

TIGARD-TUALATIN SCHOOL DISTRICT 23J

RESOLUTION NO. 1617-11

A RESOLUTION OF THE TIGARD – TUALATIN SCHOOL DISTRICT NO. 23J BOARD OF DIRECTORS, AUTHORIZING THE SUPERINTENDENT TO EXECUTE AN AGREEMENT WITH THE OREGON DEPARTMENT OF EDUCATION (“ODE”) FOR THE OREGON SCHOOL CAPITAL IMPROVEMENT MATCHING (“OSCIM”) GRANT PROGRAM.

WHEREAS, the Board of Directors of Tigard-Tualatin School District No. 23J ("District") adopted Resolution No. 1617-02 on July 2, 2016, calling a measure election on November 8, 2016 to submit to the electors of the District the question contracting general obligation bonded indebtedness in an aggregate principal amount not to exceed \$291,315,000 (the “Bonds”) to finance capital costs and related matters; and

WHEREAS, Article XI, Section 11 of the Oregon Constitution requires majority approval for new or additional ad valorem taxes to repay the Bonds for all May and November elections; and

WHEREAS, the ballot measure for the Bonds was approved by a majority of the District’s voters at the November 8, 2016 election by a 60.48%/39.52%, yes/no vote; and

WHEREAS, the District has qualified to receive a grant of \$3,050,000 from the OSCIM Program; and

WHEREAS, the Board of Directors have adopted Resolution No. 1617-10 on February 13, 2016 authorizing the issuance of a portion of the Bonds in an aggregate principal amount not to exceed \$225,000,000, issued in one or more series, to finance projects set forth in the ballot title for the bonds, in addition to delegating the negotiating and approval of related financial documents; and

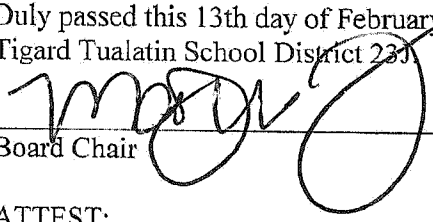
WHEREAS, the bond proceeds, along with the OSCIM grant, are expected to finance the projects for the Bonds including constructing, updating and repairing schools, improving safety and technology, and purchasing curriculum, and to pay the costs of issuance; and

WHEREAS, the OSCIM grant program requires the Board of Directors to authorize the execution of the State of Oregon Article XI-P General Obligation Bond Program Grant Agreement;

NOW THEREFORE, BE IT RESOLVED:

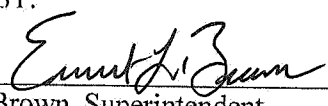
1. The Board of Directors hereby approves the execution of the State of Oregon Article XI-P General Obligation Bond Program Grant Agreement.
2. The Board authorizes the Superintendent or Superintendent's designee to execute the agreement on behalf of the District.

Duly passed this 13th day of February 2017, at the Meeting of the Board of Directors of
Tigard Tualatin School District 233.



Board Chair

ATTEST:



Ernie Brown, Superintendent

**STATE OF OREGON ARTICLE XI-P GENERAL OBLIGATION BOND PROGRAM
GRANT AGREEMENT**

School District: Tigard-Tualatin School District 23J

Project Name: Constructing, Updating and Repairing Schools, Improving Safety and Technology, and Purchasing Curriculum, and to Pay the Costs of Issuance

Article XI-P Bond Series Number: General Obligation Bonds, Series 2017

This Grant Agreement ("Agreement") is made by the State of Oregon, acting by and through its Department of Education ("ODE") and [School District] ("Grantee") for financing of the project referred to above and described in Exhibit A (the "Project"). This Agreement becomes effective only when fully signed and approved as required by applicable law.

This Agreement includes the following exhibits, incorporated into and made a part of this Agreement:

Exhibit A: Project Description

Exhibit A-1: Project Budget

Exhibit B: Evidence of Grantee Authorization and Local GO Bonds Matching Amount

Exhibit C: Form of Disbursement Request

Exhibit D: Project Completion Report

SECTION 1 – DEFINITIONS OF KEY TERMS

The following capitalized terms have the meanings assigned below.

