



Legislation Details (With Text)

File #: 20-0299 **Version:** 1 **Name:** 3/16/20 Resolution to Accept and Allocate Michigan Indigent Defense Commission Grant Award, Approve Grant Contract, and Reallocate Local Share (\$393,530.00) (8 Votes Required)

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Title: Resolution to Accept and Appropriate Michigan Indigent Defense Commission Grant Award, Approve Grant Contract, and Reallocate Local Share (\$393,530.00) (8 Votes Required)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Ann Arbor FY20 Grant Packet.pdf

Date	Ver.	Action By	Action	Result
4/6/2020	1	City Council		
3/16/2020	1	City Council	Deleted from Agenda	

Resolution to Accept and Appropriate Michigan Indigent Defense Commission Grant Award, Approve Grant Contract, and Reallocate Local Share (\$393,530.00) **(8 Votes Required)**

This resolution seeks Council approval for a grant contract with the Michigan Indigent Defense Commission (MIDC), and further seeks authorization to accept and appropriate grant funds from the MIDC without regard to City Fiscal Year.

The MIDC was created by legislation in 2013 after an advisory commission recommended improvements to the state’s legal system. (MCL §780.991)

The MIDC is statutorily required to develop and oversee the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that criminal defense systems are providing effective assistance of counsel to all indigent adults in this state consistent with the safeguards of the United States constitution, the state constitution of 1963, and with the Michigan Indigent Defense Commission Act.

MIDC requires that all indigent defense delivery systems in Michigan must submit compliance plans and cost projections for all the standards approved by the Department of Licensing and Regulatory Affairs.

A system’s duty of compliance with the terms of the compliance plan is contingent upon receipt of a grant in the amount contained in the plan and cost analysis approved by the MIDC. See MCL §780.997.

Budget/Fiscal Impact: No matching funds are required for acceptance of this grant award.

However, the City is required to maintain local indigent defense funding, an amount referred to as the "Local Share." For FY20, the local share is determined by taking the FY19 local share amount of \$202,061.50 and indexing it by 3% or the recent Urban Consumer Price Index (CPI), whichever is less. The most recent period CPI was 2.2%. Thus, the FY20 local share amount is \$206,506.85. The Local Share has been budget in the FY20 General Fund 15th District Court budget. For reporting purposes, the Local Share funding does need to be transferred from the FY20 General Fund 15th District Court budget to the FY20 Indigent Defense Fund.

The Michigan Indigent Defense Act requires indigent defense funds, both State and Local, to be allocated and maintained in a separate fund within the local chart of accounts to allow for better management and monitoring of indigent defense funds.

Prepared by: Shryl Samborn, Court Administrator, 15th Judicial District Court

Approved by: Tom Crawford, Interim City Administrator

Whereas, The United States Constitution and the amendments thereto, as well as the Michigan Constitution provide that people charged with criminal offenses are entitled the right to have an attorney represent them in court proceedings;

Whereas, The judicial system recognizes the rights of persons without the ability to pay for an attorney and/or other legal services (such as hiring investigators or expert witnesses) have the same right of legal representation in the court system as a person who can afford to pay for an attorney and/or other legal services;

Whereas, The State of Michigan ("State") has created the Michigan Indigent Defense Commission ("MIDC") within the Department of Licensing and Regulation;

Whereas, The MIDC is purposed with creating more effective and equitable funding at the State and local level for persons who are charged with criminal offenses and do not have the financial ability to pay for an attorney and/or other legal services;

Whereas, The State, through the MIDC, is separating the financial matters of court appointed cases away from the court system to local court funding units (i.e., in this case, the City of Ann Arbor on behalf of the 15th District Court, which requires creation of a separate fund within the local chart of accounts);

Whereas, The MIDC accepted grant applications to fund court-appointed attorney and related legal services;

Whereas, This separate fund within the local chart of accounts will accept State funds through MIDC grants and the Local Share, and charge all MIDC-related costs to this fund;

Whereas, At the end of the City's fiscal year any fund balance in the Indigent Defense Fund must remain in the separate fund and not revert to the City's general fund so that funds are used exclusively for court appointed attorney and related legal services;

