



CITY OF SALEM

555 Liberty St SE
Salem, OR 97301

Revisions to the Agenda City Council

Monday, August 13, 2018

6:00 PM

Council Chambers

3.3c. [18-375](#)

Revised Report - Revision to language in number one of the Facts and Findings section.

United States Department of Justice Edward Byrne Memorial Justice Assistance Grant

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Revised - Revised Report.

Version 2 of the staff report was created due to the language in item number one of the Facts and Findings section was revised.



Staff Report

File #: 18-375

Version: 2

Date: 8/13/2018

Item #: 3.3c.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Jerry Moore, Chief of Police

SUBJECT:

Revised Report - Revision to language in number one of the Facts and Findings section.

United States Department of Justice Edward Byrne Memorial Justice Assistance Grant

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

ISSUE:

Shall the City Council authorize the application for, and if awarded, execution of all documents, including the attached Intergovernmental Agreement with Marion County, associated with a U.S. Department of Justice, Justice Assistance Grant in the amount of \$75,866, for Federal Fiscal Year 2018?

RECOMMENDATION:

Authorize the application for and if awarded, execution of all documents including the attached Intergovernmental Agreement with Marion County, associated with a U.S. Department of Justice, Justice Assistance Grant in the amount of \$75,866, for Federal Fiscal Year 2018.

SUMMARY AND BACKGROUND:

The U.S. Department of Justice has announced the availability of funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, for Federal Fiscal Year 2018, to assist local law enforcement efforts in preventing and reducing crime.

The City of Salem has applied for and received JAG Program grants for several years. The grant funds have been used to support the Community Service Officer (CSO) program. The CSOs provide a valuable service to the community by responding to non-emergency calls where enforcement action

and arrest powers are not required, thereby allowing patrol officers more time to respond to, investigate, and solve more serious offenses. The CSOs respond to calls for non-injury accidents, traffic control, cold burglaries, stolen vehicles, animal complaints, noise complaints, found property, and other events of a similar priority.

FACTS AND FINDINGS:

1. The U.S. Department of Justice, Bureau of Justice Assistance (BJA) has identified the City of Salem and Marion County as "disparate" jurisdictions and requires a joint application from the two entities. As set forth in the grant solicitation, Marion County and the City of Salem are to sign and submit an Intergovernmental Agreement (Attachment 1 and Exhibit A) outlining how grant funds are to be accessed and reported. The City is designated as the fiscal agent and is responsible for submitting the grant application and all required compliance reports. Marion County is reviewing the Intergovernmental Agreement and determining whether it will participate in the application. During the 2017 grant application process, the BJA stated that a determination had not been made regarding the eligibility of applications that were not made jointly, and recommended the City submit independently as Marion County chose not to participate. BJA has not yet made a determination regarding the City's 2017 grant application.
2. The City of Salem's portion of the award for 2018 is expected to be \$75,866. Marion County's portion of the award is expected to be \$0.
3. No local match is required for this grant.
4. The City of Salem's portion of the grant funds will be used to fund the Community Service Officer program.
5. The City of Salem must make the grant application available for review by the City Council and the public not fewer than thirty (30) days before the application is submitted. As the deadline for submission of the grant application is August 22, 2018, any grant funds awarded would be withheld until the thirty-day review period has passed.
6. The City will be required to provide quarterly financial status reports, quarterly progress reports, and a final report to the grant monitors.
7. The City will be required to comply with the awarded grant's terms and conditions and other legal requirements, including but not limited to, the Office of Management and Budget (OMB), Department of Justice regulations, and such other federal regulations included in the award. These requirements will include complying with applicable federal civil rights laws, OMB circulars, and Federal Funding Accountability and Transparency Act (FFARA) Requirements. Grant recipients are also required to permit U.S. Department of Homeland Security (DHS) personnel access to any of the recipients' correctional or detention facility, meet with any alien regarding their right to be in the U.S., and to notify

DHS prior to the release of an alien in the recipient's custody if requested by DHS.

8. Prior to receiving the grant funds, the City Manager and City Attorney will be required to sign several certifications. A materially false, fictitious, or fraudulent statement in the certifications may subject the person signing to criminal prosecution, and the City to civil penalties.

