

RESOLUTION NO. 5539-21

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE YMCA; AND APPROPRIATING SPECIAL PURPOSE REVENUES IN THE CITY'S GENERAL FUND DURING THE FY 2020-21 BUDGET.

WHEREAS, the Oregon Alliance of YMCAs ("YMCA"), on behalf of the State of Oregon, acting through its Early Learning Division of the Department of Education, has certain grant funds available for camps and early learning programs;

WHEREAS, the City has been awarded grant funds to be used for necessary operating, personnel or facility expenses, related to camps and early learning programs; which were not accounted for from other revenue in the City's budget; and which were or are incurred during the period between January 1, 2021 through June 30, 2021;

WHEREAS, under ORS 294.338(2), during the year the Council may authorize the acceptance of special purpose revenues and the associated appropriations through a special purpose revenue budget adjustment resolution; and

WHEREAS, the City received \$23,000 in special purpose revenues from the YMCA.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

**Section 1.** The City Manager is authorized to execute the grant agreement with the YMCA, which is attached as Exhibit A and incorporated by reference. The City Manager is authorized to make administrative modifications to the agreement to fully implement its intent.

**Section 2.** The City Manager is authorized and instructed to adjust the General Fund's budget to reflect receipt of the special purpose revenue and the associated appropriation:

General Fund Revenues: \$23,000.

General Fund Expenditures, Parks and Recreation: \$23,000.

**Section 3.** This resolution is effective upon adoption.

Adopted by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF TUALATIN, OREGON

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM

ATTEST:

BY \_\_\_\_\_  
City Attorney

BY \_\_\_\_\_  
City Recorder

**EXHIBIT A**  
**RESOLUTION NO. 5539-21**

**2021 OREGON CAMPS RELIEF STATE FUNDING**  
**SUBRECIPIENT GRANT AGREEMENT**

Grant Number: **2021ORCAMPS**

This grant agreement (“Agreement”), dated as of the date the Agreement is fully executed, is between the Oregon Alliance of YMCAs (“YMCA”), with the YMCA of Columbia Willamette as its fiscal agent, on behalf of the State of Oregon, acting through its Early Learning Division of the Department of Education (“ODE”) and **City of Tualatin** (“Subrecipient”). This Agreement becomes effective only when fully signed and approved as required by applicable law (“Effective Date”). Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire **June 30, 2021**.

This Agreement includes Exhibit A - Use of Funds/ Project Description.

**SECTION 1 - KEY GRANT TERMS**

The following capitalized terms have the meanings assigned below.

**Grant Amount: \$23,000**

**Performance Period: Grant funds must be applied toward eligible expenditures accrued between January 1, 2021 and June 30, 2021.**

**SECTION 2 - FINANCIAL ASSISTANCE**

The YMCA shall provide Subrecipient, and Subrecipient shall accept from YMCA, a grant (“Grant”) in an aggregate amount not to exceed the Grant Amount.

**SECTION 3 – DISBURSEMENT**

- A. Full Disbursement. Upon execution of this Agreement and satisfaction of all conditions precedent, YMCA shall disburse the full Grant to Subrecipient.
- B. Conditions to Disbursements. YMCA has no obligation to disburse funds unless the ODE provides YMCA sufficient funds currently allocated for this Agreement. In addition, payment of funds by YMCA is contingent on YMCA receiving state appropriations, limitations, allotments or other expenditure authority sufficient to allow YMCA, in the exercise of its reasonable administrative discretion, to make payment, and notwithstanding anything in the Agreement, the failure to make payment based on the exercise of this reasonable administrative discretion does not constitute a default. In such an event, YMCA has no further obligation to disburse funds to Subrecipient.

**SECTION 4 - USE OF GRANT**

The Subrecipient will use the Grant for the purposes described in Exhibit A. The Subrecipient may not use the Grant to cover costs scheduled to be paid for from another State of Oregon agency or any third party.

**SECTION 5 - REPRESENTATIONS AND WARRANTIES OF SUBRECIPIENT**

The Subrecipient represents and warrants to YMCA:

A. Organization and Authority.

- (1) The Subrecipient is validly organized and existing under the laws of the State of Oregon.
- (2) The Subrecipient has all necessary right, power and authority under its organizational documents and applicable Oregon law to execute and deliver this Agreement and incur and perform its obligations under this Agreement.
- (3) This Agreement has been authorized by an ordinance, order or resolution of Subrecipient's governing body if required by its organizational documents or applicable law.
- (4) This Agreement has been duly executed by Subrecipient, and when executed by YMCA, is legal, valid and binding, and enforceable in accordance with its terms.

B. Grant. Subrecipients must use the Grant Funds to cover only those costs that (1) are necessary operating, personnel or facility expenses, related to camps and early learning programs; (2) were not accounted for from other revenue in the Subrecipient's budget most recently approved as of February 1, 2021; and (3) were or are incurred during the period from January 1, 2021 through June 30, 2021.

