

**JUDICIAL CONFERENCE
OF THE UNITED STATES OF AMERICA
AND
COMMUNITY DEFENDER ORGANIZATION
FOR _____**

**FISCAL YEAR 2016
GRANT AND CONDITIONS**

The Community Defender Organization (CDO), [NAME] (hereinafter grantee), operating as a non-profit corporation, has been authorized by the Criminal Justice Act Plan(s) of the District(s) of _____ to provide representation and related defense services to eligible persons pursuant to paragraph (g)(2)(B) of the Criminal Justice Act, as amended, 18 U.S.C. 3006A (hereinafter CJA); and

The grantee has submitted the appropriate documentation to the Judicial Conference of the United States (hereinafter Conference) via the Administrative Office of the United States Courts (AO) (hereinafter grantor); and

Under the authority delegated to it by the Conference, the Judicial Conference Committee on Defender Services (DSC) has approved a grant subject to the availability of appropriated funds for fiscal year (FY) 2016, commencing on October 1, 2015, and terminating on September 30, 2016. The amount of this grant will correspond to the final budget approved by the Conference. The FY 2016 final budget and funds disbursement schedule will be emailed to the Executive Director, Administrative Officer, and Board Chair by the grantor on October 1, 2015. In the event that Congress fails to enact an annual appropriations act covering expenditures for the judiciary by that date, the grantor will provide to each grantee on October 1, 2015, a specific amount to continue operations until enactment of the judiciary's annual appropriations act. Grantor will amend this amount in writing as necessary to continue grantee operations within the approved FY 2016 budget and disbursement schedule until sufficient budgetary resources are enacted and made available to the grantor to provide the amount approved in the final budget.

As authorized under subsections (g)(2)(B) and (h) of the CJA, and in consideration of this grant, the Conference requires that each expenditure of funds from this grant comply with the terms and conditions contained in this agreement. The grantor may grant exceptions or waivers to any provision in this agreement, as appropriate and consistent with the CJA and other federal laws.

The grantee, by signature of its authorized representative, at the end hereof, signifies its acceptance of and agreement to the terms and conditions set forth below, as well as its agreement to comply with the provisions of the CJA, the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume 7, *Guide to Judiciary Policy*, any other policies or directives issued by the Conference or by its appropriate committees, e.g. the DSC, and the CJA plans of the judicial district(s) and circuit in which the grantee will operate.

Any question with respect to the interpretation of terms, conditions, or provisions of this grant will be resolved by grantor.

A signed copy of this agreement must be returned to the grantor together with a list of the names, addresses, email addresses, and telephone numbers of all current board members.

1. USE OF GRANT FUNDS

Once awarded to the grantee, grant funds will be distributed generally according to a schedule promulgated by the grantor. Grant funds are only available for expenditures and obligations incurred during FY 2016, and, except as provided in Clause 4, only in accordance with and in such amounts as are provided in designated budget categories as authorized by the Conference. The grantee will use such funds solely for the purpose of providing representation and other appropriate services in accordance with the CJA, the CJA Guidelines, and the CJA plans of the appropriate district and circuit courts.

2. BANK ACCOUNTS FOR GRANT FUNDS

The grantee will maintain grant funds in federally insured interest or credit bearing accounts in accordance with provisions of 31 CFR 202 and will ensure that amounts in excess of federal insurance limits are collateralized before depositing the funds. Grant funds, grant-related income, and any non-grant funds will be maintained separately and will not be commingled with one another. Credits or interest earned on the grant funds account may be used to offset account maintenance fees. Any excess interest on grant funds must be returned to grantor at the end of the grant period as set forth in clause 5 of this agreement.

3. GRANT-RELATED INCOME

Grant-related income means any gross income earned by the grantee that is directly generated by a supported activity or earned as a result of the award. Grant-related income includes, but is not limited to, income from recovery of fees for services performed, the sale of commodities or items fabricated under the award, or interest earned on grant-related income. Interest earned on advances of grant funds from grantor is not grant-related income and is addressed in clause 2.

Grant-related income must be retained by the grantee and must be used in accordance with the CJA and the terms and conditions of this agreement. Grant-related income may not be commingled with any grant or non-grant funds maintained by grantee. Grantee must report the amount of grant-related income retained by the grantee on or about July 1, each year.