Prior to City receiving the funds, the City Attorney is required to make two certifications;

- That the City is in compliance with 8 USC 1373, regarding "Communication between government agencies and the Immigration and Naturalization Service." The City Attorney has executed that certification in the past, and likely will be able to do so in this instance.
- That the City is in compliance with 8 USC 1226(a)&(c), 1231(a)(4), 1357(a), and 1366 (1)&(3). These laws deal with the authority of the U.S. Attorney General to issue warrants for "aliens," removal of aliens, criminal penalties for "harboring" aliens, the powers of immigration officers to take certain actions without warrants, and the U.S. Attorney General's obligation to provide an annual report on the number of illegal aliens in prison and efforts to remove criminal aliens.

These certifications are new for the 2018-2019 grant. There has been some dispute between the U.S. DOJ and the state of Oregon in regard to the obligation or authority to detain aliens arrested and held on non-immigration offenses, and whether the new state law, House Bill 3464 (2017), complies with federal law. Further, the certifications tied to last years' grants have been subject of litigation throughout the United States. Most recently, the federal 9th Circuit Court of Appeals issued a decision that ruled against the President's executive order that purports to withhold funds from "sanctuary jurisdictions," however, the court also vacated a nationwide injunction in regard to the executive order.

The U.S. DOJ has withheld disbursing grants from last year, pending disposition of the legal issues regarding the certifications.

Both the Oregon DOJ, the City Attorney, and counsel for other local governments are assessing whether Oregon law and local regulations comply with the U.S. DOJ's interpretation of the applicable federal law.

Because the certifications do not need to be submitted until the City has been awarded the grant, the certifications are not being submitted now, and the City Attorney will determine at a later date whether the certifications may be made.

- The City Manager will need to sign a certification that the application complies with all applicable law, such as Lobbying, Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; a certification as to standard assurances regarding compliance the terms and conditions of the applicant and grant

award, and a certification that he adopts the certifications made by the City Attorney.

9. Application for and acceptance of the JAG program grant funds will benefit the public and the City of Salem.

Skip Miller
Deputy Chief

Attachments:

1. Intergovernmental Agreement with Marion County
2. Exhibit A to the IGA

THE STATE OF OREGON
COUNTY OF MARION

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF SALEM AND THE COUNTY OF MARION
FOR THE
2018 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into by the COUNTY OF MARION, acting by and through its governing body, hereinafter referred to as "COUNTY," and the CITY OF SALEM, acting by and through its governing body, hereinafter referred to as "SALEM," and referred to collectively herein as the "Parties," witnesseth:

WHEREAS, this Agreement is made under the authority of ORS 190.010 *et seq.*; and

WHEREAS, each party to this Agreement, in performing the governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party: and

WHEREAS, each party to this Agreement finds that the performance of this Agreement is in the best interest of both parties and that the undertaking will benefit the public.

NOW THEREFORE, the Parties agree as follows:

Section 1.

Disbursal Of Funds. In anticipation of receiving the JAG allocation for SALEM and the COUNTY as listed on Exhibit "A" which is attached hereto and incorporated herein by this reference, SALEM, as the grant applicant and fiscal agent, agrees to disburse \$0 received from this JAG allocation to the COUNTY from a total award of \$75,866.00.

Section 2.

Indemnification. Subject to the limits imposed under the Oregon Tort Claims Act, each Party hereto agrees to indemnify, save, and hold harmless the other Party to this Agreement and their officers, agents, employees and volunteers from and against any and all claims, suits, demands, actions, losses, damages, liabilities, and costs and expenses of any nature whatsoever (including reasonable attorneys' fees and disbursements) resulting from or arising out of or relating to the activities of the indemnifying Party or any of its officers, employees, contractors, or agents acting under this Agreement. Each Party hereto shall give to the other Party notice in writing of any such claims, suits, demands, actions, losses, damages, or liabilities within twenty (20) days of the date that Party receives notice of any such claims. No Party hereto shall settle, compromise or take any action prejudicial to the other Party's defense of or interest in such claims without the express written consent of the potentially prejudiced Party. Notwithstanding any other provision of this section, if COUNTY fails to comply with the terms of this agreement or of any program requirements and grant provisions applicable to the JAG funds, and SALEM is required to repay a portion of the grant funds as a result of COUNTY's actions, COUNTY shall repay to SALEM, upon demand, the amounts paid by SALEM.

Section 3.

