. The college year begins on July 1st
22 and ends on June 30th, and includes 260 days, of which 195 days represents 75% of the college year. (5
23 C.C.R. § 55701(a); Educ. Code § 88003(d).) It is equally clear that short-term or substitute employees
24 who work more than 75% (195 days) of a college year are entitled to classified status. (*California School*
25 *Employees Assn. v. Governing Bd. of South Orange County Community College Dist.* (2004) 124
26 Cal.App.4th 574, 580.) Contrary to Petitioner’s claim, exceeding the 75% mark does not create an
27 entitlement to “permanent” status, which only applies to employees already part of the “classified service”
28

1 and may only be claimed after an employee serves a “prescribed period of probation that shall not exceed
2 six months or 130 days of paid service, whichever is longer.” (Educ. Code § 88013(a).)

3 More closely analogous to the FAP is the analysis in *California Sch. Employees Assn. v. Oroville*
4 *Union High Sch. Dist.* (1990) 220 Cal.App.3d 289, 293, interpreting the parallel statute applicable to K12
5 classified employees. Similar to ACE, the union argued that the District violated the Education Code when
6 an employee had been employed and paid as a substitute from March 31, 1986, through April 10, 1987,
7 totaling more than 195-days. Specifically, the employee was employed for “a continuing basis” that
8 included more than 250 consecutive days, including approximately sixty-five (65) workdays during the
9 1985-1986 school year, and 191.5 days during the 1986-1987 school year. (*Id.* at 293.) In rejecting the
10 argument, the court observed that it was “clear from the plain language of *section 45103* that the 195 days
11 must be served within 1 school year,” reasoning that the statute required “employees shall not be a part of
12 the classified service where they have been ‘employed and paid for less than 75 percent of a school year,’”
13 which plainly meant that the service must be completed “in a single school year.” (*Oroville, supra* at 295.)
14 The court reasoned that the legislative intent was clear and the term “school year” would be rendered
15 “mere surplusage” if Plaintiff’s argument were accepted. (*Id.*) The court further held that the statutory
16 language was unambiguous and clearly prevented an employee from claiming a classified (not
17 “permanent”) position if the employee were employed and paid for less than 75% of a school year. (*Id.* at
18 295.)

19 The alternative theory advanced by ACE would result in absurdity. The non-academic work at
20 issue involves clerical tasks, helping students, assisting faculty, and generally supporting the District’s
21 educational mission. Other non-academic work assigned to other bargaining units may include janitorial
22 work, food-service, service as a sworn police officer, supervisory work, and all other duties that are not
23 assigned to faculty. The language in Section 88003(c) regarding whether the work is needed “on a
24 continuing basis” can only be interpreted in the context of each individual employee, and measured within
25 the college year. Applying ACE’s rationale, the entire District’s need for janitorial services must end, and
26 may not continue beyond the conclusion of any single employee’s temporary assignment, after which “the
27 service required or similar services will not be extended or needed on a continuing basis.” Such an
28 interpretation strains credulity, as most “service required or similar services” always exist – there is always

1 some demand for clerical services, janitorial services, etc. However, there is not always sufficient demand
2 for those services as to justify placing an employee in the classified service, e.g. in paid service for more
3 than 195 days, at which point the employee may be “classified” and become part of a bargaining unit.

4 **C. The Petition Should Be Denied, and the Remedy Rejected**

5 This Court should deny Petitioner’s FAP and refuse to issue a writ of mandate. Having established
6 that Petitioner has not, and cannot, identify a ministerial duty owed by the Respondent, mandate relief is
7 unavailable unless there is abuse of discretion. (*Mooney v. Garcia* (2012) 207 Cal.App.4th 229, 235.) “In
8 determining whether an agency has abused its discretion, the court may not substitute its judgment for that
9 of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, the agency’s
10 decision must be upheld. (*American Federation of State, County & Municipal Employees v. Metropolitan*
11 *Water Dist.* (2005) 126 Cal.App.4th 247, 261.) Petitioner has failed to establish that the Board action on
12 August 1, 2022, resulted in any procedural error or substantive violation of the Education Code. In short,
13 Petitioner has failed to allege a non-discretionary, ministerial duty with which Respondent has failed to
14 comply, and the petition should be rejected.

15 Further, it is clear on the face of the FAP and Petitioner’s brief that Petitioner may *prefer* that the
16 District hire additional full-time employees within the bargaining unit if only to address short-term needs,
17 yet Respondent reiterates that writ relief “may not be invoked to control an exercise of discretion, i.e., to
18 compel an official to exercise discretion in a particular way.” (*Ridgecrest Charter School v. Sierra Sands*
19 *Unified School Dist.* (2005) 130 Cal.App.4th 986, 1002.) Petitioner is incorrect every staffing need must
20 result in the employment of a full-time unit member, and that anything else – including the employment
21 of a non-academic non-classified short-term employee – results in an automatic violation of statute if the
22 purpose of their employment persists beyond one college year.