4. REALLOCATING FUNDS

Subject to such limitations as the DSC may establish, the grantee may reallocate grant funds between budget categories (i.e., for purposes not specifically identified in the funding justification), provided that the aggregate of the amounts transferred within the fiscal year does not exceed 15 percent of the organization's total fiscal year grant amount approved by the DSC. The grantor may authorize reallocation between budget categories in any amount.

5. RETURN OF UNOBLIGATED BALANCES

Grantee must perform a review of obligations of grant funds, at the close of the fiscal year, and will make records of this review available during the annual audit pursuant to clause 8. Within 60 days of the end of the fiscal year, the grantee must return to AO, Finance and Accounting Division, ATTN: Mail Stop FAD-CR, the actual or estimated amount of all unobligated grant funds awarded under this document, excluding any grant-related income, remaining at the end of the fiscal year, unless otherwise authorized by the grantor. Along with funds returned, the grantee must include a statement identifying which portion of the funds returned represents grant funds and excess grant interest pursuant to clause 2. The amount of any funds returned as an estimate will be adjusted, if necessary, following completion of the annual grantor audit specified in clause 8.

6. ANNUAL REPORTS

In compliance with subsection (g)(2)(B) of the CJA, the grantee must submit an Annual Report of Operations setting forth its activities and financial position each fiscal year. Instructions for completing and submitting the Annual Report of Operations will be provided to the grantee by the grantor at least thirty (30) days prior to the submission date.

Other periodic reports must be submitted to the grantor according to the schedule(s) promulgated in Chapter 9 of the *Federal Defenders Operations Manual*. These reports include, but are not limited to, the electronic status of funds report (ESFR), the monthly staffing and workload report (MWSR), the monthly caseload report (JS-50), the Timekeeper report, and the salary report.

7. GRANT RECORDS AND REPORTS

The grantee must keep financial records in accordance with the federal fiscal year unless a waiver is granted by the grantor. Such records must be maintained and submitted in such manner and form as required by the grantor. Such records must disclose the amount of grant funds, grant interest, and grant-related income received during the fiscal year, as well as the amount of grant funds expended or obligated by budget category and the total amount of grant funds expended during the fiscal year.

The record-keeping procedures utilized by the grantee must provide for the accurate and timely recordation and determination of all income and funds received, all expenditures and obligations, and the balance of unexpended and unobligated grant funds, grant interest, and grant-related income. In addition, the grantee must maintain the records in such a manner as to permit the determination of the propriety of all expenditures and obligations of grant funds and the charges to specific budget categories.

Grantee must maintain records concerning expenditures and obligations of all funds subject to audit (as specified in clause 8) in such a manner as to allow the auditor access to said records without compromising client files and other attorney-client privileged material. The grantee is obligated to maintain the confidentiality of information protected by the attorney-client privilege or any ethical, constitutional, statutory, or other mandate.

The grantor may inspect and audit the financial records, bank statements, and other records related to the expenditure of grant funds, at any reasonable time upon request. If, because of inadequate records, documentation, or explanation, the propriety of an expenditure cannot readily be determined, questionable costs and expenditures may be disallowed.

The grantee must maintain and submit such statistical records and reports as may be required by the grantor. The grantee must keep financial and statistical records and reports for a period of at least seven years after the expiration of the fiscal year for which the grant was awarded unless otherwise authorized by the grantor. If audit issues remain unresolved, records must be retained until all such issues have been resolved.

8. AUDITS

Within 120 days of the end of the fiscal year, an auditor (hereafter, "Auditor") contracted and paid for by the grantor will perform an audit of the grantee's financial activities occurring during the grant period. Such audit will express an opinion on whether the grantee's financial statements, and notes to the financial statements, present fairly the financial position of the grantee. The financial statements must include a statement of assets, liabilities and net assets; a statement of revenue, expenses, and other changes in net assets; and a statement of cash flows.

The grantee must compile and prepare the required statements and reports and make all statements, reports, financial records/books and supporting documents available to the Auditor (as specified in clause 7). Incidents of identified fraud, waste or abuse must be disclosed to the grantor and reports of those incidents will be made available to the Auditor.