"Act" means Article XI-P of the Oregon Constitution and applicable laws of the State, including, without limitation, Oregon Revised Statutes ("ORS") 286A.796 to 286A.806, all as amended from time to time, inclusive.

"Agreement" has the meaning set forth above.

"Bond Counsel" means a law firm that serves as bond counsel to the State because it has knowledge and expertise in the field of municipal law and issues opinions that are generally accepted by purchasers of municipal bonds.

"Bonds" means, the State of Oregon General Obligation Bonds or other obligations which may be issued in one or more series and from time to time pursuant to the Act, a portion of the sale proceeds of which are used to fund the Grant.

"Bond Bill" means the budget authorization for bond issuance established under ORS 286A.035 for the issuance of the Bonds by the State pursuant to the Act.

"Capital Costs" has the meaning given in Article XI-P of the Oregon Constitution.

"Code" means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Counsel” means an Assistant or Special Assistant Attorney General of the State who advises the State.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Delivery Date” means the date on which the Bonds are issued and the proceeds are delivered to the State.

“Disbursement Request” means the request from the Grantee to ODE for disbursement of all or a portion of the Grant Amount as set forth in Section 4, in the form and containing the information and certifications set forth in Exhibit C.

“Event of Default” has the meaning set forth in Section 8.

“Grant” means the grant funds provided by the State through the Oregon School Capital Improvement Matching Program to match the Grantee’s Local GO Bonds, as further described in Section 2.

“Grant Amount” means the amount of proceeds from the sale of the Bonds, not to exceed \$225,000,000.

“Grantee’s Counsel” means local counsel to the Grantee, bond counsel to the Grantee or any combination thereof.

“Local GO Bonds” means the general obligation bonds approved by the voters of the Grantee for the purpose of financing the Project for which the Grantee applied for the Grant from the State.

“Matching Amount” has the meaning set forth in Section 3.

“ODE” has the meaning set forth above.

“Project” means the project identified in the ballot measure title, question and summary approved by the voters of the Grantee, which is attached to Exhibit A.

“Project Completion Deadline” means no longer than 36 months after the respective Delivery Date of the Bonds issued to fund the Project Costs or such longer period of time as may be agreed in writing by the parties to this Agreement.

“Project Costs” means Grantee’s actual costs associated with the Project to the extent those costs are (a) Capital Costs that are necessary and directly used for the Project, (b) capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Code, and (c) eligible or permitted uses of the Grant under the Act and this Agreement. Project Costs do not include internal costs charged to the Project by Grantee or payments made to Related Parties. Project Costs do not include any costs that cannot be paid for with proceeds of Bonds the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986.

“Related Parties” means, in reference to governmental units or 501(c)(3) organizations, members of the same controlled group within the meaning of Section 1.150-1(e) of the Code, and in reference to any person that is not a governmental unit or a 501(c)(3) organization, a related person as defined in Section 144(a)(3) of the Code.

“State” means the State of Oregon, acting by and through its agencies including but not limited to ODE, Treasury, and any other agency authorized to administer proceeds and payment of the Bonds.

“Treasury” means the Office of the State Treasurer of the State of Oregon.

SECTION 2 – GRANT

- A. ODE shall provide the Recipient, and the Recipient shall accept from ODE, the Grant in an aggregate amount not to exceed the Grant Amount. The Grant will be made from the proceeds from the sale of the Bonds.
- B. Notwithstanding that this Agreement may be executed and delivered by the parties prior to the date the Bonds are issued by the State, nothing in this Agreement is intended to obligate the State to issue the Bonds. The Bonds shall be issued only as provided under the Act, by the State Treasurer, with the concurrence of the Director of the Oregon Department of Administrative Services, subject to (1) the request of the Superintendent of Public Instruction, pursuant to ORS 286A.798(1)(a), and (2) the Bond Bill for the biennium.
- C. Notwithstanding that the Grantee may issue its Local GO Bonds with original issue premium or original issue discount, in no event shall the Grant Amount exceed the lesser of (i) the proceeds of the Local GO Bonds received by the Grantee or (ii) the principal amount of the Local GO Bonds.

