

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

[illegible]

Department: Department of Public Safety
Submitted By: Department of Public Safety
Submitted For: Division of Justice Services

I. EXECUTIVE BRIEF

Motion and Title: **Staff recommends motion to approve:** contract for consulting/professional services with Phamatech, Inc. for the period of October 1, 2020 through December 31, 2021, to provide drug-testing services to indigent defendants on pretrial supervised release, court ordered for random drug testing for a total not-to exceed amount of \$58,000 per calendar year, total reimbursement during the 2-year contract is \$116,000.

Summary: As part of the MacArthur Safety and Justice Challenge grant program, funding was allocated to the Public Safety Department's Pretrial Services Office for drug testing services to be provided to indigent defendants. In March 2020, the Pretrial Services Office solicited proposals to provide drug testing services to approximately 15-20 indigent pretrial individuals per week on supervision that have been court ordered for random drug testing. Three proposals were submitted and reviewed by a Selection Committee. A final selection was made on June 9, 2020, ranking Phamatech Inc. as the recommended award for the contract. During the FY 2021 budget process, the Criminal Justice Commission allocated additional funding for drug testing in an amount up to \$116,000. Having this contract in place continues to provide drug testing services to indigent defendants. **Countywide** (SF)

Background and Justification: Palm Beach County was awarded the John D. and Catherine T. MacArthur Safety and Justice Challenge grant program in the amount of \$1,400,000 effective October 1, 2020. The County's MacArthur Safety and Justice Challenge grant program is administered by the Criminal Justice Commission to safely reduce the county jail population and racial and ethnic disparities within it. As part of the grant award, \$293,800 of the total \$1,400,000 funding was allocated to the Public Safety Department, Pretrial Services Office for enhancements to current services. Pretrial Services Office will use the grant funds to continue the initiative to reduce the jail population, provide transportation (bus passes) to pretrial defendants for court related activities, and for drug testing services to be provided to indigent defendants. With a pretrial population that is 85% indigent, defendants could not afford to pay for the drug tests, sometimes resulting in a violation of pretrial release conditions.

Attachments:

- 1.) Contract with Phamatech, Inc. – Pretrial Services Drug Testing
- 2.) Pretrial Services Drug Testing RFP 032320-01

Recommended By:

Department Director

8/4/20

Date _____

Approved By:

Deputy County Administrator

8/25/20

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

| Fiscal Years | <u>2021</u> | <u>2022</u> | <u>2023</u> | <u>2024</u> | <u>2025</u> |
|-------------------------|-------------|-------------|-------------|-------------|-------------|
| Capital Expenditures | | | | | |
| Operating Costs | \$116,000 | | | | |
| External Revenues | (116,000) | | | | |
| Program Income (County) | | | | | |
| In-Kind Match (County) | | | | | |
| | | | | | |
| Net Fiscal Impact | \$* | | | | |

ADDITIONAL FTE

| | | | | | |
|------------------------|---|---|---|---|---|
| POSITIONS (Cumulative) | 0 | 0 | 0 | 0 | 0 |
|------------------------|---|---|---|---|---|

Is Item Included In Proposed Budget? Yes X No

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

Budget Account Exp No: Fund 1513 Department 820 Unit 7722 Object 9000
Exp No: Fund 0001 Department 660 Unit 5217 Object 3401
Rev No: Fund 0001 Department 660 Unit 5217 RevSc 8773

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

Fund: MacArthur's Foundation's Safety and Justice Challenge \$1.4M and General Fund

Unit: MacArthur Foundation \$1.4M FY20-FY21 and MacArthur Pre-Trial

Grant: MacArthur Foundation Safety and Justice Challenge

*Reimbursement per calendar year is limited to \$58,000. Total reimbursement during the contract is \$116,000. If there is a remaining balance from 2021 calendar year, it will be carried forward to FY22 (Oct. through Dec. 2021).

Departmental Fiscal Review:

III. REVIEW COMMENTS

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

[Signature] 8/6/2020
 REC 12/5 OFMB ASD 8/5

Control Comments:

Are J. Jacobson 8/17/20

Contract Administration

8-17-20 TW

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of the _____ day of _____, 2020, 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 Phamatech, Inc., a foreign profit corporation authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. is 33-0836229.

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 professional legal services to indigent citizens of Palm Beach County, 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 Latronda Hayes, telephone no. (561) 688-4623.

The CONSULTANT'S representative/liaison during the performance of this Contract shall be Dana Conde, Contract Manager telephone no. (888) 635-5840 Ext 276.