Whereas, The MIDC recommends any fund balance at the end of the City's fiscal year shall remain in the fund to carry-over to the next year to be used for future compliance expenditures;

Whereas, The City acknowledges that a separate fund will allow for better management of the grant

funds and monitoring by the local and state interested parties; and

Whereas, City Council determines that this is an important service and source of funding for defendants in criminal cases who do not have the ability to afford an attorney or legal services in the 15th District Court;

RESOLVED, That City Council accept the MIDC Grant Award for expenditure without regard to City Fiscal Year and approve the Grant Contract;

RESOLVED, That \$73,139 be appropriated to the FY20 Indigent Defense Fund with the source of revenue as the State of Michigan, that \$113,884 be appropriated from the Indigent Defense Fund fund balance, that \$206,507 be appropriated in the FY20 Indigent Defense Fund with the source of revenue as a transfer from the FY20 15th District Court General Fund for the local share contribution, and that \$206,507 be reallocated from Professional Services to Transfers to Other Funds within the FY20 15th District Court General Fund budget to be transferred to the FY20 Indigent Defense Fund for the local share contribution;

RESOLVED, That all amounts appropriated in this resolution are made available without regard to fiscal year;

RESOLVED, That the Mayor and City Clerk be authorized and directed to execute the contract on behalf of the Court and the City following approval as to form by the City Attorney and as to substance by the City Administrator;

RESOLVED, That Council authorize the City Administrator to take all necessary administrative actions to implement this resolution; and

RESOLVED, That City Council authorize the City Finance Department to establish and maintain a separate fund to receive, hold, disburse and account for funds awarded pursuant to this grant as well as the local share contribution.

GRANT BETWEEN
THE STATE OF MICHIGAN
MICHIGAN INDIGENT DEFENSE COMMISSION (MIDC)
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS (LARA)
AND
City of Ann Arbor

GRANTEE/ADDRESS:

Christopher Taylor
Mayor
301 E. Huron Street
Ann Arbor, MI 48104
734-794-6161

GRANTOR/ADDRESS:

Michigan Indigent Defense Commission
Department of Licensing and Regulatory Affairs
200 N. Washington Square
Lansing, MI 48933
517-657-3060
866-291-0874

GRANT PERIOD:

From October 1, 2019 to September 30, 2020

TOTAL AUTHORIZED BUDGET: \$393,529.96

FY 20 State Grant Contribution: \$73,138.66
FY 20 Local Share Contribution: \$206,506.85
FY 19 Prior Year Unspent Funds: \$113,884.45

ACCOUNTING DETAIL: Accounting Template No.: 6411113T032

SIGMA Vendor Code: 0047636

GRANT

This is Grant # 2020-68 between the Michigan Indigent Defense Commission (MIDC) (Grantor), and the City of Ann Arbor (Grantee), subject to terms and conditions of this grant agreement (Agreement).

1.0 Statement of Purpose

The purpose of this Grant is to provide funding to assist the Grantee to comply with the Compliance Plan and Cost Analysis approved by the MIDC for the provision of indigent criminal defense services through the Standards approved by LARA on May 22, 2017, and the process described in the Michigan Indigent Defense Act.. The funding for this grant is contingent upon an appropriation by the legislature that is signed by the Governor. In the event a budget is not enacted by the effective date of the grant, the grant agreement will not be executed.

1.1 Definitions

- A. Budget means a detailed statement of estimated costs consistent with the Grantee's approved Cost Analysis and required to implement the Compliance Plan.
- B. Budget Category means the aggregate of all funds in each of the high-level categories within Attachment B to the funding unit's grant budget.
- C. Compliance Plan is the plan submitted by the local funding unit and approved by the MIDC that specifically addresses how the Grantee shall meet the approved minimum standards established by the MIDC.
- D. Cost Analysis is a statement of the types of expenditures and funding necessary to bring Grantee's indigent defense system into compliance with the approved minimum standards established by the MIDC, including a statement of the funds in excess of the Grantee's local share as defined under the MIDC Act and as outlined in the Compliance Plan.
- E. MIDC Act means the Michigan Indigent Defense Commission Act, Public Act 93 of 2013, MCL 780.991 *et seq* as amended, enacted for the purpose of creating the Michigan Indigent Defense Commission and creating minimum standards for the local delivery of indigent criminal defense services that meet the constitutional requirements for the effective assistance of counsel.
- F. MIDC means the Michigan Indigent Defense Commission.
- G. Subgrantee means a governmental agency or other legal entity to which an MIDC subgrant is awarded by the Grantee. Attorneys representing indigent defendants, including both public defenders and attorneys contracted to represent indigent defendants, public defender office employees, judges, magistrates, court personnel, and professional service contract vendors shall not be considered subgrantees.