C. Full Disclosure. The Subrecipient has disclosed in writing to YMCA all facts that materially adversely affect the Grant, or the ability of Subrecipient to perform all obligations required by this Agreement. The Subrecipient has made no false statements of fact, nor omitted information necessary to prevent any statements from being misleading. The information contained in this Agreement, including Exhibit A, is true and accurate in all respects.

D. Tax Compliance. Subrecipient is not in violation of any Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue under ORS 305.620.

E. Subrecipient represents that it has never been in violation of any criminal law involving fraud or bribery.

**SECTION 6 - COVENANTS OF SUBRECIPIENT**

The Subrecipient covenants as follows:

A. Notice of Adverse Change. The Subrecipient shall promptly notify YMCA of any adverse change in the activities, prospects or condition (financial or otherwise) of Subrecipient related to the ability of Subrecipient to perform all obligations required by this Agreement.

B. Compliance with Laws.

- (1) Subrecipient will comply with the requirements of all applicable federal, state and local laws, rules, regulations, and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings.
- (2) Subrecipient is responsible for all federal or state tax laws applicable to its implementation of the Project described in Exhibit A and its use of the Grant or compensation or payments paid with the Grant.

- C. Financial Records. Subrecipient will cooperate with YMCA to provide all necessary financial information and records to comply with the requirements of this Agreement and any auditing or reporting requirements authorized or permitted by state law. Subrecipient are required to provide, and YMCA will obtain from Subrecipient, any information necessary for such reporting and compliance. Subrecipient is required to keep proper books of account and records on all activities associated with the Grant, including, but not limited to, invoices, cancelled checks, payroll records, instruments, agreements and other supporting financial records documenting the use of the Grant. Subrecipient is required to maintain these books of account and records in accordance with generally accepted accounting principles and in sufficient detail to permit YMCA and the State of Oregon to verify how Grant Funds were expended. Subrecipient are required to retain these books of account and records until five years after the expiration of termination of this Agreement or the date that all disputes, if any, arising under this Agreement have been resolved, whichever is later.
- G. Inspection. The Subrecipient shall permit YMCA, and any party designated by YMCA, the Oregon Secretary of State's Office, and their duly authorized representatives, at any reasonable time, to inspect and make copies of any accounts, books and records related to the administration of this Agreement. The Subrecipient shall supply any Agreement-related information as YMCA may reasonably require.
- H. Notice of Event of Default. The Subrecipient shall give YMCA prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Subrecipient becomes aware of its existence or reasonably believes an Event of Default is likely.
- I. Indemnity. Subrecipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless YMCA and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Subrecipient, or its employees, agents or contractors, that is related to this Agreement; however, the provisions of this section are not to be construed as a waiver by YMCA of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- K. Continued Tax Compliance. Subrecipient shall, throughout the duration of this Agreement, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state.

<b>SECTION 7 – DEFAULT</b>
----------------------------

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

- A. Misleading Statement. Any material false or misleading representation is made by or on behalf of Subrecipient, in this Agreement or in any document provided by Subrecipient related to this Grant.
- B. The Subrecipient fails to perform any obligation required under this Agreement, other than those referred to in subsection A of this section, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Subrecipient by YMCA. YMCA may agree in writing to an extension of time for correction if it determines Subrecipient instituted and has diligently pursued corrective action.

<b>SECTION 8 – REMEDIES</b>
-----------------------------

Upon the occurrence of an Event of Default, YMCA may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of YMCA's

obligations to make the Grant or further disbursements, return of all or a portion of the Grant amount, payment of interest earned on the Grant amount, and declaration of ineligibility for the receipt of future awards from YMCA.

If, as a result of an Event of Default, YMCA demands return of all or a portion of the Grant amount or payment of interest earned on the Grant amount, Subrecipient shall pay the amount upon YMCA's demand. The ODE may also recover all or a portion of any amount due from Subrecipient by deducting that amount from any payment due to Subrecipient from the State of Oregon under any other contract or agreement, present or future, unless prohibited by state or federal law. YMCA reserves the right to turn over any unpaid debt under this Section 8 to the ODE, the Oregon Department of Revenue or a collection agency and may publicly report any delinquency or default. These remedies are cumulative and not exclusive of any other remedies provided by law.

In the event YMCA defaults on any obligation in this Agreement, Subrecipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of YMCA's obligations.

## SECTION 9 - TERMINATION

In addition to terminating this Agreement upon an Event of Default as provided in Section 8, YMCA may terminate this Agreement with notice to Subrecipient under any of the following circumstances:

- A. The Oregon Department of Administrative Services notifies ODE and the YMCA of any anticipated shortfall or reduction in applicable revenues or YMCA fails to receive sufficient funding, appropriations or other expenditure authorizations to allow YMCA, in its reasonable discretion, to continue making payments under this Agreement.
- B. There is a change in federal or state laws, rules, regulations or guidelines so that the uses of the Grant are no longer eligible for funding.

This Agreement may be terminated at any time by mutual written consent of the parties. All funds used up until the date of the termination may be used to reimburse costs for necessary operating, personnel or facility expenses, related to camps and early learning programs which were not accounted for from other revenue in the Subrecipient's budget most recently approved as of February 1, 2021, and were or are incurred during the period between January 1, 2021 through June 30, 2021. All other funds must be returned to YMCA via check or ACH transfer within 15 days. A full report of any funds is required.