SECTION 3 – MATCHING AMOUNT

Pursuant to the Act, the Grantee hereby represents, warrants and certifies to the State, Treasury, ODE, Bond Counsel and Counsel that the “matching funds” required under Article XI-P of the Oregon Constitution (the “Matching Amount”) shall be evidenced prior to the disbursement of any portion of the Grant by the State to the Grantee, consistent with the requirements of Section 4 of this Agreement. The Matching Amount shall:

- (a) meet or exceed the Grant Amount;
- (b) be from Local GO Bonds that have been issued by the Grantee; and
- (c) be confirmed to the satisfaction of the State, Counsel and Bond Counsel by the delivery of the documentary evidence as set forth in Exhibit B hereto, all of which shall be true and correct.

SECTION 4 – DISBURSEMENTS

- A. Disbursement Requests. To receive any portion of the Grant Amount, Grantee shall deliver to ODE its Disbursement Request. Grantee's Disbursement Request must describe all work performed with particularity and shall itemize and explain all expenses for which reimbursement or direct payment is claimed in detail, including sufficient detail to allow ODE to determine the extent to which such expenses are Capital Costs.
- B. Conditions to Disbursements. Notwithstanding that this Agreement may be executed and delivered by the parties prior to the date the Local GO Bonds are issued by the Grantee, the obligation of the State to disburse any portion of the Grant to the Grantee under this Agreement is expressly conditioned on the satisfaction of all of the following conditions on each date of disbursement.
- (1) Local GO Bonds must be closed and proceeds delivered to the Grantee within six months of the date of the election at which the Local GO Bonds were approved.
 - (2) Delivery of the documentary evidence of the Matching Amount, as required by Section 3(c) of this Agreement, satisfactory to the State, Counsel and Bond Counsel.
 - (3) Execution and delivery of this Agreement by an authorized officer of Grantee and the State.
 - (4) Delivery of an opinion of Grantee's Counsel that satisfies the requirements set forth in Section 4. C. of this Agreement.
 - (5) The representations, certifications, covenants and warranties made by Grantee in this Agreement are true and correct as if made on such date.
 - (6) There is no Default or Event of Default.
 - (7) The State has received net proceeds from the sale of the Bonds sufficient to make the disbursements, and ODE, in the reasonable exercise of its administrative discretion, has sufficient funding, appropriations, limitations, allotments, allocation and other expenditure authority to authorize the disbursement.
 - (8) The State has received the Certificate from the Grantee's auditors described in Section 6. F. hereof.
 - (9) Satisfaction of all terms and conditions for disbursements as set forth herein.
- C. Opinion of Grantee's Counsel. On or before the date of the first Disbursement Request, there shall be delivered to the State, Counsel and Bond Counsel, an opinion of Grantee's Counsel, subject to appropriate assumptions, qualifications, certifications and representations, acceptable to the State, Counsel and Bond Counsel, to the effect that (i) the Grantee has issued valid general obligation bonds (which may be satisfied by a

reliance letter addressed to the State on the approving opinion of bond counsel to the Grantee with respect to the Local GO Bonds); and (ii) this Agreement has been duly executed and delivered by, and constitutes a valid and binding obligation of, Grantee, enforceable against Grantee in accordance with its terms and that Grantee has taken all actions necessary to and has full authority and power to incur and perform its obligations under this Agreement and to receive financing for and to carry out the Project.

D. Disbursement by ODE; Waiver of Conditions.

- (1) Upon receipt of a Disbursement Request, satisfaction of the conditions set forth in this Agreement and ODE's review and approval of the Project Costs set forth in the Disbursement Request, ODE shall disburse or cause to be disbursed the requested portion of the Grant Amount to Grantee as soon as practicable and not later than 30 days after ODE has received the Disbursement Request.
- (2) ODE may, in its sole discretion, waive any of the conditions to disbursement set forth in this Agreement and otherwise determine to disburse or cause to be disbursed any portion of the Grant Amount to the Grantee in the event of a written appeal from the Grantee that demonstrates financial need or other unforeseen circumstances.