- H. "Substantial Change" to a Compliance Plan is a change to the plan or cost analysis that alters the method of meeting the objectives of the standard(s) in the approved plan.

1.2 Statement of Work

The Grantee agrees to undertake, perform and complete the services described in its approved Compliance Plan and in accordance with the Michigan Indigent Defense Act, MCL 780.991 *et seq.*, specifically Standards 1 through 4. The Parties to this Agreement enter into this Agreement to facilitate the process described in the MIDC Act, which controls or supersedes any terms of this Agreement. Consistent with the Act and when applicable, an indigent criminal defense system shall comply with the terms of the grant in bringing its system into compliance with the minimum standards established by the MIDC within 180 days after receiving funds from the MIDC. Grantee may exceed 180 days for compliance with a specific item needed to meet minimum standards as set forth in the Act. Grantee's Compliance Plan, as submitted and approved by the MIDC (Attachment A), addresses the prescribed methods the grantee has chosen to provide indigent criminal defense services pursuant to MCL 780.993(3). Any substantial changes to the work described in the Compliance Plan must be submitted to the MIDC for approval as set forth in this Agreement prior to any changes being implemented. All provisions and requirements of this Agreement shall apply to any agreements the Grantee may enter into in furtherance of its obligations under this Agreement and Grantee shall be responsible for the performance of any Subgrantee work, as defined in subsection 1.1.

1.3 Detailed Budget

- A. This Agreement does not commit the State of Michigan (State) or the Department of Licensing and Regulatory Affairs (LARA) to approve requests for additional funds at any time.
- B. If applicable, travel expenses will not be reimbursed at rates greater than the State Travel Rates, Attachment C, without the prior written consent of the MIDC.
- C. Attachment B is the Budget. The Grantee agrees that all funds are to be spent as detailed in the Budget, unless a budget adjustment request is approved, in accordance with section 1.3(E).
- D. Grantee will maintain a restricted fund within their Local Chart of Accounts for the sole purpose of accounting for the expenses and revenue sources for operation of this grant and the local adult indigent defense system.
- E. All requests for a budget adjustment or substantial changes to the Grantee's Compliance Plan will be submitted quarterly with the Grantee's quarterly report. MIDC staff shall respond to a request in writing within 30 days of receipt.
 - 1) Budget adjustments less than or equal to 5% of the Budget Category total, including adjustments between Budget Categories, do not require approval

by MIDC staff, but must be reported quarterly in the next financial status report.

- 2) A Budget adjustment involving greater than 5% of the aggregate of all funding within a Budget Category requires prior written approval by MIDC Staff and must be reported to the MIDC as soon after the Grantee is aware of the necessity of the Budget adjustment and reported in the Grantee's quarterly report.
- 3) Any substantial change to a Compliance Plan requires prior approval by MIDC staff and MIDC Commission.

1.4 Payment Schedule

The maximum amount of grant assistance approved is \$187,023.11.

The Grantee must report and certify to Grantor by October 31st of each year the balance of any unexpended indigent defense grant funds from the prior fiscal year grant plus any interest earned on the advancement of the state grant funds in the previous fiscal year. Any funds from the previous fiscal year contained in an approved extension of the previous fiscal year's grant for projects that will be completed after September 30, 2019 will be carried over into the current fiscal year and shall not be considered unexpended funds, nor be included in the balance of unexpended funds. The current fiscal year indigent defense grant funds advanced will be reduced by the amount of unexpended funds from the prior fiscal year's grant.