The Auditor will perform the audit in accordance with the *Government Auditing Standards* promulgated by the U.S. Government Accountability Office. In accordance with those standards, the Auditor also will prepare a report on the grantee's internal controls over its financial activities and a report on the grantee's compliance with the terms and conditions of the grant and other rules and regulations pertinent to the grant. Audits performed by independent certified public accounting firms under contract with the grantor are performed in accordance with the American Institute of Certified Public Accountants Code of Conduct and integrity and confidentiality standards. Audit reports issued by the grantor or its contract audit CPA firms, are intended solely for the information and use by the grantor and the grantee, unless otherwise specified by those parties.

The grantee may contract with local accountants for any accounting and financial services necessary for the operation of its office, including, but not limited to, the preparation of all required federal and state tax returns; payroll, disbursing, and record-keeping services; and any additional annual audit reports required by the board of directors that do not duplicate the audit conducted under this section. Notwithstanding the foregoing, grantee may use grant funds to contract with an expert for the purpose of responding to a finding of the Auditor in the annual audit when authorized in advance to do so by the grantor.

9. GRANTEE STATUS

Neither the grantee nor any of its employees are officers, employees, or agents of the United States. The United States will in no way be obligated under leases, contracts, or other agreements entered into by the grantee.

10. PROPERTY AND SERVICES

Title to all property, including, but not limited to, real property, equipment, and supplies purchased with grant funds or grant-related income will vest in the grantee subject to the condition that grantee must use the property for the purposes authorized by the CJA and the terms and conditions of this agreement. Grantee may not encumber any title to property without the approval of grantor. Grantee must maintain insurance, in reasonable amounts, to cover the costs of replacing or repairing property acquired with grant funds due to damage, loss or theft.

For equipment and real property interests, when property is no longer needed, Grantee must request disposition instructions from grantor except under the following conditions:

The grantee may sell, assign, transfer, dispose of, or encumber any property of the United States, having an acquisition cost of less than \$1,000, without the prior approval of the grantor.

The grantee must maintain an inventory of all property reflecting the date and cost of purchase of such property; the date of receipt by transfer, if applicable; and the date and manner of disposition of excess or surplus property. This inventory must be available to the grantor upon request.

Grantee must (1) provide the grantor with at least 15 working days advance notification of its intention to enter into or renew a lease for office space and (2) obtain grantor approval prior to initiating lease negotiations. Advance notification must include the total number of square feet, cost per square foot, the duration of the lease, and certification that at least two other competitive proposals were considered.

All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, of all property and all services (other than services under subsection (e) of the CJA) must be conducted in a manner promoting maximum open competition. Grantee must maintain and adhere to policies promoting full and open competition in all acquisitions made with grant funds. No employer, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Grantee is the responsible procuring authority. By offering this grant, the grantor does not become a responsible party to any contract, lease, or licensing agreement entered into by the grantee; therefore, any party entering into a contract, lease, or licensing agreement with the grantee does so without recourse to the grantor regarding settlement and satisfaction of contractual and administrative issues arising out of procurements entered into in support of an award or other agreement.

Unless otherwise authorized by grantor, no equipment, furniture, furnishings, or other property, and no services (except for services as contemplated under subsection (e) of the CJA, leasing of office space, and procurement of liability insurance) must be obtained with such funds at a total cost of more than \$100,000 without advance approval of the grantor. In addition, hardware and software purchases must be made consistent with the specifications listed on the National Hardware and Software Lists and the national defender information technology architecture and infrastructure.

11. DISSOLUTION OF GRANTEE ORGANIZATION OR TERMINATION OF GRANT FUNDS

The grantee may dissolve on its own accord in accordance with the laws of the state in which it is organized. Grantee must provide the grantor, chief judge of the district court, and chief judge of the court of appeals 90 days advance notice of its intent to dissolve. Additionally, the Conference in its discretion may determine to terminate or not renew the grant. In either event, unless otherwise authorized by the grantor, the grantee must properly inventory and make available for reclamation, all property in the care and custody of the grantee purchased with grant funds or related income. Within 75 days of dissolution, the Auditor will perform a final financial audit of the grant. The audit will be of the same scope as discussed in clause 8. Upon receipt of the report of this audit, grantee must remit to the AO, Finance and Accounting Division, ATTN: Mail Stop FAD-CR, all remaining unobligated or unexpended grant funds, grant interest, and grant-related income. The United States will not be responsible for any obligations or debts incurred by the grantee, and the grantee must hold the United States harmless for such obligations or debts.