E. Disbursement Deadline. The State's obligation to make, and the Grantee's right to request, disbursements under this Agreement terminates on the Project Completion Deadline.

SECTION 5 – USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. Grantee shall use disbursements of the Grant only to reimburse itself or to pay directly for Project Costs incurred by Grantee as set forth in and in compliance with Grantee's certifications in its Disbursement Request.
- B. Project Costs Otherwise Paid. Grantee understands that federal tax law prohibits the State and the Grantee from issuing more tax-exempt debt than necessary to pay Project Costs. Accordingly, Grantee may not use any proceeds of the Grant to pay Project Costs that have otherwise been provided for, whether from proceeds of the Grantee's own tax-exempt debt, by proceeds of a third party grant whose use is restricted to the payment of costs of the Project, or by equity of the Grantee otherwise irrevocably dedicated to pay costs of the Project.
- C. Earnings on Bond Proceeds. Any earnings on proceeds of the Bonds will be retained by the State and may be applied to any purposes consistent with the Act and subject to the limitations of the Internal Revenue Code with respect to the use of the proceeds of the Bonds.
- D. Unexpended Proceeds. If the full Grant Amount is not required to pay Project Costs that were incurred by Grantee on or before the Project Completion Deadline, the State will

retain the excess and may apply such amounts to any purposes consistent with the Act and subject to the limitations of the Internal Revenue Code with respect to the use of proceeds of the Bonds.

- E. No Grant Amounts to Satisfy Matching Amount. The Recipient shall in no circumstances use the Grant Amount to satisfy the Matching Amount requirement of the Act.

SECTION 6 – REPRESENTATIONS AND WARRANTIES OF GRANTEE

Grantee represents and warrants to the State:

- A. Organization and Authority.
- (1) Grantee is a school district, as defined in ORS 328.001(3), validly created and existing under the laws of the State of Oregon.
 - (2) The official actions by which Grantee has authorized the Project, the Local GO Bonds and the execution, delivery and performance of this Agreement are attached hereto as set forth in Exhibit B. Grantee will use the Project as set forth in the authorizing documents for its Local GO Bonds attached hereto in Exhibits A and B.
 - (3) Grantee has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Agreement, (b) incur and perform its obligations under this Agreement, and (c) receive financing for and carry out the Project.
 - (4) This Agreement has been duly authorized and executed by an authorized representative of Grantee, and when executed by ODE, is legal, valid and binding, and enforceable in accordance with its terms.
- B. Full Disclosure. Grantee has disclosed in writing to ODE all facts that reasonably could have a material adverse effect on the Project, or the ability of Grantee to perform all obligations required by this Agreement. Grantee has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Matching Amount, the Grant, the Project and this Agreement. The information contained in this Agreement is true and accurate in all respects.
- C. Pending Litigation. Except as disclosed by Grantee in writing to ODE, there is no litigation or formal governmental administrative proceedings, including any environmental or other matters, pending (or to the knowledge of Grantee, threatened) against or affecting Grantee, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Grantee to perform all obligations required by this Agreement.

D. No Defaults.

- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Agreement.
- (2) Grantee has not violated, and has not received notice of any claimed violation of, any agreement or instrument related to the Project to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Grantee to perform all obligations required by this Agreement.

E. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Agreement will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Grantee is a party or by which the Project or any of Grantee's property or assets may be bound; (ii) violate any provision of the organizational or other documents pursuant to which Grantee was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Grantee, the Project or Grantee's properties or operations.

F. Certificate of Capitalization of Project Costs. Grantee agrees to provide ODE with a certificate from an independent accountant or firm of independent accountants stating that any Project Costs for repair, remediation or deferred maintenance of Grantee facilities are eligible to be capitalized under generally accepted accounting principles promulgated by GASB.