23 **V. CONCLUSION**

24 For the reasons stated above, Respondent respectfully requests the Court deny the First Amended
25 Petition for Writ of Mandate, reject the requested remedy, and dismiss this action with prejudice.

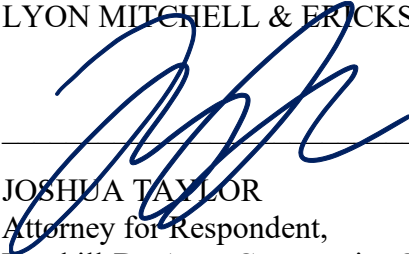
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1 Dated: March 14, 2024

MCDUGAL BOEHMER FOLEY
LYON MITCHELL & ERICKSON

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5 JOSHUA TAYLOR
6 Attorney for Respondent,
7 Foothill-De Anza Community College District
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1 FOOTHILL-DE ANZA CLASSIFIED
2 EMPLOYEES ASSOCIATION,

3 Petitioner,

4 v.

5 FOOTHILL-DE ANZA COMMUNITY COLLEGE
6 DISTRICT, a government entity,

7 Respondent.

) **CASE NO. 22CV404986**

) **DECLARATION OF COUNSEL,**
) **JOSHUA TAYLOR**

8 I, Joshua Taylor, declare under penalty of perjury that:

9 1. I am an attorney licensed to practice in the state of California, State Bar Number 309909.

10 2. I am employed by the law firm of McDougal Boehmer Foley Lyon Mitchell & Erickson.

11 In the course of my employment, I have been assigned to represent Respondent, Foothill-De Anza
12 Community College District, in the instant action. I am readily familiar with the subject of the instant
13 proceedings, I have personal knowledge of the foregoing, and I could and would competently testify
14 thereto provided that my client has knowingly and intelligently consented to waiver of any matters
15 falling within the attorney-client privilege.

16 3. I have researched, prepared, and drafted the Respondent’s Opposition Brief Opposing
17 Petition for Writ of Mandate in the instant matter, and have facilitated and maintained records for the
18 District relating to the matter. Based on the foregoing, I represent and attest that the following are true
19 and correct, and are based upon documents readily available for inspection and review, as attached and
20 designated herein.

21 4. Attached hereto as Exhibit A is a true and correct excerpt from the last published
22 bargaining agreement between the District and ACE, for the period of 2018-2021, publicly available on
23 the District’s website at https://hr.fhda.edu/_classified_staff-information.html. The excerpt includes
24 Article 1 (Recognition) concerning the composition of the unit, as well as the appendices describing
25 classifications included in the unit, which is one (1) of five (5) classified units recognized in the District.

26 5. Attached hereto as Exhibit B is a true and correct excerpt from the last published
27 bargaining agreement between the District and the California School Employees Association and its
28 Chapter 96 (Skilled Trades and Crafts), for the period of 2022-2024, publicly available on the District’s
website at https://hr.fhda.edu/_classified_staff-information.html. The excerpt includes Article 1

1 (General Provisions) and Article 18 (Contracting Out) concerning the composition of the unit and
2 employment of short-term employees outside of the unit, which is one (1) of five (5) classified units
3 recognized in the District.

4 6. Attached hereto as Exhibit C is a true and correct excerpt from the last published
5 Confidential Employees Handbook approved in 2008, publicly available on the District’s website at
6 https://hr.fhda.edu/_classified_staff-information.html. The excerpt includes Chapter 1 (Definitions)
7 describing the nature of the positions in the unit, which is one (1) of five (5) classified units recognized
8 in the District.

9 7. Attached hereto as Exhibit D is a true and correct excerpt from the last published
10 bargaining agreement between the District and its Police Officers Association, for the period of 2017-
11 2019, publicly available on the District’s website at [https://hr.fhda.edu/_classified_staff-](https://hr.fhda.edu/_classified_staff-information.html)
12 [information.html](https://hr.fhda.edu/_classified_staff-information.html). The excerpt includes Article 1 (Recognition and Effect of Agreement) defining the
13 scope of the unit, which is one (1) of five (5) classified units recognized in the District.

14 8. Attached hereto as Exhibit E is a true and correct excerpt from the last published
15 bargaining agreement between the District and Teamsters Local 287, for the period of 2018-2021,
16 publicly available on the District’s website at https://hr.fhda.edu/_classified_staff-information.html. The
17 excerpt includes Article 1 (Recognition and Effect of Agreement) defining the scope of the unit, which
18 is one (1) of five (5) classified units recognized in the District.