12. MULTI-SERVICE DEFENDER ORGANIZATIONS

Consistent with clause 2 of this agreement, if the grantee is part of a larger defender organization which is not exclusively providing services under the CJA, grant funds received from the Conference pursuant to the CJA, grant interest, and grant related income may not be commingled with those of the general organization unless otherwise authorized by the grantor. Also, expenses, inventory, payroll, and other records pertaining to CJA funds and operations of the grantee must be maintained separately by the grantee unless otherwise approved by the grantor.

13. TRAVEL, MEALS, AND LODGING

The grantee's reimbursement policies regarding expenses for official travel, meals, and lodging must be in writing. Grantee must furnish the grantor a current copy of the written policies and all changes thereto. Unless approved by the grantor, grantee's reimbursement policies for official travel, lodging, and meals may not exceed the maximum allowances to be paid for per diem, actual expenses, and travel prescribed for federal judiciary employees. Grantee must maintain records of travel and reimbursement in a form acceptable to the grantor.

Grantee must follow the policies outlined in the *Federal Defenders Operations Manual*, Chapter 8, specifically applicable to CDOs, regarding travel inside and outside the district(s) served by the grantee.

14. PERSONNEL

Personnel policies and other terms and conditions of employment must be in writing. The grantor must be furnished a current copy of such policies, and

subsequently, any changes to those policies. Grantee must maintain leave records in a form acceptable to the grantor.

Grantee must follow the policies and procedures contained in the Defender Organization Classification System (DOCS). No personnel vacancy may be filled without prior notice to the grantor. Such notice must include all relevant data concerning the employee candidate, including his or her name, position, starting salary (including grade and step for graded employees or AD level for assistant defenders), education, experience and compensation history, and any annual leave credit for prior experience. Information regarding attorneys must indicate the month and year they received their law degree, the month and year they first became a member of a bar, and their prior relevant work experience.

Grantee must conform employee benefit policies on leave, holidays, hours worked, and payment of bar dues to those applicable to federal public defender organizations, unless a request for a variance is submitted to and approved by the DSC. Grantee must provide grantor with notice at least 90 business days in advance of any proposed changes to the above referenced policies or any other policies that may impact the organization's current or future costs. The grantee's expenditures for employee benefits may not exceed ___ percent of its expenditures of salaries for the fiscal year.¹ If, at any point during the fiscal year, it appears the grantee's expenditures for employee benefits will exceed the percentage authorized the grantee, the grantee must submit a written justification to the DSC's Budget Subcommittee requesting approval to exceed the authorized benefit-to-salary ratio.

15. INVESTIGATIVE, EXPERT, OR OTHER SERVICES

Under subsection (e) of the CJA, and to the extent that they are necessary for adequate representation of a person who is financially eligible under the CJA, the grantee may engage and compensate investigators, experts, or others from grant funds made available for that purpose.

16. BUSINESS, ENTERTAINMENT, OR PERSONAL EXPENSES

The grantee may not expend grant funds for business or personal entertainment; professional or association dues, memberships, or fees; or items of property or services of a personal nature.

17. TRAINING

Funds for training of employees are provided in the "other services" budget category of the grant. Grantees must submit annual reports of training activities including travel and other expenses associated therewith.

¹ The limit on benefits is calculated by adding three percentage points to the national average federal public defender organization benefit-to-salary ratio, based on the most recently completed fiscal year.

18. EMPLOYMENT

The grantee may not discriminate against any employee, or applicant for employment, on the basis of race, color, national origin, religion, sex, age,² or disability. The grantee may not hire, promote, or advance within the organization any individual who is a relative³ of: (1) the federal defender, (2) any superior of the federal defender, or (3) any member of the board of directors. No employee of the grantee may hire, promote, advance, or advocate the hiring, promotion, or advancement of his or her relative by the grantee.

