**TEMPORARY TRANSFER CONTRACT**

This Temporary Transfer Contract (the “Contract”) is made and effective this \_\_\_ day of [INSERT MONTH], 20\_\_, by and between the County Superintendent of Schools / Department of Education (OCDE) and [INSERT NAME OF LOCAL EDUCATIONAL AGENCY] (the “LEA”).

**RECITALS**

WHEREAS, by Resolution No. \_\_\_\_\_\_\_ of its Board of Trustees (attached as Exhibit A hereto), the LEA has requested the OCDE to make a temporary transfer (the “Transfer”) of monies to meet its current operating expenses; and

WHEREAS, the LEA has not pledged, nor will pledge, its expected revenue as collateral for a loan or other borrowing of any kind or nature for the purpose of funding the LEA’s short-term cash flow, which is outstanding in whole or in part, while a Transfer is outstanding; and

WHEREAS, California Education Code §§1040(a), 1042(a), 42621, and 42622 authorize the county superintendent of schools, with the approval of the county board of education, to make temporary transfers to a district or charter school that does not have sufficient money to its credit to meet current operating expenses, in the amounts and at times that the county superintendent of schools deems necessary; and

WHEREAS, the Orange County Board of Education, by Resolution No. \_\_\_\_\_\_ (attached as Exhibit D hereto), has authorized the OCDE to make the Transfer to the LEA in accordance with the terms of such Resolution; and

WHEREAS, transfers are authorized solely for exigent, urgent, or emergency cash flow purposes when no other financing is available, including but not limited to facilities rent/lease, unanticipated one-time expenses, or LCFF apportionment corrections; and

WHEREAS, this Contract represents the contract of the OCDE and the LEA with respect to the OCDE making the Transfer and its repayment by the LEA.

**CONTRACT**

Section 1. Transfer; Timing. Upon receipt of the LEA’s written request (Exhibit B, certified by the LEA), the OCDE will review the request and determine whether such monies are available for such Transfers. If approved, the OCDE may make such Transfer to the LEA in the amount requested, subject to the limitations herein. 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 LEA 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 LEA 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 current fiscal year. The Transfer will be made from and limited to the OCDE Temporary Borrowing Special Fund.

Section 2. Deposit of Transfer; Interest. Any Transfer made by the OCDE to the LEA shall be directly deposited in the LEA’s General Fund (the “Fund”) for the purpose of the LEA meeting its current operating obligations. Interest on any Transfer will accrue and be payable monthly by the LEA at a rate equal to the gross rate the County Treasurer’s Educational Investment Pool is earning for the same period plus a liquidity fee not to exceed 10 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: Term and Date Example: In Full no later than June 30, 20\_\_]. (b) If the LEA shall fail to make any payment(s) required under Section 3(a), the monies transferred to the LEA will be repaid to the OCDE from the first revenues accruing to the LEA before any other obligation of the LEA is met. Full repayment of any Transfer shall be made no later than June 30 of the current fiscal year. In no event shall the term of any Transfer exceed fifteen (15) months from the date of issuance. (c) The LEA understands and agrees that repayment of any and all Transfers is an obligation imposed by law and the obligation of the LEA to make payments with respect to such Transfer(s) is absolute and unconditional, payable from lawfully available funds of the LEA. In furtherance of the LEA’s repayment obligations, the LEA hereby grants the OCDE a first lien and pledge of all revenues accruing to the LEA for the purpose of repayment of the Transfer(s).

Section 4. LEA Covenants. The LEA hereby represents and covenants with the OCDE at the time each Transfer is made:

1. In the aggregate, the amount of Transfers made to the LEA during Fiscal Year 20\_\_–20\_\_ does not exceed 85 percent of the anticipated revenues accruing to the LEA for such Fiscal Year.
2. The LEA has not pledged, nor will pledge, any of its expected revenue as collateral for a loan or other borrowing of any kind or nature for the purpose of funding the LEA’s short-term cash flow, while a Transfer is outstanding.
3. The LEA has the ability to meet its financial obligations under this Contract.
4. The LEA has disclosed any other outstanding short-term borrowing and agrees to provide documentation reasonably requested by OCDE to confirm its ability to repay.

Section 5. Transfer Charges. In further consideration of the Transfer(s) made to the LEA in accordance with this Agreement, the LEA agrees to reimburse OCDE for its actual costs in processing the LEA’s Transfer request. These costs relate to the processing, analysis, documentation, legal services and administration for each Transfer request. These costs shall be directly withdrawn from the Fund designated by the LEA 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 OCDE and the LEA provided for or permitted under this Contract 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:

Orange County Department of Education

Attention: County Superintendent

200 Kalmus Drive

Costa Mesa, CA 92626

Telephone: (714) 966-4001

Facsimile: (714) 432-1916

If to the LEA:

[INSERT CONTACT INFORMATION]

Section 7. Governing Law, Venue and Entire Contract. This Contract 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 Contract, 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. The parties waive any rights under California Code of Civil Procedure Section 394 to transfer venue. This Contract constitutes the entire contract between the OCDE and the LEA with respect to the Transfer and supersedes any previous contract(s), negotiations, proposals, or understandings, whether written or oral, concerning such matter, unless expressly included in this Contract.

Section 8. Dispute Resolution. In the event of any dispute regarding this Contract or any Transfer made hereunder, and as conditions precedent to the filing of any legal action, the LEA and the OCDE 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 LEA and the OCDE. The LEA agrees to pay all OCDE costs and expenses in accordance with a dispute hereunder, including, without limitation, all costs and expenses of the OCDE relating to the collection of any Transfer repayment(s).

Section 9. Amendment or Modifications. No amendment, modification, or alteration of this Contract 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 Contract 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 OCDE by such judicial finding of invalidity.

Section 11. Counterparts. This Contract 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 Contract.

Section 12. Student Benefit. The LEA affirms that the use of temporary transfers under this Contract will directly support the educational programs and services provided to students who reside in Orange County.

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

County of Orange, California

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dr. Stefan Bean

Orange County Superintendent of Schools

Approved as to Form

Orange County Department of Education, Legal Services

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Gregory Rolen

Orange County Department of Education, General Counsel

[INSERT NAME OF LOCAL EDUCATIONAL AGENCY]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_