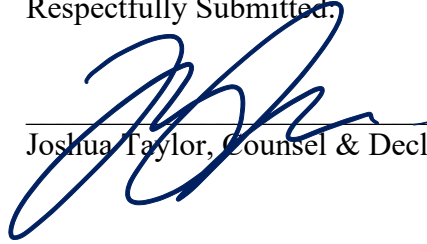
19 9. Attached hereto as Exhibit F is a true and correct copy of the District’s Board Policy
20 2430 (“Delegation of Authority to Chancellor”), describing the adopted policy concerning the delegation
21 of the authority by the Board of Trustees to the District’s Chancellor. This policy is publicly available
22 online at: <https://go.boarddocs.com/ca/fhda/Board.nsf/goto?open&id=9MFQTN60C8CE>.

23 10. Attached hereto as Exhibit G is a true and correct copy of the District’s Board Policy
24 4125 (“Authorization to Offer Employment”), describing the adopted policy concerning the delegation
25 of the authority by the Board of Trustees to the District’s Chancellor for the purpose of authorizing
26 employment subject to ratification by the Board of Trustees. This policy is publicly available online at:
27 <https://go.boarddocs.com/ca/fhda/Board.nsf/goto?open&id=9TUSKG70268B>.

1 I declare under penalty of perjury that under the laws of the State of California that the
2 foregoing is true and correct.

3
4 Dated: March 14, 2024

Respectfully Submitted,

5 
6 _____
7 Joshua Taylor, Counsel & Declarant

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EXHIBIT A

AGREEMENT

Between the

**BOARD OF TRUSTEES
of the
FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT**

And

ASSOCIATION OF CLASSIFIED EMPLOYEES (ACE)

**As defined by the
Public Employment Relations Board**

November 1, 2018 - October 31, 2021




PREAMBLE

This *Agreement* is made and entered into this 10th day of July 2018 between the Board of Trustees of the Foothill-De Anza Community College District, hereinafter referred to as the District, and Association of Classified Employees, hereinafter referred to as ACE.

The purpose of this *Agreement* is to promote the improvement of personnel management and employer-employee relations, provide an equitable and peaceful procedure for the resolution of differences, and establish rates of pay and other terms and conditions of employment.

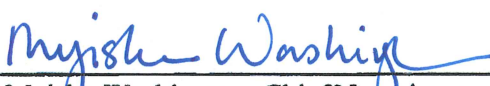
Foothill-De Anza Community College District

By: 

Judy Miner, Chancellor


By: 

Dorene Novotny, Chief Negotiator
Vice Chancellor of Human Resources and Equal Opportunity

By: 

Myisha Washington, Chief Negotiator
Director of Human Resources


**Association of Classified Employees
Negotiations Team Members**

By: 

Bradley Booth, ACE Counsel

By: 

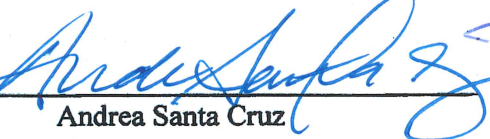
Cathleen Monsell

By: 

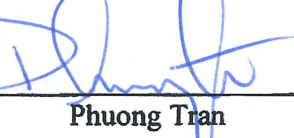
Dana Kennedy

By: 

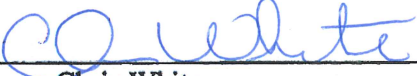
Al Rufinelli

By: 

Andrea Santa Cruz

By: 

Phuong Tran

By: 

Chris White

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ARTICLE 1
RECOGNITION AND EFFECT OF AGREEMENT

- 1.1 The District hereby recognizes ACE (herein referred to as the Union) as the exclusive bargaining representative in ACE for all classified workers holding those positions listed in Appendix E and all classified hourly workers holding those positions listed in Appendix E.1. All newly created positions, except those that are faculty positions or which are Blue Collar or skilled trades and crafts (Unit A) or are designated by the PERB as management, supervisory or confidential positions shall be assigned to the bargaining unit. The bargaining unit may be expanded to other classes by mutual agreement of the District and the Union subject to the rules of the PERB.
- 1.2 This *Agreement* shall supersede any rules, regulations, policies or practices of the District. In the absence of specific provisions of this *Agreement*, the adoption or modification of rules, regulations, policies, and practices is discretionary with the District; provided, however, the District shall notify ACE prior to any implementation, and shall afford sufficient time to negotiate over the effects of such a change, or to meet and confer.
- 1.3 If any provision of this *Agreement* is held invalid by any court of competent jurisdiction, such invalidity shall not affect any other provision of this *Agreement* so long as it can be given effect without the invalid provision. To this end the provisions of this *Agreement* are severable.
- 1.4 This *Agreement* expresses the entire understanding between the parties with respect to all matters within the scope of representation as defined by the Government Code Section 3543.2 and supersedes all previous agreements between the parties, whether written or oral. During the term of this *Agreement* the parties expressly waive the right to meet and negotiate with respect to any matter, whether addressed in this *Agreement* or not, even though such matter may not have been within the contemplation of either or both parties at the time this *Agreement* was negotiated and executed. Notwithstanding such waiver, if any provision of this *Agreement* is rendered invalid, the parties agree to meet and negotiate upon request of either party for the purpose of arriving at a mutually satisfactory replacement for the invalidated provision. Further, the parties reserve the right to revise or amend this *Agreement*, or any provision thereof, by mutual consent expressed in a written document signed by both parties.

