



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