An initial advance of 50% of the State Grant shall be made to the Grantee upon receipt by the Grantor of a signed Agreement. The Grantor shall make subsequent disbursements of 25% up to the total state grant amount in accordance with the following schedule:

Initial Advance of 50% of total grant – Within 15 days of receipt of executed agreement
25% disbursement – May 15, 2020
25% disbursement – August 14, 2020 (final payment).

The above schedule of disbursement of funds is contingent after receipt of quarterly reporting as addressed in this section and section 1.5 of this document. The financial status report (FSR) report must be submitted on the form provided by the MIDC/LARA and indicate:

Grant funds received to date;
Expenditures for the reporting period by budget category;
Cumulative expenditures to date by budget category;

The quarterly FSR must be supported and accompanied by documentation of those grant funded expenditures incurred for the reporting period, including but not limited to:

- The general ledger for the restricted local indigent defense fund, including a detailed expenditure report with all expenditure detail within the budget

- categories, which must include documentation of payments to contract attorneys either by individual invoice or by report of payments made, by attorney;
- All invoices related to experts and investigators;
 - All invoices related to construction;
 - Personnel detail including full-time equivalency of any grant funded positions, including total compensation for that position;

Upon request, the Grantee shall provide the MIDC with additional documentation/verification of expenditures under the grant within 30 days of the making of the request. Documentation of expenditures shall be maintained according to record retention policies for audit purposes in order to comply with this Agreement. Grantee will be held to the full contribution of the Local Share within the original one-year grant period.

The quarterly FSR as provided in Attachment D and standards compliance report as addressed in Section 1.5, shall be provided in accordance with the following schedule:

- Initial FSR and compliance report for 10/1/19–12/31/19 -- January 31, 2020
- 2nd FSR and compliance report for 1/1/20–3/31/20 – April 30, 2020
- 3rd FSR and compliance report for 4/1/20–6/30/20 – July 31, 2020
- Final FSR and compliance report for 7/1/20–9/30/20 – October 31, 2020

1.5 Monitoring and Reporting Program Performance

- A. **Monitoring.** The Grantee shall monitor performance to assure that time schedules are being met and projected work is being accomplished.
- B. **Quarterly Reports.** The Grantee shall submit to the Grantor quarterly progress reports on compliance with the Standards and participate in follow up and evaluation activities. Compliance reports include narrative responses containing a description of the Grantee's compliance with standards 1-4, identifying problems or delays, actual, real or anticipated and any significant deviation from the approved Compliance Plan. The grantee will use its best efforts to provide data relevant to assessing compliance as contained in the compliance reporting template requested by MIDC. If Grantee is unable to provide the information requested on the template, Grantee will demonstrate in writing the steps taken to assess what information is currently available and how to retrieve it. Grantee also agrees to work with MIDC Research staff to seek additional options or ideas for the collection and retrieval of this information.

PART II - GENERAL PROVISIONS

2.1 Project Changes

Grantee must obtain prior written approval for substantial changes to the compliance plan from the Grantor.

2.2 Delegation

Grantee must notify the MIDC at least 90 calendar days before the proposed delegation with reasonable detail of subgrantee and the nature and scope of the activities delegated. If any obligations under this grant are delegated, Grantee must: (a) be the sole point of contact regarding all contractual project matters, including payment and charges for all Grant activities; (b) make all payments to the subgrantee; and (c) incorporate the terms and conditions contained in this Grant in any subgrant with a subgrantee. Grantee remains responsible for the completion of the Grant activities and compliance with the terms of this Grant.

2.3 Program Income

To the extent that it can be determined that interest was earned on advances of funds, such interest shall be recorded in the Grantee's restricted Indigent Defense fund and included in the quarterly FSRs. The grant award shall not be increased by the amount of interest earned. Any grant funds attributable to interest and not spent at the end of the grant period shall be returned to the State or included in future grant awards from the MIDC consistent with MCL 780.993(15), as amended 12/23/18.

2.4 Share-in-savings

The Grantor expects to share in any cost savings realized by the Grantee in proportion of the grant funds to the local share.