APPENDIX D

CLASSIFICATION TITLES AND GRADES

| Title | Grade |
|---|--------------|
| Academic Advisor | 46 |
| Academic Scheduling Coordinator | 56 |
| Academic Services Technician | 46 |
| Academic Services Technician, Senior | 50 |
| Accommodations Coordinator | 48 |
| Accommodations Instructional Technology Coordinator | 58 |
| Accountant | 51 |
| Accountant, Senior | 63 |
| Accountant, Senior-Grants Monitor | 63 |
| Accounting Assistant | 40 |
| Accounting Technician, Senior | 46 |
| Accounts Payable Assistant | 41 |
| Adapted Physical Education Specialist | 46 |
| Administrative Assistant I | 42 |
| Administrative Assistant II | 46 |
| Administrative Assistant, Senior | 52 |
| Admissions & Records Assistant | 41 |
| Admissions & Records Coordinator, Senior | 55 |
| Allied Health & Nursing Specialist | 42 |
| Alternative Media Specialist | 60 |
| Articulation Specialist | 46 |
| Assessment Specialist | 46 |
| Athletic Trainer | 46 |
| Automotive Technician | 50 |
| Benefits Specialist | 54 |
| Benefits Technician | 46 |
| Bookstore Coordinator | 52 |

| Title | Grade |
|--|--------------|
| Bookstore Courseware Coordinator | 39 |
| Bookstore Shipping & Receiving Assistant | 35 |
| Broadcast Production Coordinator | 54 |
| Budget Analyst | 56 |
| Business Analyst | 53 |
| Buyer | 48 |
| Buyer, Senior | 54 |
| Buyer, Senior – Special Projects | 60 |
| Call Center Support Technician | 50 |
| Campus Budget & Enrollment Analyst | 54 |
| Campus Facilities Rental Coordinator | 56 |
| Campus Personnel Assistant | 44 |
| Cashier, Senior | 41 |
| Cashiering Services Coordinator | 48 |
| Child Development Center Teacher | 45 |
| Clinic Nurse | 60 |
| College Web Coordinator, Senior | 70 |
| Communications Associate | 54 |
| Communications and Development Coordinator | 48 |
| Communications Operator/Receptionist | 33 |
| Community Education & Planetarium Assistant | 46 |
| Community Education Programs, Lead | 60 |
| Community Education Web Support/Marketing Specialist | 54 |
| Community Service Officer | 39 |
| Computer Lab Instructional Coordinator | 52 |
| Computer Lab Operations Coordinator | 52 |
| Computer Project Coordinator | 73 |

| Title | Grade |
|---|--------------|
| Computer Systems Integration Specialist | 60 |
| Counseling Services Specialist | 46 |
| Curriculum Coordinator | 55 |
| Customer Service Assistant | 37 |
| Database Administrator, Senior | 70 |
| Database Programmer Analyst | 70 |
| Dental Clinic Administrative Assistant | 42 |
| Division Administrative Assistant | 44 |
| Enrollment Services Specialist | 46 |
| Environmental Studies Technician | 45 |
| EOPS Services Coordinator | 48 |
| EOPS Specialist | 41 |
| EOPS Specialist, Senior | 46 |
| Evaluation Specialist | 49 |
| Evaluation Specialist, Senior | 52 |
| Executive Assistant | 46 |
| Executive Director, Kirsch Center for Environment Studies & The Environmental Study Area | 54 |
| Facilities & Equipment Assistant | 39 |
| Facilities & Equipment Coordinator | 42 |
| Financial Aid Assistant | 41 |
| Financial Aid Coordinator | 48 |
| Financial Aid Outreach Assistant | 41 |
| Financial Aid Outreach Coordinator | 48 |
| Flea Market Coordinator | 41 |
| Furniture, Fixtures & Equipment (FF&E) Coordinator | 56 |
| Graduation & Evaluation Coordinator | 55 |
| Graphic Design Technician | 48 |

