

#10

AMENDMENT TO ALLOW FOR EXPENDITURE OF FISCAL YEAR 2019 UNEXPENDED FUNDS

Subject to the terms and conditions below, the State of Michigan, the Michigan Indigent Defense Commission (MIDC), and the Department of Licensing and Regulatory Affairs (LARA) (collectively "Grantor") and Alpena County ("Grantee") enter into this Agreement to allow Grantee to use funds remaining from Grant No. 2019-21 after September 30, 2019.

BACKGROUND

In June 2018, the Michigan Legislature appropriated funds to cover the cost of indigent defense services under the Michigan Indigent Defense Commission Act. Funding for fiscal year 2019 was distributed to funding units pursuant to a grant contract executed between each funding unit and Grantor. The funds distributed under these grant contracts included the state grant amount and the local share. The amount of the grants included funding for a full fiscal year--October 1, 2018, through September 30, 2019.

Pursuant to the MIDC Act, all indigent defense grant funds are required to be held in a restricted fund. MCL 780.993(14)(b). The MIDC Act also provides that unexpended funds in a system's restricted fund (not subject to MCL 780.993(11)) will be included in the system's subsequent fiscal year's expenditures through the subsequent year's compliance plan and cost analysis.

The Parties are unable to execute a new grant contract for fiscal year 2020 on or before October 1, 2019. The Parties agree, however, that Grantee should make indigent defense-related expenditures with unexpended funds from fiscal year 2019 in order to ensure the uninterrupted provision of indigent defense services.

TERMS

- Scope of Authority:* This agreement incorporates by reference the fiscal year 2019 grant contract and associated fiscal year 2019 compliance plan and cost analysis. If Grantee received a budget adjustment during fiscal year 2019, it should continue spending funds in accordance with the budget adjustment. Any funds used pursuant to this agreement shall be used consistent with the FY 19 approved compliance plan and cost analysis and shall not be used for any other purpose.
- Variation from Fiscal Year 2019 Spending:* Any variation in Grantee's spending requires prior written approval from the MIDC. Grantee must follow MIDC policy and procedure when applying for approval. The MIDC's approval of Grantee's fiscal year 2020 plan and/or cost analysis does not qualify as approval to deviate from Grantee's fiscal year 19 spending.
- Offset:* The state grant for fiscal year 2020 will be offset by the amount of unexpended funds (not subject to MCL 780.993(11)) remaining on September 30, 2019.
- Fund Balance Reporting:* Michigan Compiled Laws 780.993(15) requires Grantee to report all unexpended funds as of September 30th by October 31, 2019, to the MIDC.

5. *Incorporation:* All terms and conditions of the Parties' fiscal year 2019 grant agreement (including attachments) are incorporated into this Agreement. But if there is a conflict between the terms and conditions of the fiscal year 19 grant agreement and this Agreement, this Agreement prevails.

MISCELLANEOUS PROVISIONS

6. *Local Share:* Nothing in this agreement affects the calculation of the local share pursuant to the MIDC Act. That share is adjusted on an annual basis.

7. *Modification:* This Agreement, and all documents incorporated hereto, constitute the Parties' entire Agreement. This Agreement can only be modified by the Parties' written agreement.

8. *Waiver:* Failure to enforce any provision of this Agreement shall not constitute a waiver.

9. *Severability:* If any court of competent jurisdiction finds any part of this Agreement to be invalid or unenforceable, that part will be deemed deleted from this Agreement. The severed part will be replaced with a mutually agreeable provision that achieves the same or similar objectives. The remaining Agreement will continue in full force and effect.

10. *Headings:* The use of headings in this Agreement is for convenience only. Headings shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties.

11. *Termination:* This agreement shall terminate on December 31, 2019, or the date that the parties sign their FY 20 grant contract—whichever date is earlier. Expenditures made under this Agreement, however, shall be included and supported with documentation in the first report required under the FY20 grant contract.

12. *Signatories:* The signatories warrant that they are empowered to enter into this Agreement and agree to be bound by it.