Trust Fund/Fiscal Agent. The Parties hereby agree that SALEM will administer the financial and programmatic functions assigned to the "fiscal agent" under the terms of the grant. To the extent required by JAG legislation: a) SALEM will establish a non-interest bearing trust account for JAG funds and make all decisions regarding administration of and distributions out of the fund; and b) SALEM will complete and submit quarterly financial reports and the annual performance report to the Bureau of Justice Assistance (BJA) as required. COUNTY hereby agrees to cooperate with and timely provide SALEM with the data necessary to complete any section of the quarterly financial and performance reports or the annual performance reports regarding COUNTY's activity. In addition, COUNTY shall submit to SALEM, the fiscal agent under the program, all information necessary to complete the preparation of the quarterly financial and program reports within five (5) calendar days after the end of each calendar quarter. These submissions shall begin once the award is accepted.

Section 4.

Each Party to this Agreement shall be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other Party.

Section 5.

By entering into this Agreement, the Parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

Section 6.

Effective Date, Term. This Agreement shall become effective upon the date of the last signature hereon, and shall continue until completion of the requirements of the Grant Award, unless sooner terminated as provided herein. The Agreement shall terminate immediately without notice being given by either Party if the Bureau of Justice Assistance fails to make a 2018 Edward Byrne Memorial Justice Assistance Grant award to the Parties for 2018.

Section 7.

Warranty of Parties. The COUNTY warrants that nothing in any of the COUNTY'S activities related to this Agreement are, or would result in, the breach of any state statutes, rules, program requirements and grant provisions applicable to the funds, and that if any of the COUNTY's activities related to this Agreement result in such a breach, the COUNTY shall be solely responsible for such breach, and shall hold SALEM harmless and indemnify SALEM for an amount equal to the maximum amount of liability for such breach. Nothing herein shall cause the COUNTY to be liable to (or require the COUNTY to indemnify and hold harmless) SALEM in the event that the breach, loss, damage or obligation is caused or contributed to by SALEM.

Section 8.

Compliance with Applicable Laws. The Parties agree that they will comply with any federal, state, and local laws, regulations, executive orders and ordinances that may be applicable to the work under this Agreement, including, but not limited to, program requirements and grant provisions applicable to the JAG funds, which by this reference are made a part hereof.

Section 9.

Records Maintenance; Access. The Parties hereby acknowledge and agree that they and their duly authorized representatives and the federal government shall have access to such fiscal records and other books, documents, papers, and writings of the other Party that are pertinent to this Agreement to perform

examinations and audits and make excerpts and transcripts. The Parties shall retain and keep accessible all such fiscal records, books, documents, papers, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later. Copies of applicable records shall be made available upon request.

Section 10.

The Parties agree that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, age or physical or mental disability suffer discrimination in the performance of this Agreement when employed by Party. Parties agree to comply with all applicable requirements of state and federal civil rights and rehabilitation statutes, rules and regulations. Further Parties agree not to discriminate against minority-owned, women-owned, or emerging small businesses in awarding subcontracts as required by ORS 279A.110.

Section 11.

Agency. No Party to this Agreement, nor the officers, employees or agents of that Party are agents of the other Party. Each Party shall be separately and exclusively responsible for acts, errors, and omissions of its own officers, employees, and agents except to the extent provided under the indemnity provisions of this Agreement.

Section 12.

Entire Agreement. This Agreement sets forth the entire understanding between the Parties with respect to the subject matter of this Agreement.

Section 13.

Termination. This Agreement may be terminated by mutual agreement of all Parties at any time. Any Party hereto may terminate this Agreement for any reason deemed appropriate in its sole discretion by giving not less than thirty (30) days written notice to the other Parties.

Section 14.

Modification. This Agreement may not be altered, modified, supplemented, or amended in any manner whatsoever except by mutual agreement of the Parties set forth in writing and executed with the same formalities as this Agreement. Any such alteration, modification, supplementation, or amendment, if made, shall be effective only in the specific instance and for the specific purpose given, and shall be valid and binding only if signed by the Parties.

Section 15.

Notice. Any notice provided for under this Agreement shall be sufficient if in writing and (1) delivered personally to the other Party hereto; (2) sent by U.S. Mail to the other Party, postage prepaid, certified mail, return receipt requested; (3) sent overnight by commercial courier to the other Party; or (4) sent by facsimile transmission to the other Party, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following addresses, or such other addresses as each party may specify in writing:

CITY OF SALEM
Steven D. Powers, City Manager
City of Salem
555 Liberty Street SE
Salem, OR 97301
Fax 503-588-6354

COUNTY OF MARION
John Lattimer, Chief Administrative Officer
County of Marion
555 Court Street NE
Salem, OR 97301
Fax 503-588-5237

Section 16.