| Title | Grade |
|---|--------------|
| Health Services Assistant | 39 |
| Human Resources Technician I | 46 |
| Human Resources Technician II | 48 |
| Instructional Associate | 45 |
| Instructional Computer Lab Administrator | 57 |
| Instructional Computer Lab Administrator, Senior | 60 |
| Instructional Designer | 60 |
| Instructional Facilities Coordinator, Discipline | 46 |
| Instructional Services Coordinator | 55 |
| Instructional Support Coordinator | 46 |
| Instructional Support Technician, Discipline | 45 |
| Instructional Technology Coordinator | 66 |
| Instructional Technology Solutions Systems Engineer | 64 |
| International Operations Analyst | 58 |
| Internship/Job Developer | 50 |
| Laboratory Technician | 45 |
| Laboratory Technician, Art | 45 |
| Laboratory Technician, Photography | 45 |
| Laboratory Technician, Physical Therapy | 45 |
| Learning Management Systems Administrator | 70 |
| Library Technician | 38 |
| Library Technician, Senior | 44 |
| Machine Tool Technician | 50 |
| Mobility Assistant/Van Driver | 33 |
| Multimedia Coordinator | 56 |
| Multimedia Producer | 64 |
| Museum Programs Coordinator | 52 |

| Title | Grade |
|--|--------------|
| Network & Communications Administrator | 65 |
| Network & Communications Technician | 60 |
| Network Engineer | 72 |
| Network Security Engineer | 73 |
| Network Specialist | 56 |
| Nurse Practitioner | 74 |
| Office Assistant | 33 |
| Office Coordinator | 46 |
| Office Coordinator, Printing Services | 46 |
| Outreach Assistant | 41 |
| Payroll Technician II | 46 |
| Payroll Technician, Senior | 51 |
| Physical Education/Wellness Assistant | 45 |
| Planetarium Coordinator | 52 |
| Police Dispatcher | 42 |
| Police Records Specialist | 41 |
| Police Support Services Coordinator, Sr. | 52 |
| Postal Services Assistant | 35 |
| Press Operator II | 40 |
| Press Operator, Senior | 44 |
| Printing Services Coordinator | 46 |
| Program Coordinator I | 48 |
| Program Coordinator II | 52 |
| Program Coordinator, Senior | 56 |
| Programmer Analyst I | 55 |
| Programmer Analyst II | 64 |
| Programmer Analyst, Senior | 70 |

| Title | Grade |
|--|--------------|
| Project Analyst | 60 |
| PSME Laboratory Instructional Coordinator | 52 |
| Publications, Publicity & Editorial Coordinator | 56 |
| Real Time Captioner | 59 |
| Research Analyst | 52 |
| Research Analyst, Sr./Data Warehouse Coordinator | 70 |
| Sales Coordinator, Senior | 56 |
| School Relations Specialist | 46 |
| Secretary | 37 |
| Secretary, Senior | 41 |
| Sign Language Interpreter II | 57 |
| Student Activities Specialist | 44 |
| Student Success Specialist | 46 |
| Systems & Network Programmer I | 60 |
| Systems & Network Programmer II | 66 |
| Systems & Network Programmer, Senior | 72 |
| Technology Services Technician | 45 |
| Technology Services Technician II | 48 |
| Technology Training Specialist | 54 |
| Television Systems Engineer | 64 |
| Testing Assistant | 33 |
| Testing Technician | 41 |
| Theater & Fine Arts Assistant | 46 |
| Theater & Fine Arts Facilities Coordinator | 52 |
| Veterans Resources Specialist | 46 |
| Web Content Developer | 60 |
| Web & Print Communications Design Coordinator | 62 |

| Title | Grade |
|--|--------------|
| Web Support Technician | 54 |
| Workstation & Systems Support Technician I | 50 |
| Workstation & Systems Support Technician II | 55 |
| Workstation & Systems Support Technician, Senior | 60 |

APPENDIX D.1

**CLASSIFIED HOURLY
CLASSIFICATION TITLES AND GRADES**

**Classification Titles and Grades
Classified Hourly**

| Title | Grade |
|---|--------------|
| 1. Automotive Technology Tool Room Assistant | 30 |
| 2. Ceramics Technician – De Anza | 33 |
| 3. Ceramics Technician – Foothill | 33 |
| 4. Evening Clinic Nurse | 60 |
| 5. Massage Therapy Assistant | 35 |
| 6. Performance Class Accompanist | 41 |
| 7. Planetarium Presenter and Technical Assistant | 45 |
| 8. PM Stockroom Clerk | 35 |
| 9. Radio Station Coordinator | 40 |
| 10. Short Course Assistant | 40 |
| 11. Teacher Assistant, Child Development Center (CDC) | 30 |
| 12. Tutorial Assistant | 35 |