G. Governmental Consent. Grantee has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Agreement and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located. "Land use approvals and development permits" includes, but is not limited to, any necessary "land use decision" or "limited land use decision" as those terms are defined by ORS 197.015(10) and (12).

SECTION 7 – COVENANTS OF GRANTEE

Grantee covenants as follows for so long as the Bonds and any obligations issued to refund the Bonds are outstanding:

- A. Compliance with Laws. Grantee shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement, the Project and the Matching Amount. These laws, rules, regulations and orders are incorporated by reference in this Agreement to the extent required by law.

B. Reporting Obligations.

- (1) Within 90 days after the Project Completion Date, Grantee shall furnish the State with a final report on Grantee's expenditure of the Grant and the Matching Amount; and
- (2) Grantee shall provide such additional reports as the State may reasonably request from time to time.

C. Coordination with State. The Grantee agrees to work with the State to facilitate the cost-effective issuance and sale of the Bonds, and to provide any information and execute such documents, agreement and certificates as the State, Counsel or Bond Counsel may reasonably request in connection with the sale and issuance of the Bonds from time to time.

D. Real Property. Legal title to all real property financed with the Grant shall be owned in fee simple by Grantee, free and clear of all encumbrances other than minor encumbrances. Grantee shall maintain a standard form of title insurance policy for the value of the purchase price of the property, and where appropriate will purchase endorsements to that policy in amounts to cover improvements. Where Grantee suffers a loss that is covered by title insurance, insurance proceeds will be used to remedy the loss if possible and if not, proceeds will be paid to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance).

E. Operation and Maintenance of the Project. Grantee agrees to complete the Project consistent with the approval by the voters of the Grantee of the Local GO Bonds and in accordance with the Project plans, specifications and budget and, if applicable, to contract with competent, properly licensed and bonded contractors and professionals in accordance with the Oregon Public Contracting Code and all other applicable federal, state and local laws regulating projects of the same type and purpose. If applicable, Grantee agrees to have plans and specifications for the Project prepared by a licensed architect or licensed engineer and to require that the Project meets applicable standards of survival in good condition. Prior to commencement of Project construction, if any, Grantee shall require the general contractor for the Project, if any, to procure and maintain in full force and effect throughout the entire time of construction and until one year after the date construction of the Project is complete, a performance and payment bond for the faithful performance and payment of all of the contractor's obligations for the total cost of the Project. The Grantee shall be named as the obligee on the bond. Grantee shall operate and maintain the Project in good repair and operating condition so as to preserve the public education benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements.

F. Insurance, Damage. Grantee shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining

similar facilities. If the Project or any portion is destroyed, insurance proceeds will be used to restore the Project to its prior condition if possible and if not, proceeds will be paid to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), unless Grantee has informed the State in writing that the insurance proceeds will be used to rebuild the Project.

- G. Sales, Leases and Encumbrances. So long as the Bonds, or any obligations issued to refund the Bonds, are outstanding, Grantee shall not sell, transfer, encumber, lease or otherwise dispose of any property paid for with disbursements of the Grant, unless the State has granted prior, written consent. In the case of sale, lease, exchange, transfer or other disposition of any substantial portion of or interest in the Project, Grantee shall, within 30 days of receipt of any proceeds from such disposition, pay such proceeds to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), for the defeasance or prepayment of debt service on such Bonds, unless the State agrees otherwise in writing.
- H. Condemnation Proceeds. If the Project or any portion is condemned, within 30 days of receipt of any condemnation proceeds, Grantee shall pay such proceeds to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), unless Grantee has, after consultation with the State and Bond Counsel, informed the State in writing that the condemnation proceeds will be used to rebuild the Project. The State shall consult with Bond Counsel and Grantee regarding the use of any proceeds paid to the State.
- I. Financial Records. Grantee shall keep accurate books and records for the use of the Grant and the Matching Amount, and maintain them according to generally accepted accounting principles established by the Governmental Accounting Standards Board (or any successor thereto) in effect at the time.
- J. Inspections; Information. Grantee shall permit the State and any party designated by the State: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Grantee's records regarding receipts, disbursements, contracts, investments and any other related matters. Grantee shall supply any reports and information related to the Project as the State may reasonably require.
- K. Records Maintenance. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Project, the Grant or the Matching Amount until the date that is three years following the later of the final maturity or earlier retirement of all of the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds) or such longer period as may be required by other provisions of this Agreement or applicable law.
- L. Notice of Default. Grantee shall give ODE prompt written notice of any Default as soon as any senior administrative or financial officer of Grantee becomes aware of its existence or reasonably believes a Default is likely.