2.5 Purchase of Equipment

The purchase of equipment must be made pursuant to the Grantee's established purchasing policy and if not specifically listed in the Budget, Attachment B, must have prior written approval of the Grantor. Equipment is defined as non-expendable personal property having a useful life of more than one year. Such equipment shall be retained by the Grantee unless otherwise specified at the time of approval.

2.6 Accounting

The Grantee must establish and maintain a restricted indigent defense fund in their local chart of accounts to record all transactions related to the indigent defense grant. The restricted fund will not lapse to the local general fund at the close of the Grantee's fiscal year. The Grantee shall adhere to the Generally Accepted Accounting Principles and shall maintain records which

will allow, at a minimum, for the comparison of actual outlays with budgeted amounts. The Grantee's overall financial management system must ensure effective control over and accountability for all indigent defense funds received. Accounting records must be supported by source documentation of expenditures including, but not limited to, balance sheets, general ledgers, payroll documents, time sheets and invoices. The expenditure of state funds shall be reported by line item and compared to the Budget.

2.7 Records Maintenance, Inspection, Examination, and Audit

The State or its designee may audit the Grantee and the restricted indigent defense fund account to verify compliance with this Grant. Grantee must retain, and provide to the State or its designee upon request, all financial and accounting records related to the Grant through the term of the Grant and for 7 years after the latter of termination, expiration, or final payment under this Grant or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Grantee must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Grantee's premises or any other places where Grant activities are being performed, and examine, copy, and audit all records related to this Grant. Grantee must cooperate and provide reasonable assistance. If any financial errors have occurred, the amount in error must be reflected as a credit or debit on subsequent disbursements until the amount is paid or refunded. Any remaining balance must be reported by the Grantee to the Grantor by October 31 of each year as required under the MIDC Act.

This Section applies to Grantee, any parent, affiliate, or subsidiary organization of Grantee, and any subgrantee that performs Grant activities in connection with this Grant.

If the Grantee is a governmental or non-profit organization and expends the minimum level specified in OMB Uniform Guidance (\$750,000 as of December 26, 2013) or more in total federal funds in its fiscal year, then Grantee is required to submit an Audit Report to the Federal Audit Clearinghouse (FAC) as required in 200.36.

2.8 Competitive Bidding

The Grantee agrees that all procurement transactions involving the use of state funds shall be conducted in a manner that provides maximum open and free competition, consistent with Grantee's purchasing policies. Sole source contracts should be negotiated to the extent that such negotiation is possible. Attorney contracts, including managed assigned counsel contracts for representation of indigent or partially indigent defendants, are exempt from a competitive bid process, but must meet standard internal procurement policies, as applicable.

3.0 Liability

The State is not liable for any costs incurred by the Grantee before the start date or after the end date of this Agreement. Liability of the State is limited to the terms and conditions of this Agreement and the total grant amount.

3.1 Safety

The Grantee, and all subgrantees are responsible for ensuring that all precautions are exercised at all times for the protection of persons and property. Safety provisions of all Applicable Laws and building and construction codes shall be observed. The Grantee, and every subgrantee are responsible for compliance with all federal, state and local laws and regulations in any manner affecting the work or performance of this Agreement and shall at all times carefully observe and comply with all rules, ordinances, and regulations. The Grantee, and all subgrantees shall secure all necessary certificates and permits from municipal or other public authorities as may be required in connection with the performance of this Agreement.

3.2 Indemnification

Each party to this grant must seek its own legal representation and bear its own legal costs; including judgments, in any litigation which may arise from the performance of this Grant and/or Agreement. It is specifically understood and agreed that neither party will indemnify the other party in any such litigation.

3.3 Failure to Comply and Termination

- A. Failure to comply with duties and obligations under the grant program as set forth in Public Act 93 of 2013, as amended, is subject to the procedures contained in sections 15 and 17 of said Act.
- B. Termination for Convenience

The State may immediately terminate this Grant in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. If the State terminates this Grant for convenience, the State will pay all reasonable costs, for State approved Grant responsibilities. If parties cannot agree to the cost to be paid by the State, the parties shall attempt to resolve the dispute by mediation pursuant to MCL 780.995. The Grantee's duty to comply with MIDC standards is limited to funding covering the cost of compliance as set forth in section 17 of Public Act 93 of 2013, as amended.