EXHIBIT B

AGREEMENT

Between the

Board of Trustees
of the
Foothill-De Anza Community College District

and

California School Employees Association
and its Chapter 96
(Skilled Trades and Crafts)

as defined by the
Public Employment Relations Board

January 1, 2022 – December 31, 2024




PREAMBLE

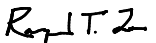
**AGREEMENT BETWEEN THE BOARD OF TRUSTEES OF
THE FOOTHILL – DE ANZA COMMUNITY COLLEGE DISTRICT
AND
CSEA, CHAPTER 96**

This *Agreement* is made and entered into this 6th day of May 2019 between the Board of Trustees of the Foothill-De Anza Community College District and CSEA, Chapter 96 of the classified staff.


This *Agreement* becomes effective upon ratification by both parties. To the extent the provisions of the current *Agreement* are not modified by the amendments contained in this Agreement, they shall remain in full force and effect.

FOOTHILL – DE ANZA COMMUNITY COLLEGE DISTRICT

By: 
Lee Lambert (Nov 7, 2023 16:33 PST)
Lee D. Lambert, Chancellor

By: 
Raymond T. Quan (Nov 7, 2023 14:31 PST)
Ray Quan, Vice-Chancellor, Human Resources and Equal Employment

CSEA, CHAPTER 96

By: 
Stanley Saraos, Jr., President


By: 
Mike Lin-Utzig (Nov 7, 2023 14:58 PST)
Michal Lin-Utzig, Labor Relations Representative

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Article 1
General Provisions

- 1.1 Unless expressly provided otherwise, the definitions set forth in Appendix B shall govern the interpretation and construction of this *Agreement*.
- 1.2 Any individual employment contract between the District and any employee in the bargaining unit shall be subject to and consistent with the terms of this *Agreement*. In the event of a conflict, the terms of this *Agreement* shall govern.
- 1.3 Within a reasonable time after execution of this *Agreement*, the District shall provide CSEA Chapter 96 with a sufficient number of copies of this *Agreement* for distribution to each employee in the bargaining unit. CSEA Chapter 96 shall, at its expense, distribute a copy of the *Agreement* to each employee.

Article 18
Contracting Out of Work

- 18.1 During the life of this *Agreement* the District shall not retain the services of outside contractors to do work usually performed by employees in the unit except as required by law, or as permitted by this article.
- 18.2 This article shall not apply to projects for which the total cost of labor by employees in the unit would exceed \$22,500 or the total number of hours would exceed seven hundred fifty (750) hours, nor shall it apply to projects that are certified by the Chancellor as being necessary to meet an emergency or the program or safety needs of the District.
- 18.3 If management determines a project to which this article applies cannot be done economically, efficiently, and within the required timelines by members of the bargaining unit, it may be contracted out. The Union will be apprised of such projects and the justification prior to issuance of the contract. If the work can economically and efficiently be done on an overtime basis by members of the bargaining unit in appropriate classifications, it shall first be offered to employees who have expressed interest in overtime work. If the offer of overtime work is rejected, the work may then be contracted out.
- 18.4 If a member of the bargaining unit is required to correct a deficiency or an error of a contractor for which the contractor is legally responsible, or must participate in unplanned cleanup contractually the responsibility of the contractor, the member will be authorized "working with contractor pay," which will be an additional half of his/her straight time rate for the hours worked on such tasks. Working with contractor pay shall also be authorized when approved by the Executive Director, Facilities, Operations and Construction Management or Director, College Services because an employee in the unit is required to work on a project jointly with an outside contractor in the same trade.
- 18.5 Normally all major remodel and construction projects will be offered to the in-house trades on an overtime basis first prior to going out to bid.
- 18.6 Employment of substitute and/or short-term employees employed to perform a service for the District shall not result in the displacement of classified personnel.
- 18.7 From the money saved by contracting for services, \$5,000 per year shall be committed to a training fund for unit members.

EXHIBIT C

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

**CONFIDENTIAL
EMPLOYEES
HANDBOOK**

**Approved by the Board of Trustees
2008**

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

CONFIDENTIAL EMPLOYEES HANDBOOK

This handbook was developed for the purpose of defining the particular working conditions, including salary schedule and benefits, rights and privileges, granted to the Confidential Employees of the Foothill-De Anza Community College District.

It is the philosophy of District Confidential Employees that they have a special responsibility to promote pride in the District and to support administrative functions with high quality effort in a spirit of cooperation.

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Chapter 1

DEFINITIONS

Unless otherwise provided the following definitions govern the interpretation and construction of this handbook.

