

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

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Meeting Date: January 15, 2019	<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
	<input type="checkbox"/>	Ordinance	<input type="checkbox"/>	Public Hearing

Department: Criminal Justice Commission
Submitted For: Criminal Justice Commission

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I. EXECUTIVE BRIEF

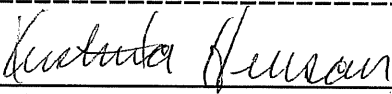

Motion and Title: Staff recommends motion to: **A) receive and file** a no cost contract for consulting/professional services with Uptrust, Inc., for the period November 8, 2018 through November 18, 2019 to implement a court date reminder system for criminal court defendants in the Fifteenth Judicial Circuit, Palm Beach County, Florida, with services to be paid by Robert F. Kennedy Human Rights directly to Uptrust, Inc.; and **B) authorize** the County Administrator or designee to execute any amendments relating to this agreement on behalf of the Board of County Commissioners, after approval of legal sufficiency by the County Attorney's Office, and within budgeted allocations.

Summary: Palm Beach County was awarded \$2,000,000 from the John D. and Catherine T. MacArthur Foundation (the Foundation) on October 2, 2017 as an implementation site in the Foundation's Safety and Justice Challenge (SJC). The goal of the SJC is to safely reduce Palm Beach County's jail population of 2,210 by 16.7% by September 30, 2019 through five main and two supportive strategies which have been identified and are being implemented by our SJC Core Team of stakeholders. This agreement will address the strategy to reduce the number of defendants admitted to the Palm Beach County jail for a failure to appear (FTA) for court. In 2016, 14 percent (3,528 defendants) of jail admissions were for FTA. Court reminder systems have proven very successful in other jurisdictions across the nation in reducing FTA's by as much as 50 percent. This reminder system will be in addition to the existing Clerk's Office paper notification process and will be done through text messages upon the defendant's enrollment by signing a consent form required by the Federal Communications Commission (FCC). Funding for the consultant's work will be provided by Robert F. Kennedy Human Rights as a one-year pilot project. Director Kathleen Scarlett of the County Purchasing Department executed this agreement pursuant to Palm Beach County Purchasing Policy and Procedures CW-L-008. **No County matching funds are required. Countywide (DC)**

Background and Justification: In May of 2015, Palm Beach County was one of 20 jurisdictions chosen by the MacArthur Foundation for initial grants and expert counsel to develop plans for reform after a highly competitive selection process that drew applications from nearly 200 jurisdictions in 45 states. During this initial grant period in 2015, the Criminal Justice Commission (CJC) led the effort to develop a reform plan focused on reforming the first appearance hearing process and diverting from jail those with mental illness, minor outstanding warrants, misdemeanor technical probation violations, and those charged with driving with suspended licenses. In 2016, the County received an additional \$150,000 to continue participation in the Challenge Network of 20 sites. In October 2017, the County received an award of \$2,000,000 for full implementation of strategies designed to safely reduce the jail population by 16.7% by September 30, 2019.

Attachments:
1) Executed Agreement with Uptrust, Inc.

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Recommended by:		12-18-18
	Department Director	Date
Approved by:		1/9/19
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
Net Fiscal Impact	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes ☐ No ☐

Does this item include the use of federal funds? Yes ☐ No ☒

Budget Account Exp No: Fund _____ Department _____ Unit _____ Object _____
Rev No: Fund _____ Department _____ Unit _____ RevSc _____

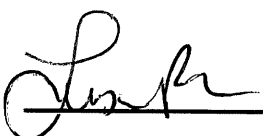
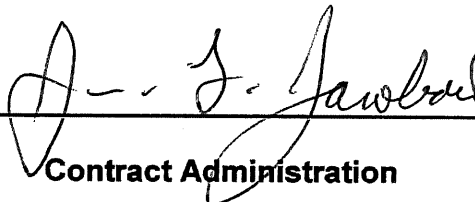
B. Recommended Sources of Funds/Summary of Fiscal Impact:

No Fiscal Impact


Departmental Fiscal Review:  11/20/18

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 12/20/18  11/8/19
OFMB ^{SP} 12/19 ^{SP} 12/19 Contract Administration

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of the 9th day of November, 2018, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and CONSULTANT, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. is 47-3356062.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

ARTICLE 1 - SERVICES

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services in the area of text based court date reminders, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The COUNTY'S representative/liaison during the performance of this Contract shall be Kristina Henson, telephone no. (561) 355-2314.

The CONSULTANT'S representative/liaison during the performance of this Contract shall be Jacob Sills, telephone no. (860) 539-0999.