3.4 Conflicts and Ethics

Grantee will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Grant; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Grant; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Grantee, any consideration contingent upon the award of the Grant. Grantee must immediately notify the State of any violation or potential violation of this Section. This Section applies to Grantee, any parent, affiliate, or subsidiary organization of Grantee, and any subgrantee that performs Grant activities in connection with this Grant.

3.5 Non-Discrimination

Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101 to 37.2804, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., Grantee and its subgrantees agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Grant.

3.6 Unfair Labor Practices

Under MCL 423.324, the State may void any Grant with a Grantee or subgrantee who appears on the Unfair Labor Practice register compiled under MCL 423.322.

3.7 Force Majeure

Neither party will be in breach of this Grant because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Grantee will not be relieved of a breach or delay caused by its subgrantees except where the Commission determines that an unforeseeable condition prohibits timely compliance pursuant to MCL 780.993, Sec. 13(11).

4.0 Certification Regarding Debarment

The Grantee certifies, by signature to this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal or State department or agency. If the Grantee is unable to certify to any portion of this statement, the Grantee shall attach an explanation to this Agreement.

4.1 Illegal Influence

The Grantee certifies, to the best of his or her knowledge and belief that:

- A. No federal appropriated funds have been paid nor will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this grant, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Grantee shall require that the language of this certification be included in the award documents for all grants or subcontracts and that all subrecipients shall certify and disclose accordingly.

The State has relied upon this certification as a material representation. Submission of this certification is a prerequisite for entering into this Agreement imposed by 31 USC § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Grantee certifies, to the best of his or her knowledge and belief that no state funds have been paid nor will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any State agency, a member of the Legislature, or an employee of a member of the Legislature in connection with the awarding of any state contract, the making of any state grant, the making of any state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state contract, grant, loan or cooperative agreement.

4.2 Governing Law

This Grant is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Grant are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Grant must be resolved as outlined in Sec. 15 of PA93 of 2013, as amended.

4.3 Disclosure of Litigation, or Other Proceeding

Grantee must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of the Grant against a public defender office, an attorney employed by a public defender office, or an attorney contracted to perform indigent defense functions funded by the Grantee that involves: (a) a criminal Proceeding; (b) a civil Proceeding involving a claim that, after consideration of Grantee's insurance coverages, would adversely affect Grantee's viability; (c) a civil Proceeding involving a governmental or public entity's claim or written allegation of fraud related to performance of the Grant; or (d) a Proceeding challenging any license that an attorney practicing on behalf of a public defender office or an attorney practicing pursuant to a contract to perform indigent defense functions for the Grantee is required to possess in order to perform under this Grant.

4.4 Assignment

Grantee may not assign this Grant to any other party without the prior approval of the State. Upon notice to Grantee, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Grant to any other party. If the State determines that a novation of the Grant to a third party is necessary, Grantee will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Grant.

4.5 Entire Grant and Modification

This Grant is the entire agreement and replaces all previous agreements between the parties for the Grant activities. Pursuant to the MIDC Act, the MIDC shall promulgate policies necessary to carry out its powers and duties. The MIDC may also provide guides, instructions, informational pamphlets for the purpose of providing guidance and information with regard to the Grant and MIDC policies. This Grant Agreement supersedes all terms of MIDC policies, guides, instructions, informational pamphlets and any other explanatory material that is in conflict with the Grant Agreement. This Grant may not be amended except by a signed written agreement between the parties.

4.6 Grantee Relationship

Grantee assumes all rights, obligations and liabilities set forth in this Grant. Grantee, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Grant. Grantee, and not the State, is responsible for the payment of wages, benefits and taxes of Grantee's employees. Prior performance does not modify Grantee's status as an independent Grantee.

4.7 Dispute Resolution

The parties will endeavor to resolve any Grant dispute in accordance with section 15 of Public Act 93 of 2013. The dispute will be referred to the parties' respective representatives or