Funds Available and Authorized. The Parties understand and agree that SALEM's payment of amounts under this Agreement is contingent on SALEM receiving from the Bureau of Justice Assistance funds and expenditure authority sufficient to allow SALEM, in the exercise of its reasonable administrative discretion, to make the payment under this Agreement.

Section 17.

Choice of Laws/Venue. This Agreement shall be governed and interpreted according to the laws of the State of Oregon, without regard to conflict of laws principles. Venue for litigation of any action regarding this Agreement shall be in the Circuit Court for Marion County, State of Oregon, unless the action is brought in federal court, in which case venue shall be in the federal district court for the District of Oregon. Each Party to this Agreement expressly waives any and all rights to maintain an action under this Agreement in any other venue.

Section 18.

Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

Section 19.

Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set for below.

CITY OF SALEM, OREGON

COUNTY OF MARION, OREGON

City Manager

Chief Administrative Officer

Dated: _____

Dated: _____

RECOMMENDED BY:

Marion County Sheriff Date

APPROVED AS TO FORM:

County Legal Counsel Date

Marion County Contracts Date

2018 OREGON LOCAL JAG ALLOCATIONS

Listed below are all jurisdictions in the state that are eligible for FY 2018 JAG funding, as determined by the JAG formula. For additional details regarding the JAG formula and award calculation process, with examples, please refer to the updated JAG Technical report here: <https://www.bja.gov/Jag/pdfs/JAG-Technical-Report.pdf> and current JAG Frequently Asked Questions here: <https://www.bja.gov/Funding/JAGFAQ.pdf>.

Finding your jurisdiction:

- (1) Disparate jurisdictions are listed in shaded groups below, in alphabetic order by county.
- (2) Eligible individual allocations are listed alphabetically below the shaded, disparate groupings.
- (3) Counties that have an asterisk (*) under the "Eligible Individual Allocation" column did not submit the level of violent crime data to qualify for a direct award from BJA, but are in the disparate grouping indicated by the shaded area. The JAG legislation requires these counties to remain a partner with the local jurisdictions receiving funds and must be a signatory on the required Memorandum of Understanding (MOU). A sample MOU is provided online at: <https://www.bja.gov/Funding/JAGMOU.pdf>. Disparate jurisdictions do not need to abide by the listed individual allocations, which are provided for information only. Jurisdictions in a funding disparity are responsible for determining individual amounts within the Eligible Joint Allocation and for documenting individual allocations in the MOU.

State	Jurisdiction Name	Government Type	Direct Allocation	Joint Allocation
OR	BENTON COUNTY	County	*	
OR	CORVALLIS CITY	Municipal	\$10,687	\$10,687
OR	JACKSON COUNTY	County	\$26,599	
OR	MEDFORD CITY	Municipal	\$56,648	\$83,247
OR	JOSEPHINE COUNTY	County	*	
OR	GRANTS PASS CITY	Municipal	\$16,726	\$16,726
OR	KLAMATH COUNTY	County	*	
OR	KLAMATH FALLS CITY	Municipal	\$10,831	\$10,831
OR	LANE COUNTY	County	\$38,580	
OR	EUGENE CITY	Municipal	\$81,953	\$120,533
OR	MARION COUNTY	County	*	
OR	SALEM CITY	Municipal	\$75,866	\$75,866
OR	MULTNOMAH COUNTY	County	\$11,981	
OR	GRESHAM CITY	Municipal	\$53,149	
OR	PORTLAND CITY	Municipal	\$326,564	\$391,694

OR	BEAVERTON CITY	Municipal	\$14,282	
OR	BEND CITY	Municipal	\$17,014	
OR	CLACKAMAS COUNTY	County	\$36,423	
OR	DESCHUTES COUNTY	County	\$12,413	
OR	DOUGLAS COUNTY	County	\$19,266	
OR	HILLSBORO CITY	Municipal	\$25,496	
OR	REDMOND CITY	Municipal	\$11,838	
OR	SPRINGFIELD CITY	Municipal	\$28,707	
OR	TIGARD CITY	Municipal	\$10,352	
OR	WASHINGTON COUNTY	County	\$33,260	
	Local total		\$918,635	