ARTICLE 2 - SCHEDULE

The CONSULTANT shall commence services on November 19, 2018 and complete all services by November 18, 2019.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

ARTICLE 3 - PAYMENTS TO CONSULTANT

The total amount to be paid by the COUNTY under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed a total contract amount of Zero Dollars (\$0.00). The CONSULTANT shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The funding for the CONSULTANT's work is being provided by ROBERT F. KENNEDY HUMAN RIGHTS.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the

Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be terminated by the CONSULTANT upon sixty (60) days' prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with cause upon five (5) business days written notice to the CONSULTANT or without cause upon ten (10) business days written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the COUNTY, in writing, the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereinunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT'S personnel (and all Subcontractors), while on County premises, will comply with all COUNTY requirements governing conduct, safety and security.

ARTICLE 7 - SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities.

If the CONSULTANT uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.

The CONSULTANT agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONSULTANT understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

The CONSULTANT shall provide the COUNTY with a copy of the CONSULTANT's contract with any SBE subcontractor or any other related documentation upon request.

The CONSULTANT understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of this Contract as it relates to the use of SBE firms.

The CONSULTANT will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this Contract. Requests for substitutions of SBE's must be submitted to the COUNTY's representative and to the Office of Small Business Assistance.

The CONSULTANT shall be required to submit to the COUNTY Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable.

The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the COUNTY to inspect such records.

ARTICLE 8 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

ARTICLE 9 - AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

ARTICLE 10 - INSURANCE

- A. CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. CONSULTANT shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.
- B. **Commercial General Liability** CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONSULTANT shall provide this coverage on a primary basis.
- C. **Business Automobile Liability** CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Accident for all owned, non-owned and hired automobiles. In the event CONSULTANT doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. CONSULTANT shall provide this coverage on a primary basis.
- D. **Worker's Compensation Insurance & Employers Liability** CONSULTANT shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. CONSULTANT shall provide this coverage on a primary basis.

E. **Professional Liability** CONSULTANT shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONSULTANT’S most recent annual report or audited financial statement. For policies written on a “Claims-Made” basis, CONSULTANT shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an “occurrence” or “claims - made” form. If coverage is provided on a “claims - made” form the Certificate of Insurance must also clearly indicate the “retroactive date” of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, CONSULTANT shall purchase a SERP with a minimum reporting period not less than 3 years. CONSULTANT shall provide this coverage on a primary basis.

Additional Insured CONSULTANT shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read **“Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents.”** CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.

F. **Waiver of Subrogation** CONSULTANT hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement to the policy, then CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or which voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.

G. **Certificate(s) of Insurance** Prior to execution of this Contract, CONSULTANT shall deliver to the COUNTY’S representative as identified in Article 26, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be issued to

Palm Beach County
c/o _____

H. **Umbrella or Excess Liability** If necessary, CONSULTANT may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer’s

Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

- I. **Right to Review** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

ARTICLE 11 - INDEMNIFICATION

CONSULTANT shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONSULTANT.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other.

ARTICLE 13 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or CONSULTANT.

ARTICLE 14 - CONFLICT OF INTEREST

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

ARTICLE 15 - EXCUSABLE DELAYS

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 16 - ARREARS

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS; REQUIREMENTS OF TCPA

A. The CONSULTANT shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract. All reports, invoices, data lists or other records, provided to COUNTY, or developed for COUNTY under this Contract for or at the COUNTY'S expense, shall be turned over to COUNTY and remain the COUNTY'S property and may be reproduced and reused only with the written permission of the COUNTY.

B. COUNTY grants to CONSULTANT the limited right to use data generated through the use of the CONSULTANT' System, other than personally identifiable data or Personal Data (defined below), for the term of this AGREEMENT for the sole purpose of improving the services to the COUNTY by CONSULTANT. No license, express or implied to use COUNTY data is granted, except as provided herein.

C. CONFIDENTIAL CONSULTANT OWNED AND OPERATED IP AND SOFTWARE

Right, title, and interest in and to CONSULTANT'S software and the UPTRUST System and all improvements, amendments, updates thereto and all copies thereof, shall be and remain in the control of CONSULTANT and no title to or ownership of CONSULTANT'S software or the UPTRUST System or any portion thereof is conveyed or transferred to the COUNTY. CONSULTANT's system shall remain in the exclusive control of CONSULTANT.