1. "Board" means the Board of Trustees of the Foothill-De Anza Community College District.
2. "Chancellor" means the Chancellor of the Foothill-De Anza Community College District or his or her designee.
3. "District" means the Foothill-De Anza Community College District, its Board of Trustees, or any employee of the Board who has authority to act on behalf of the District.
4. "Confidential Employee" means any employee of the District who, in the regular course of his/her duties, has access to confidential information which contributes to the development of management proposals and decisions with respect to employer-employee relations.
[Government Code Section 3540.1(c)]
5. "President" means the president of a college or his/her designee.
6. "Classification" means a process by which positions are defined to establish the relative importance of positions to the District and through which an appropriate salary level is determined using criteria such as know-how, problem solving and accountability.
7. "College Year" means July 1 to June 30.

EXHIBIT D

AGREEMENT

Between the

**BOARD OF TRUSTEES
of the
FOOTHILL – DE ANZA COMMUNITY
COLLEGE DISTRICT**

and

**FOOTHILL-DE ANZA COMMUNITY COLLEGE
DISTRICT POLICE OFFICERS ASSOCIATION**

**as defined by the
Public Employment Relations Board**

January 1, 2017 – December 31, 2019



PREAMBLE

This *Agreement* is made and entered into this 11th day of September 2017 by and between the Board of Trustees of the Foothill-De Anza Community College District, Los Altos Hills, California, hereinafter referred to as the "District," and Foothill-De Anza Community College District Police Officers Association, hereinafter referred to as "POA."

The purpose of this *Agreement* is to promote improvement of personnel management and employer-employee relations provide and equitable and peaceful procedure for the resolution of differences, and establish rates of pay and other terms and conditions of employment.

FOOTHILL – DE ANZA COMMUNITY COLLEGE DISTRICT

By: 

Judy Miner, Chancellor

By: 

Dorene Novotny, Chief Negotiator
Vice Chancellor of Human Resources and Equal Opportunity

By: 

Myisha Washington, Interim Director
Human Resources

**FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
POLICE OFFICERS ASSOCIATION
Negotiations Team Members**

By: 

Brayton Stone, Labor Relations Representative

By: 

Officer Leif Nelson, Negotiator

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ARTICLE 1
RECOGNITION AND EFFECT OF AGREEMENT

- 1.1 The District hereby recognizes Foothill-De Anza Community College District Police Officers Association (herein referred to as the POA) as the exclusive bargaining representative all full-time Police Officers ranked below Sergeant.
- 1.2 This *Agreement* shall supersede any rules, regulations, policies or practices of the District. In the absence of specific provisions of this *Agreement*, the adoption or modification of rules, regulations, policies, and practices is discretionary with the District; provided, however, the District shall notify POA prior to any implementation, and shall afford sufficient time to negotiate over the effects of such a change, or to meet and confer.
- 1.3 If any provision of this *Agreement* is held invalid by any court of competent jurisdiction, such invalidity shall not affect any other provision of this *Agreement* so long as it can be given effect without the invalid provision. To this end the provisions of this *Agreement* are severable.
- 1.4 This *Agreement* expresses the entire understanding between the parties with respect to all matters within the scope of representation as defined by the Government Code Section 3543.2 and supersedes all previous agreements between the parties, whether written or oral. During the term of this *Agreement* the parties expressly waive the right to meet and negotiate with respect to any matter, whether addressed in this *Agreement* or not, even though such matter may not have been within the contemplation of either or both parties at the time this *Agreement* was negotiated and executed. Notwithstanding such waiver, if any provision of this *Agreement* is rendered invalid, the parties agree to meet and negotiate upon request of either party for the purpose of arriving at a mutually satisfactory replacement for the invalidated provision. Further, the parties reserve the right to revise or amend this *Agreement*, or any provision thereof, by mutual consent expressed in a written document signed by both parties.

EXHIBIT E

AGREEMENT

between

THE BOARD OF TRUSTEES

of the

**FOOTHILL-DE ANZA COMMUNITY
COLLEGE DISTRICT**

and

**TEAMSTERS
LOCAL 287**



July 1, 2018 – June 30, 2021

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PREAMBLE

This *Agreement* is made and entered into this July 8, 2019 by and between the Board of Trustees of the Foothill-De Anza Community College District, Los Altos Hills, California, hereinafter referred to as the “District,” and FREIGHT, CONSTRUCTION, GENERAL DRIVERS AND HELPERS UNION, TEAMSTERS LOCAL 287, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the “Union.”

The purpose of this *Agreement* is to promote the improvement of personnel management and employer-employee relations, provide an equitable and peaceful procedure for the resolution of differences, and establish rates of pay and other terms and conditions of employment.