The grantee agrees to place in effect a program for providing equal employment to all persons regardless of their race, color, national origin, religion, sex, age, or disability. This program must encompass all facets of personnel management, including recruitment, hiring, promotion, and advancement. The program must also provide for a system whereby all applicants for employment, and all employees, may seek timely redress of discrimination complaints. A copy of the grantee's program will be filed with the grantor.

Upon request, grantee must submit to the grantor statistical and other reports relating to its equal employment opportunity practices. Grantee also agrees to notify the grantor of any equal employment opportunity-related grievance or suit filed against the organization or any of its employees and of the outcome of all such grievances or suits, and upon request, must provide the grantor with any additional information regarding any such grievance or suit.

19. OUTSIDE PRACTICE OF LAW

Unless otherwise authorized by the grantor, no employee of the grantee organization (including the executive director) may engage in the practice of law outside the scope of his or her official duties with the grantee. Notwithstanding this prohibition, an employee may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the employee's family.⁴

20. LIABILITY INSURANCE

Grantee must maintain insurance, in reasonable amounts, to cover the costs of representation and liability for claims alleging malpractice, negligence, unfair personnel practices, and "errors and omissions" of officers, directors, and employees of the organization. Upon receiving or amending coverage, grantee must notify the grantor of the amount of coverage per event, the aggregate limit, the amount of deductible, and

² Judicial Conference policy with respect to age discrimination is that the complainant must have been at least 40 years of age at the time of the alleged discrimination.

³ For purposes of this clause, the term "relative," is defined in 5 U.S.C. §3110 (a)(3).

⁴ For purposes of this clause, the term "family" includes all relatives listed in 5 U.S.C. §3110(a)(3).

the cost for each type of insurance obtained, and must certify that competitive proposals were sought.

Grantee also agrees to notify the grantor of any such claims filed and their disposition, and upon request must provide the grantor with any additional information regarding any such claim.

21. CODE OF CONDUCT

The grantee must adopt the Model CDO Code of Conduct. The grantee may seek a variance of one or more of the provisions from the grantor.

A copy of the grantee's code of conduct and any subsequent revisions must be filed with the grantor. The grantee must inform the grantor of significant violations of the code of conduct and, upon request, must provide a written report to the grantor.

22. CHANGES OR MODIFICATIONS

Upon their adoption, the grantee must forward to the grantor any amendment to the articles of incorporation or the by-laws under which the grantee operates; the grantee must also notify the grantor of any changes in the grantee's board of directors.

23. PAYMENTS FROM OR ON BEHALF OF CLIENTS

Except as authorized under subsection (f) of the CJA and corresponding provisions in the CJA Guidelines, neither the grantee nor its employees will take, request, demand, accept, receive, or agree to receive anything of value from or on behalf of a person who is to be, is being, or has been furnished representation by grantee. Grantee will take appropriate measures to enforce this clause and advise the grantor of any violation.

24. NON-ASSIGNABILITY

No obligations or responsibilities of the grantee, and no grant funds or benefits accruing under the grant, may be transferred, assigned, sub-contracted, or otherwise conveyed without the express written approval of the grantor, except as specifically authorized in the Grant and Conditions.

25. FAILURE TO COMPLY WITH TERMS AND CONDITIONS

In the event the grantee fails to comply substantially with any of the terms or conditions of the grant award set forth herein, or it is unable to deliver the representation and other services which are the subject of this agreement, the Conference, or its authorized representative, may reduce, suspend, or terminate payments under this grant award as it deems appropriate. The Conference, or its authorized representative, must give the grantee notice of intent to reduce, suspend, or terminate payments at

least 10 days prior to taking action. Such notice must indicate the intended action and the reason therefor. The Conference reserves the right to pursue all remedies, including, but not limited to, recovery of monetary damages and accrued interest, for grantee's failure to comply with any of the terms and conditions of the grant award or to deliver the representation and other services which are the subject of the agreement.

Authorized Representative of [Name of CDO]

Date

Chief, AO's Defender Services Office

Date