CONSULTANT is not providing COUNTY with use of its software or use of the Uptrust System or access to such system. COUNTY is not purchasing or licensing any software, enhancements or improvements to CONSULTANT data processing software or systems under this Agreement. CONSULTANT shall take Personal Data provided to CONSULTANT and utilize CONSULTANT's program to perform the services of notifying court participant's of upcoming court appointments. Nevertheless, and for the purposes of clarity of intent, CONSULTANT has identified its data processing software and system, the "Uptrust Program" or "Uptrust System" as well as any of CONSULTANT's improvements and/or amendments or related software products as a trade secret as defined in Section 812.081, Florida Statutes, and exempt from Florida's public records requirements. COUNTY shall not disclose or release and shall maintain as confidential the Uptrust Program and any amendments, or related software products or improvements thereto, unless court ordered to release same.

D. PERSONAL DATA

CONSULTANT has been provided with personal identifying information of individuals in the court system for the sole and exclusive purpose of notifying individuals by text message of upcoming Court appointments. CONSULTANT will only be provided with court appointment information for those individuals who have executed an authorization to receive text court date reminder messages for a court case. Personal identifying data provided shall include cellular telephone number to be used, name, court appointment information and such other identifying information as is necessary to ensure notifications to

the correct individual ("Personal Data"). CONSULTANT shall immediately stop all court appointment notifications whenever CONSULTANT receives notification from an individual or COUNTY or the Fifteenth Judicial Circuit that the service is no longer needed, the court case is closed, the authorization to send text messages is withdrawn by opt-out or otherwise, or that there is an error in telephone number.

CONSULTANT shall comply at all times with the Florida Statutes and the rules of the Federal Communications Commission regarding the Telephone Consumer Protection Act, 47 U.S.C § 227¹. In addition, CONSULTANT shall comply with rules of the Federal Communications Commission ("FCC") as applicable and any other applicable federal or State laws concerning the service to be provided herein. It is understood that CONSULTANT is an expert in the services to be provided and fully understands all legal requirements associated with the provision of the service and that COUNTY is relying on CONSULTANT's expertise.

CONSULTANT shall not under any circumstances, disclose, copy, sell, use or reuse, provide, give, or disseminate to any other entity or person, the Personal Data or any copy or compilation thereof, for any purpose or reason whatsoever, except as expressly authorized in this Agreement, or otherwise authorized by COUNTY in advance, in writing. Any reuse, disclosure, sale, or dissemination of Personal Data, or other violation of this Article is a material breach of this Agreement. In addition to all remedies available at law for such breach, CONSULTANT shall indemnify, defend and hold COUNTY harmless for all damages, costs, fines, penalties, and reasonable attorneys fees and costs, arising from a violation of this Article 17, any violation of the TCPA, breach of privacy, or a violation of any other statute, rule or law, governing the services provided by CONSULTANT hereunder. At the conclusion of this Agreement, CONSULTANT shall destroy all Personal Data provided by COUNTY under this Agreement when and to the extent permitted under federal and state law.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP

¹ The Telephone Consumer Protection Act (TCPA) regulates telemarketing calls, auto-dialed calls, prerecorded calls, text messages, and unsolicited faxes. It also is the authority to create the National Do-Not-Call List.

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 19 - CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 20 - ACCESS AND AUDITS

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 21 - NONDISCRIMINATION

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the CONSULTANT warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status,

familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

ARTICLE 22 - AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 23 - SEVERABILITY

If any term or provision or part thereof of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, term or provision or part thereof, or the application of such terms or provision or part thereof, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and to the fullest extent, every other term and provision or part thereof of this Contract, shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 24 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 25 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

ARTICLE 26 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Kristina Henson
301 N. Olive Ave., Suite 1001
West Palm Beach, Fl. 33401

With copy to:

Palm Beach County Attorney's Office
301 North Olive Ave., 6th FL
West Palm Beach, Florida 33401

If sent to the CONSULTANT, notices shall be addressed to:

Jacob Sills
16 Center St., Suite 205
Northampton, MA. 01060

ARTICLE 27 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25- Modifications of Work.

ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK

The CONSULTANT, CONSULTANT'S employees, subcontractors of CONSULTANT and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolution R-2003-1274, as amended. The CONSULTANT is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the CONSULTANT acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include access to sites and/or buildings which have been designated as either “critical facilities” or “criminal justice information facilities” pursuant to the Ordinance and Resolution R2003-1274, as amended. COUNTY staff representing the COUNTY department will contact the CONSULTANT(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The CONSULTANT shall make every effort to collect the badges of its employees and its subcontractors’ employees upon conclusion of the contract and return them to the COUNTY. If the CONSULTANT or its subcontractor(s) terminates an employee who has been issued a badge, the CONSULTANT must notify the COUNTY within two (2) hours. At the time of termination, the CONSULTANT shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the CONSULTANT if the CONSULTANT 1) does not comply with the requirements of County Code Section 2-371 - 2-377, as amended; 2) does not contact the COUNTY regarding a terminated CONSULTANT employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

ARTICLE 29 - REGULATIONS; LICENSING REQUIREMENTS

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

ARTICLE 30 - SCRUTINIZED COMPANIES

- A. As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.
- B. **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the County determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Contract renewal, if applicable.

ARTICLE 31 - PUBLIC RECORDS

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Consultant: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Consultant shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Consultant is specifically required to:

- A. Keep and maintain public records required by the County to perform services as provided under this Contract.
- B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Consultant further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Consultant does not transfer the records to the public agency.
- D. Upon completion of the Contract the Consultant shall transfer, at no cost to the County, all public records in possession of the Consultant unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Consultant transfers all public records to the County upon completion of the Contract, the Consultant shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically by the Consultant must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.
- E. COUNTY acknowledges that data processing software which has been obtained by an agency under a licensing agreement prohibiting its disclosure and which is a trade secret as defined in s. 812.081, F.S., is exempt from public records disclosure pursuant to Section 119.071(1)(f), F.S.

Failure of the Consultant to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Consultant acknowledges that it has familiarized itself with

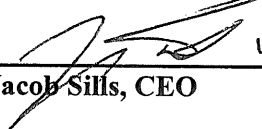
the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

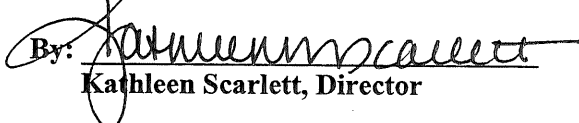
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IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

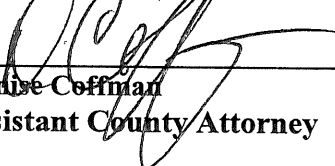
CONSULTANT:
UPTRUST, INC.

By:  10/22/13
Jacob Sills, CEO

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:
BY KATHLEEN SCARLETT
DIRECTOR, PURCHASING DEPARTMENT

By: 
Kathleen Scarlett, Director

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Denise Coffman
Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS:

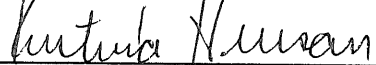
By: 
Kristina Henson, Director
Criminal Justice Commission

EXHIBIT "A"

SCOPE OF WORK

This contract concerns itself with the Palm Beach County Criminal Justice Commission's (CJC) participation in the John D. and Katherine T. MacArthur Foundation's (Foundation) Safety and Justice Challenge. Palm Beach County was awarded \$2 million by the Foundation in October, 2017 to develop and implement strategies to safely reduce the local jail population and address racial and ethnic disparities within that population.

One of the strategies being developed by the CJC in furtherance of the goals of the Safety and Justice Challenge is the implementation of a court date reminder system through the use of cell phone text messages. The specific goal of this strategy is to reduce the number of instances when defendants fail to appear for court hearings, and arrest warrants are issued.

The Fifteenth Judicial Circuit Clerk of Court will provide CONSULTANT with lists of criminal court defendants who have provided prior express authorization to receive text messages, including their court dates and times and cellular telephone numbers. CONSULTANT will send two (2) text messages to each of the defendants reminding them of each scheduled court appearance. The first message will be sent seven days prior to the scheduled court date and the second shall be sent one day prior to the scheduled date for each court appearance.

As court appearance dates are cancelled and changed, CONSULTANT shall update the court appearance date so that recipients receive the most current date information.

CONSULTANT shall include an "opt out" provision in all text messages. CONSULTANT shall immediately cease and stop all text messaging upon notification of an "opt-out" text from a participant or other reasonable notification of revocation of prior express consent, notification of incorrect telephone number from any recipient by any means, notification to cancel or terminate notifications to an individual or to all participants by the COUNTY or by the Fifteenth Judicial Circuit Clerk of Court.

Absolutely no marketing, sales or commercial information shall be included in the text messages. The text messages must be purely information concerning the upcoming court date.

CONSULTANT shall provide COUNTY with monthly reports of the text messages sent, beginning forty (40) days after the initial text messages of the project are sent. Said reports shall include for each case number the number of text messages, the dates of those messages, whether the messages were received, any action taken by consultant if the text message was not received, and the cell phone number(s) where the messages were sent.