LeAnn Droste, Director
Bureau of Finance and Administrative Services
Department of Licensing and Regulatory Affairs
State of Michigan

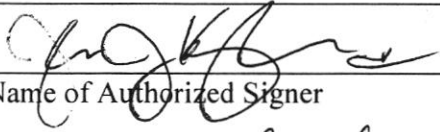
Date:

Loren Khogali, Executive Director
Michigan Indigent Defense Commission
Department of Licensing and Regulatory Affairs

Date:

9-19-2019

Date:


Name of Authorized Signer

Vice-chairman of Bd of Commissioners
Title

System Name



MICHIGAN INDIGENT
DEFENSE COMMISSION

September 10, 2019

Dear Local Stakeholders:

I am pleased to report that as we near the end of the 2019 fiscal year, the Commission distributed over \$80 million dollars statewide to support local funding units in providing indigent defense services consistent with the minimum standards set by the Commission.

In accordance with its statutory mandate, the Commission is currently in the process of reviewing and approving local funding unit compliance plans for fiscal year 2020. To date, the Commission has approved 93 of 124 compliance plans. The Commission's next meeting is October 15, 2019, at the Capitol National Building at 200 N. Washington Square in downtown Lansing, where it will continue to review compliance plans at that meeting. If you are unsure of the status of your compliance plan and cost analysis, please contact your Regional Manager.

FY20 Indigent Defense Budget and Unexpended FY19 Funds

The legislative appropriations process, which will determine the State of Michigan's fiscal year 2020 budget, is ongoing. We will update you when more information about the state's indigent defense budget is known.

At its August meeting, the Commission acknowledged the need to provide for uninterrupted indigent defense services in the case where a funding unit may not have a signed FY20 grant contract in place by October 1, 2020. In order to achieve this, the Commission authorized the opportunity for local funding units to amend the FY19 grant contract to enable them to continue to spend unexpended FY19 grant funds into FY20—consistent with the FY19 grant contract.

If you wish to continue spending FY19 funds as you wait for your FY20 grant contract, please sign the attached contract amendment and return it to LARA-MIDC-Info@michigan.gov no later than Monday, **September 25, 2019**. You should include your Regional Manager on this email.

Fourth Quarter Reporting

All systems with current grant contracts will be required to submit fourth quarter reports in October per the grant contract. The following information should be submitted by local funding units:

- A quarterly program report detailing progress on implementation of compliance;
- A financial status report with information about spending during the reporting period;
- A list of the attorneys providing services.

As part of its fourth quarter reporting, each local funding unit must report identified **unexpended FY19 grant funds** to MIDC no later than **October 31, 2019**. MCL 780.993(15). Local funding units will receive specific directions for submitting this information.

The MIDC website contains helpful information, checklists, templates, and links to the above items, as well as answers to questions regarding reporting. Our grants page is accessible here: www.michiganidc.gov/grants. In addition, MIDC staff will host an informational webinar to provide additional guidance and instructions regarding fourth quarter reporting.

Local Share

As we near the end of the FY19 grant year, please keep in mind that each funding unit is required under MCL 780.993(7) to maintain its local share. The total local share is reflected on the cover page of the current grant contract.

FY20 Grant Contract

The MIDC continues to work in partnership with local stakeholders to finalize a master contract for distribution of indigent defense grant funds in fiscal year 2020. We have done so with an eye on streamlining progress and financial reporting to make it easier for everyone.

Important Upcoming Dates

Please note the following important dates:

- **September 25, 2019:** Due date for signed amendment to FY19 grant contract allowing for continued expenditures into FY20;
- **October 2019:** Each funding unit is required to submit its fourth quarter reporting and supporting documentation in October pursuant to its grant contract.
- **October 31, 2019:** Deadline by which all systems are required to report FY19 grant balances as of September 30th to the MIDC. "Identified unexpended grant funds must be reported by indigent criminal defense systems on or before October 31 of each year." MCL 780.993(15).
- **December 31, 2019:** Deadline for any attorney receiving appointments in indigent defense cases to complete training required under Standard 1.

Please do not hesitate to contact me if you have any feedback, or your Regional Manager if you have questions about implementation or planning. We encourage you to continue to check our website, where you can find information regarding the time and location of the Commission's meetings, as well as other updated information.

Sincerely,

s/Loren Khogali

Loren Khogali, Executive Director
Michigan Indigent Defense Commission
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