

TEMPORARY TRANSFER AGREEMENT

This Temporary Transfer Agreement (the “Agreement”) is made and effective this ___ day of _____, 20[___], by and between the County of Orange, California (the “County”) and [INSERT NAME OF SCHOOL DISTRICT or COMMUNITY COLLEGE DISTRICT] (the “District”).

RECITALS

WHEREAS, by Resolution No. ___ of its Board of Trustees (attached as Exhibit A hereto), the District has requested the County Treasurer to make a temporary transfer (the “Transfer”) of monies to meet its current maintenance expenses; and

WHEREAS, the District has not issued, nor will issue, a TRAN or other borrowing of any kind or nature for the purpose of funding the District’s short term cash flow, which is outstanding in whole or in part, while a Transfer is outstanding; and

WHEREAS, California Constitution Article XVI, Section 6, provides that the County Treasurer shall have the power and the duty to make temporary transfers of monies, as further specified therein, upon the resolution of the Board of Supervisors authorizing such temporary transfer; and

WHEREAS, the Board of Supervisors by Resolution No. _____ (attached as Exhibit B hereto) has authorized the Treasurer to make the Transfer to the District in accordance with the terms of such Resolution; and

WHEREAS, this Agreement represents the agreement of the County and the District with respect to the Treasurer’s making the Transfer and its repayment by the District.

AGREEMENT

Section 1. **Transfer; Timing.** Upon receipt of the District’s written request (Exhibit C) certified by the District and the Superintendent of Schools, if applicable, the Treasurer will review the request and determine, in addition to exercising her trust and fiduciary duties with respect to protecting all of the Educational Investment Pool participants from any principal loss and ensuring adequate liquidity to meet operating cash needs, that such monies are available for such Transfers, whether to make such Transfer to the District in the amount requested, as soon as reasonably possible, *provided, however,* that in no event shall the total amount of all Transfers within the fiscal year exceed 85% of the anticipated revenues which will accrue to the District during the fiscal year. No Transfer attributable to a subsequent fiscal year will be made prior to the full and complete repayment of all outstanding Transfers.

An authorized Transfer may be made to the District in one or more installments.

No Transfer shall be made prior to July 1 of the fiscal year (July 1 through June 30) for which the Transfer is made or after the last Monday in April of the then current fiscal year.

The Transfer will be made from and limited to the Educational Investment Pool.

Section 2. **Deposit of Transfer; Interest.** Any Transfer made by the Treasurer to the District shall be directly deposited in the District's _____ Fund (the "Fund") for the purpose of the District meeting its maintenance obligations. Compound interest on any Transfer will accrue and be payable monthly by the District at a rate equal to the gross rate the Educational Investment Pool is earning for the same period plus (5) basis points from the date of the Transfer until the entire Transfer and applicable interest is repaid.

Section 3. **Repayment; Pledge and Lien.** (a) Repayment of the Transfer will be made in accordance with the following repayment schedule: [INSERT] (b) If the District shall fail to make any payment(s) required under Section 3 (a), the monies transferred to the District will be repaid to the Educational Investment Pool from the first revenues accruing to the District before any other obligation of the District is met from such revenue. Full repayment of any Transfer shall be made no later than October 31 following each fiscal year. Notwithstanding anything to the contrary herein, the District understands and agrees that repayment of any and all Transfers is an obligation imposed by law and the obligation of the District to make payments with respect to such Transfer(s) is absolute and unconditional, payable from lawfully available funds of the District. In furtherance of the District's repayment obligations, District hereby grants the County a first lien and pledge of all revenues accruing to the District for the purpose of repayment of the Transfer(s).

Section 4. **District Covenants.** The District hereby represents and covenants with the County at the time each Transfer is made, the following:

- (a) That the District's Anticipated Revenue Calculation and Remaining General Fund Revenue Calculation for Fiscal Year 20__-20__, as provided for in Exhibit C attached hereto, represents the District's best estimate of anticipated revenues accruing and remaining revenues accruing to the District during the fiscal year.
- (b) In the aggregate, the amount of Transfers made to the District during Fiscal Year 20__-20__ do not exceed 85 percent of the anticipated revenues accruing to the District for such Fiscal Year.
- (c) The District has not issued, nor will issue, any TRANs, or other borrowing of any kind or nature for the purpose of funding the District's short term cash flow, while a Transfer is outstanding.
- (d) The District has the ability to meet its financial obligations under this Agreement.

The County may rely upon Exhibit C in connection with any Transfer sizing.

Section 5. **Transfer Charges.** In further consideration of the Transfer(s) made to the District in accordance with this Agreement, the District agrees to pay the County Transfer Charges for each Transfer as set forth on the Listing of Fees at Exhibit D. These charges are intended to reimburse the County for its costs related to the Transfer processing, analysis, documentation, legal services and administration. The Transfer charges shall be directly withdrawn from the Fund designated by the District in Section 2 above on the date the Transfer is deposited or on a monthly basis for transaction related fees.

Section 6. **Notices.** Any and all notices between the County and the District provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly given when personally delivered to one of the parties or in lieu of such personal service, when deposited in the United States mail, postage prepaid, addressed to such party at the following address:

If to the County:

County of Orange
Attention: Shari Freidenrich, Treasurer-Tax Collector
PO Box 4515
Santa Ana, CA 92702-4515
Telephone: (714) 834-7625 Facsimile: (714) 834-2912

If to District:

[INSERT CONTACT INFORMATION]

Section 7. **Governing Law, Venue and Entire Agreement.** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, withstanding Code of Civil Procedure Section 394.

Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering into this Agreement, to waive any and all rights to request

that an action be transferred for trial to another county under Code of Civil Procedure Section 394.

This Agreement constitutes the entire agreement between the County and the District with respect to the Transfer and supersedes any previous agreement(s), negotiations, proposals or understanding, whether written or oral concerning such matter, unless expressly included in this Agreement.

Section 8. **Dispute Resolution.** In the event of any dispute regarding this Agreement or any Transfer made hereunder and as conditions precedent to the filing of any legal action, the District and the County shall meet regarding the dispute and use their best efforts to resolve the matter. Should the meeting fail to resolve the dispute, the parties may enter into mediation with an impartial professional mediator agreed to by both the District and County. The District agrees to pay all County costs and expenses in accordance with a dispute hereunder, including, without limitation, all costs and expenses of the County relating to the collection of any Transfer repayment(s).

Section 9. **Amendment or Modifications.** No amendment, modification or other alteration of this Agreement shall be valid unless in writing and signed by the parties hereto.

Section 10. **Severability.** In the event that any provision herein contained is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and such invalidity shall in no way affect, impair, or invalidate any other provision contained herein if there is no substantive effect to the services to be rendered to the County by such judicial finding of invalidity.

Section 11. **Counterparts.** This Agreement may be executed in any number of counterparts, each counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

County of Orange, California

By: _____

Shari L. Freidenrich
Treasurer-Tax Collector

Approved as to Form
Office of the County Counsel

By: _____

Angelica Castillo Daftary
Deputy County Counsel

[INSERT NAME OF SCHOOL DISTRICT]

By: _____

[NAME OF AUTHORIZED OFF.]
[TITLE]