- M. Indemnity; Release. To the extent permitted by law, Grantee shall defend, indemnify, save and hold harmless and release the State, its officers and employees from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and reasonable attorneys' fees and expenses at trial, on appeal and in connection with any petition for review, related to: (a) the tax-exempt status of interest on the Bonds and any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by the Internal Revenue Service, the Securities and Exchange Commission, Municipal Securities Rulemaking Board and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction over the Bonds arising from the Project or the actions, omissions or representations of Grantee; (b) any federal arbitrage and rebate penalties arising from the actions of Grantee; (c) the construction, use or condition of the Project; and (d) any actual or alleged act or omission by Grantee, or its employees, agents or contractors.
- N. Representations and Covenants Regarding the Tax-Exempt Status of the Bonds. Grantee acknowledges that the Grant will be funded with the proceeds of Bonds the interest on which is excluded from gross income for federal tax purposes. Grantee further acknowledges that the tax status of the Bonds could be adversely affected if Grantee's representations regarding the Project Costs are unreasonable or if Grantee includes, as Project Costs, amounts that are properly characterized as working capital expenditures. Grantee agrees to comply with all applicable provisions of the Code necessary to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes.

SECTION 8 – EVENTS OF DEFAULT

Any of the following constitutes an "Event of Default" of Grantee:

- A. Any false or misleading representation is made by or on behalf of Grantee, in this Agreement or in any document provided by Grantee to the State related to this Grant, the Matching Amount or the Project.
- B. Grantee fails to perform any obligation required under this Agreement, other than those referred to in subsection A of this Section 8, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Grantee by ODE, or such longer period as ODE may agree to in writing, if ODE determines Grantee has instituted and is diligently pursuing corrective action.

SECTION 9 – REMEDIES

- A. Remedies. Upon any Event of Default, the State may pursue any or all remedies in this Agreement, and any other remedies available at law or in equity (including specific performance, but not including acceleration) to collect amounts due or to become due or

to enforce the performance of any obligation of Grantee. Remedies may include, but are not limited to:

- (1) Terminating ODE's commitment and obligation to make any further disbursements of the Grant under this Agreement.
- (2) While any of the Grant remains undisbursed, withholding amounts otherwise due to Grantee.
- (3) Requiring repayment of the Grant (including any costs of defeasing the portion of the Bonds relating to the Project (including all allocable costs of issuance), if necessary and the State's costs of exercising its remedies under this Agreement, including reasonable attorney's fees and costs.

If, as a result of an Event of Default, the State demands return of the portion of the Grant moneys related to the Event of Default, the State may deduct such amount from other payments due from the State or any agency of the State to Grantee and legally available for such purpose, including but not limited to, any disbursements to Grantee from the State School Fund (after any moneys paid by ODE under an intercept agreement pursuant to the State School Bond Guaranty Program, ORS 328.284 or 238.698 or other intercept agreements entered into prior to the date of this Agreement) and any payment to Grantee from the State under any other agreement, present or future, between the State or any agency of the State and Grantee.

- B. Application of Moneys. Any moneys collected by the State pursuant to Section 9.A will be applied first, to pay any reasonable attorneys' fees and other fees and expenses incurred by the State; then, to repay any Grant proceeds owed; and last, to pay any other amounts due and payable under this Agreement.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to the State is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right, power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The State is not required to provide any notice in order to exercise any right or remedy, except as set forth in Section 8.B.
- D. Default by the State; Remedies of Grantee. In the event the State defaults on any obligation in this Agreement, Grantee's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of the State's obligations.