Foothill-De Anza Community College District

By: _____
Judy Miner, Chancellor

By: _____
Myisha Washington, Chief Negotiator
Director, Human Resources

TEAMSTERS LOCAL 287

Negotiations Team Members

By: _____
George Robles

By: _____
Elaine Kuo

By: _____
Tonette Torres

ARTICLE 1

RECOGNITION AND EFFECT OF AGREEMENT

- 1.1 The District hereby recognizes Teamsters Local 287 (herein referred to as the Union) as the exclusive bargaining representative for all supervisory positions. All newly created classified supervisory positions shall be assigned to the bargaining unit. The bargaining unit may be expanded to other classes by mutual agreement of the District and the Union subject to the rules of the PERB.
- 1.2 This *Agreement* expresses the entire understanding between the Board and the Union with respect to all matters within the scope of representation as defined by the Government Code Section 3543.2 and supersedes all previous agreements between them, whether written or oral. It also supersedes any rules, regulations, policies or practices of the Board that are contrary to or inconsistent with its terms.
- 1.3 If any provision of this *Agreement* is held invalid by any court of competent jurisdiction, such invalidity shall not affect any other provision of this *Agreement* so long as it can be given effect without the invalid provision. To this end the provisions of this *Agreement* are severable.
- 1.4 During the term of this *Agreement* the parties expressly waive the right to meet and negotiate with respect to any matter, whether addressed in this *Agreement* or not, even though such matter may not have been within the contemplation of either or both parties at the time this *Agreement* was negotiated and executed. Notwithstanding such waiver, if any provision of this *Agreement* is rendered invalid, the parties agree to meet and negotiate upon request of either party for the purpose of arriving at a mutually satisfactory replacement for the invalidated provision. Further, the parties reserve the right to revise or amend this *Agreement*, or any provision thereof, by mutual consent expressed in a written document signed by both parties.

EXHIBIT F



**FOOTHILL-DE ANZA
Community College District**

| | |
|--------------|---|
| Book | Board Policy |
| Section | Chapter 2 - Board of Trustees (including former Article 2 - Administration and Article 9 - Bylaws) |
| Title | Delegation of Authority to Chancellor |
| Code | BP 2430 |
| Status | Active |
| Legal | Accreditation Standards IV.B.1.j, IV.B.2, IV.B.3 Education Code Section 70902(d) Education Code Section 72400 |
| Adopted | November 7, 1960 |
| Last Revised | May 5, 2014 |

The Board of Trustees of the Foothill-De Anza Community College District delegates to the Chancellor of the District the executive responsibility for administering the policies adopted by the Board and executing all decisions of the Board requiring administrative action. In the initiation and formulation of District policies the Chancellor shall act as the professional advisor to the Board.

The Chancellor may delegate any powers and duties entrusted to him/her by the Board including the administration of each college and center, but he/she will be specifically responsible to the Board for the execution of such delegated powers and duties.

The Chancellor is empowered to reasonably interpret Board policy. In situations where there is no Board policy direction, the Chancellor shall have the power to act, but his/her decisions shall be subject to review by the Board. It shall be the duty of the Chancellor to inform the Board promptly of such action and to recommend a written Board policy if one is required.

The Chancellor shall make available any information or give any report requested by the Board as a whole. Individual trustee requests for information shall be met if, in the opinion of the Chancellor, they are not unduly burdensome or disruptive to District operations. Information provided to any trustee shall be provided to all trustees.

The Chancellor shall ensure that all relevant laws and regulations are complied with, and that required reports are submitted in a timely fashion.

The Chancellor is expected to perform the duties contained in the Chancellor job description and fulfill other responsibilities as may be determined in annual goal-setting or evaluation sessions. The job description and objectives for performance shall be developed by the Board in consultation with the Chancellor. In his/her capacity as Chancellor, he/she shall attend all meetings of the Board (except when the current Chancellor's contract is under consideration) and serve as Secretary to the Board.

Approved 11/7/60
Amended 5/1/95
Amended and renumbered 5/5/14 (formerly BP 2210)

EXHIBIT G



**FOOTHILL-DE ANZA
Community College District**

| | |
|--------------|--|
| Book | Board Policy |
| Section | Chapter 7 - Human Resources (including former Article 4 - Personnel) |
| Title | Authorization to Offer Employment |
| Code | BP 4125 |
| Status | Active |
| Adopted | October 25, 1961 |
| Last Revised | December 6, 2010 |

The Board authorizes the Chancellor to authorize employment and other personnel action items pending Board ratification provided he/she has verified that all appropriate procedures and policies have been followed. Prior Board approval is required for an appointment as Chancellor, Interim Chancellor and Acting Chancellor, and for a regular appointment as President, Vice Chancellor and Executive Director of Facilities, Operations and Construction.

Approved 10/25/61
Amended 12/3/73, 11/18/96, 12/6/10