## SECTION 10 – MISCELLANEOUS

- A. No Implied Waiver. No failure or delay on the part of YMCA to exercise any right, power, or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- B. 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 of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon 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.

- C. Notices and Communication. Except as otherwise expressly provided in this Agreement, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Subrecipient or YMCA at the addresses listed in Exhibit A, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the receiver's email system that the notice has been received by the receiver's email system or 2) the receiver's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

- D. Amendments. This Agreement may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.
- E. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.
- F. Successors and Assigns. This Agreement is binding upon and inure to the benefit of ODE, YMCA, Subrecipient, and their respective successors and assigns, except that Subrecipient may not assign or transfer its rights, obligations or any interest without the prior written consent of YMCA.
- G. 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.
- H. Integration. This Agreement (including all exhibits, schedules or attachments) constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.
- I. No Third Party Beneficiaries. YMCA and Subrecipient are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives or provides, or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise.
- J. Survival. All provisions of this Agreement that by their terms are intended to survive shall survive termination of this Agreement.
- K. Time is of the Essence. Subrecipient agrees that time is of the essence under this Agreement.
- L. Attorney Fees. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement will be entitled to recover from the other its reasonable attorney fees and costs and expenses at trial, in a bankruptcy, receivership or similar proceeding, and on appeal. Reasonable attorney fees shall not exceed the rate charged to YMCA by its Department of Justice attorneys.
- M. Public Records. YMCA's obligations under this Agreement, and all related records, are subject to the Oregon Public Records Laws.

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



Oregon Alliance of YMCAs  
with YMCA of Columbia-Willamette  
as its fiscal agent

City of Tualatin

By: \_\_\_\_\_  
Marisa Fink, Ed.D.

By: \_\_\_\_\_  
Julie Ludemann

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

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

APPROVED AS TO LEGAL  
SUFFICIENCY IN ACCORDANCE  
WITH ORS 291.047:

Joshua Nasbe  
Assistant Attorney General  
4/2/2021 by email

**EXHIBIT A - USE OF FUNDS/ PROJECT DESCRIPTION**

Subject to Sections 1 to 10 of this Agreement, these Grant Funds may be used to reimburse those costs that: (1) are necessary operating, personnel or facility expenses, related to camps and early learning programs; (2) were not accounted for from other revenue in the Subrecipient's budget most recently approved as of February 1, 2021; and (3) were or are incurred during the period between January 1, 2021 through June 30, 2021.

The Subrecipient shall deliver to YMCA no later than July 30, 2021 a final report accounting for the use of the Grant Funds accompanied by a certification statement that all such costs, including no more than 3% of the Grant Amount for the Subrecipient's administrative costs paid by this Grant, are not excluded from funding, are not excluded from funding, either by the terms of this Agreement or by any exclusion identified by YMCA in writing.

Grant Funds may not be used for construction of buildings, entertainment, fines and penalties, fundraising, goods or services for personal use, political activities, promotional gifts and prizes, and purchase of land, buildings or vehicles.

Grant funds may not be used to pay for any costs incurred after June 30, 2021. For any unexpended Grant funds, YMCA will direct Subrecipient on how to return or expend any such funds.

Notices, questions and communication shall be directed to Marisa Fink at [marisa@oregonymcas.org](mailto:marisa@oregonymcas.org). Reports shall be delivered to YMCA via Google Form provided by YMCA by the deadline described in Exhibit A.



## Certificate Of Completion

Envelope Id: 6294506D0AD5442185B0BE9346EF6284	Status: Sent
Subject: Please DocuSign: City of Tualatin.pdf	
Source Envelope:	
Document Pages: 7	Signatures: 0
Certificate Pages: 1	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Marisa Fink
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	610 Stillwell Ave
	nil
	Tillamook, OR 97141
	marisa@oregonymcas.org
	IP Address: 47.39.39.12

## Record Tracking

Status: Original	Holder: Marisa Fink	Location: DocuSign
4/10/2021 1:35:34 PM	marisa@oregonymcas.org	

## Signer Events

Signature	Timestamp
Julie Ludemann jludemann@tualatin.gov Security Level: Email, Account Authentication (None)	Sent: 4/10/2021 1:38:17 PM Viewed: 4/12/2021 1:27:14 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	

Marisa Fink  
marisa@oregonymcas.org  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

## In Person Signer Events

Signature

Timestamp

## Editor Delivery Events

Status

Timestamp

## Agent Delivery Events

Status

Timestamp

## Intermediary Delivery Events

Status

Timestamp

## Certified Delivery Events

Status

Timestamp

## Carbon Copy Events

Status

Timestamp

## Witness Events

Signature

Timestamp

## Notary Events

Signature

Timestamp

## Envelope Summary Events

Status

Timestamps

Envelope Sent	Hashed/Encrypted	4/10/2021 1:38:17 PM
---------------	------------------	----------------------

## Payment Events

Status

Timestamps