SECTION 10 – MISCELLANEOUS

- A. Time is of the Essence. Grantee agrees that time is of the essence under this Agreement.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.

- (1) Nothing in this Agreement gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
- (2) This Agreement will be binding upon and inure to the benefit of ODE, Grantee, and their respective successors and permitted assigns.
- (3) Grantee may not assign or transfer any of its rights or obligations or any interest in this Agreement without the prior written consent of ODE, which consent will not be unreasonably withheld. ODE may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Grantee shall pay, or cause to be paid to ODE, any fees or costs incurred because of such assignment, including but not limited to reasonable attorneys' fees of ODE's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of the State beyond those in this Agreement, nor ODE's assignment relieve Grantee of any of its duties or obligations under this Agreement.
- (4) Grantee hereby approves and consents to any assignment or transfer of the administration of this Agreement that ODE deems to be necessary to any other agency of the State.

C. Disclaimer of Warranties; Limitation of Liability. Grantee agrees that:

- (1) The State makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) In no event is the State, any agency of the State or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Agreement or the existence, furnishing, functioning or use of the Project.

D. Notices. All notices to be given under this Agreement must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to ODE: Michael Elliott, School Facilities Coordinator
Department of Education
255 Capitol Street NE
Salem, Oregon 97310

If to Grantee: David Moore, Chief Financial Officer
Tigard-Tualatin School District

6960 SW Sandburg St.
Tigard, Oregon 97223

- E. No Construction Against Drafter. This Agreement is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Agreement is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Survival. Except as provided in Section 7.K and 7.N, and notwithstanding any other provision of this Agreement, the obligations of the parties under this Agreement survive disbursement of the Grant Amount and payment of the Bonds and do not terminate until the date that the Bonds, including any obligations issued to refund the Bonds are no longer outstanding.
- H. Amendments, Waivers. This Agreement may not be amended without the prior written consent of the State (and when required, Counsel or review by Bond Counsel) and Grantee. This Agreement may not be amended in a manner that is not in compliance with the Act or the provisions of the Code applicable to obligations bearing interest that is excludable from gross income. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- In the event that federal rules or federal laws change in a manner that affects the administration of this Agreement, the proceeds of the Bonds or the payment of debt service on the Bonds, the State and the Grantee agree to cooperate to implement any amendments to this Agreement that the parties deem necessary.
- I. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to the State by its attorneys.
- J. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State only to the extent Congress has appropriately abrogated the State's sovereign immunity and is not consent by the State to be sued in federal court. This paragraph is also not a waiver by the State of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- K. Integration. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.
- L. False Claims. Grantee will refer to the ODE contact designated to receive notices under this Agreement any credible evidence that a principal, employee, agent, sub-grantee contractor, contractor or other person has submitted a false claim under the False Claims Act, ORS180.750 to 180.785, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving funds provided under this Grant Agreement.
- M. Execution in Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

[DRAFT FORM OF XI-P GRANT AGREEMENT]

Grantee, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

STATE OF OREGON
acting by and through the
Department of Education

[TIGARD-TUALATIN SCHOOL DISTRICT]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

[], Assistant Attorney General

EXHIBIT A – PROJECT DESCRIPTION

See Attached

(Ballot Measure Title, Question and Summary Approved by District/Grantee voters)

EXHIBIT A-1 – PROJECT BUDGET

Grant Amount: \$ 3,050,000

Matching Amount: \$291,315,000

Other Amounts: \$ 1,299,126 (Oregon Seismic Rehabilitation Grant)

Total Project Budget: \$295,664,126

<u>Project Component</u>	<u>Total Budget</u>	<u>OSCIM Grant Portion</u>	<u>Total Matching & Other</u>
See Attached	\$295,664,126	\$ 3,050,000	\$292,614,126
	\$	\$	\$
	\$	\$	\$

**EXHIBIT B – EVIDENCE OF GRANTEE AUTHORIZATION AND LOCAL GO BONDS
MATCHING AMOUNT; OTHER CONDITIONS TO DISBURSEMENT**

The following shall be attached hereto:

Local GO Bond Documents

- Board Resolution calling the ballot measure election;
- Notice(s) of measure election as filed with county elections officer(s);
- Publication Affidavit of Ballot Title;
- Copy of Explanatory Statement, if filed, from Voters' Pamphlet;
- Sample Official Ballots;
- Certified election documents from county elections officer;
- Abstracts of Votes from county elections office(s);
- District's Determination of Election Results;
- Affidavit of Publication of Notice of Adoption of Resolution Classifying Taxes and Specifying Authorized Uses of Bond Proceeds, *if applicable to Grantee*;
- Board Resolution authorizing the issuance of Local GO Bonds;
- Certificate of District evidencing compliance with debt limitations and capacity;
- Copy of final Local GO Bonds settlement memorandum evidencing delivery and receipt of proceeds of Local GO Bonds to Grantee;
- Executed copy of Approving Opinion of Bond Counsel with Reliance Letter addressed to the State

Grant Agreement Required Documents

- Board Resolution authorizing the execution of the Grant Agreement;
- Opinion of Grantee's Counsel Required by Section 4. C. of Grant Agreement;
- Certificate from the Grantee's auditors described in Section 6. F. of Grant Agreement

EXHIBIT C – FORM OF DISBURSEMENT REQUEST

DISBURSEMENT REQUEST

DATED: [insert date of request]

Project Name: Constructing, Updating and Repairing Schools, Improving Safety and Technology, and Purchasing Curriculum, and to Pay the Costs of Issuance

Bonds: Article XI-P Bond Series Number: General Obligation Bonds, Series 2017

Date of Grant Agreement: February 13, 2017

Name of Grant Grantee: Tigard-Tualatin School District

On behalf of [School District _____] (the "Grantee") I hereby request a total disbursement of \$_____ (the "Disbursement") under the Grant Agreement identified above (the "Grant Agreement"). The following representations and certifications are made by the Grantee in connection with this Disbursement Request:

1. As of the date of this Disbursement Request, Grantee has spent a portion of the Grant Amount in the amount of \$[_____] as detailed on the attached list and documentation.
2. All of the Disbursements requested by this Disbursement Request will be used to reimburse Grantee for payments that Grantee has made or to make payments for Project Costs that are currently payable by Grantee.
3. With respect to amounts of the Disbursement used to reimburse Grantee, none of the expenditures that Grantee has requested for reimbursement were paid from the Matching Amount.
4. Grantee is eligible to receive the Disbursement under the terms of the Grant Agreement, and has satisfied all conditions that the Grant Agreement requires be satisfied for ODE to make the Disbursement.
5. The invoices or other documents provided to ODE in connection with this Disbursement Request evidence that the Project Costs to be paid from the Disbursement have been paid or are currently payable by Grantee.
6. All the Disbursements will be used to pay for Project Costs that have not been previously paid from disbursements under the Grant.
7. Except as disclosed by Grantee in writing to ODE, and attached hereto as an Exhibit, there is no litigation or formal governmental administrative proceedings, including any environmental or other matters, pending (or to the knowledge of Grantee, threatened) against or

affecting Grantee, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Grantee to perform all obligations required by this Agreement.

8. All representations of Grantee in the Grant Agreement are true and correct on the date of this Reimbursement Request and all warranties by Grantee in the Grant Agreement continue to be in effect.

9. There is no Default or Event of Default occurring under the Grant Agreement.

The certifications in this Disbursement Request are true and accurate to the best of my knowledge and belief, after reasonable investigation.

Capitalized terms that are used but are not defined in this Disbursement Request have the meanings defined for those terms in the Grant Agreement.

[SCHOOL DISTRICT]

By: _____

Name:

Title:

Date: _____

EXHIBIT D – PROJECT COMPLETION REPORT

[To Be Provided By Grantee Upon Project Completion]