ARTICLE 2 - SCHEDULE

The CONSULTANT shall commence services on October 1, 2020 and complete all services by December 31, 2021.

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

- A. 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 one hundred sixteen thousand (\$116,000). The CONSULTANT shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CONSULTANT will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Work. Where incremental billings for partially completed items are permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.
- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.

- C. "Out-of-pocket" expenses will be reimbursed up to an amount not to exceed one hundred sixteen thousand (\$116,000), and in accordance with the list of the types and amounts of expenditures eligible for reimbursement as set forth in Exhibit "B". All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CONSULTANT.
- E. In order to do business with Palm Beach County, CONSULTANTS are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If CONSULTANT intends to use sub-consultants, CONSULTANT must also ensure that all sub-consultants are registered as consultants in VSS. All subcontractor agreements must include a contractual provision requiring that the sub-consultant register in VSS. COUNTY will not finalize a contract award until the COUNTY has verified that the CONSULTANT and all of its sub-consultants are registered in VSS.

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 herein under 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.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Exhibit "A", must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY'S representative before said change or substitution can become effective.

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 following language only applies if the EBO Ordinance applies to the Contract:

It is the policy of the Board of County Commissioners of Palm Beach County, Florida (the Board) that all segments of its business population including, but not limited to, small, local, minority and women owned businesses, have an equitable opportunity to participate in the COUNTY's procurement process, prime contract and subcontract opportunities. In pursuance of that policy, the Board adopted an Equal Business Opportunity (EBO) Ordinance which is codified in Sections 2-80.20 through 2-80.30 (as may be amended) of the Palm Beach County Code. The EBO Ordinance sets forth the COUNTY'S requirements for the EBO program, and is incorporated herein and made part of this Contract. Non-compliance with the EBO Ordinance must be corrected within fifteen (15) days of notice of non-compliance. Failure to comply with the EBO Ordinance may result in any of the following penalties:

- Suspension of Contract;
- Withholding of funds;
- Termination of the Contract based upon a material breach of contract pertaining to the EBO Program compliance;
- Suspension or debarment of CONSULTANT from eligibility for providing goods or services to the COUNTY for a period not to exceed three (3) years; and
- Liquidated damages equal to the difference in dollar value of S/M/WBE participation as committed to in the Contract, and the dollar value of S/M/WBE participation as actually achieved.

The CONSULTANT must adhere to the Affirmative Procurement Initiatives (APIs) as incorporated herein as Attachment 1, including RFP 032320-01, and the specifications set forth in CONSULTANT's response, which are both incorporated herein by reference. Failure to comply with this Article 7 is a material breach of this Contract. **(NOTE: If consultant has agreed to provide an API percentage that is higher than what was required by the Goal Setting Committee, then you must state what the consultant has agreed to on the API page.)**

- i. CONSULTANT shall report all subcontractor payment information on EBO forms 3a and 4, or as otherwise required by EBO, and, when the EBO portal is available, input subcontractor payment information directly into the COUNTY'S contract management system.

CONSULTANT shall pay subcontractors undisputed amounts within ten (10) days after COUNTY pays the CONSULTANT. In the event of a disputed invoice, the CONSULTANT shall send the subcontractor(s) and COUNTY a written notice of the dispute within five (5) days after receipt of the subject invoice.

- ii. CONSULTANT must notify the Office of EBO of changes in S/M/WBE utilization and get prior approval for any substitutions.

The CONSULTANT agrees to pay its subconsultants in compliance with the Florida Prompt Payment Act. In the event CONSULTANT fails to comply with payments(s) to its subconsultants in accordance with the Florida Prompt Payment Act, CONSULTANT shall be subject to any and all penalties and sanctions available under the terms of the EBO Program, its contract with the COUNTY, or any other applicable law. The Office of EBO has the right to review CONSULTANT's records and interview Subcontractors.

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
Department of Public Safety
Latronda Hayes
20 South Military Trail
West Palm Beach, FL 33415

- 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

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.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY. 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

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 five (5) 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. As a condition of entering into this Contract, the CONSULTANT represents and warrants that it will comply with the COUNTY'S Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the CONSULTANT retaliate against any person for reporting instances of such discrimination. The CONSULTANT shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the COUNTY'S relevant marketplace in Palm Beach County. The CONSULTANT understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification or debarment of the company from participating in COUNTY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONSULTANT shall include this language in its subcontracts.

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 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, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision 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:

Stephanie Sejnoha, Director
Department of Public Safety
20 South Military Trail
West Palm Beach, FL 33415

With copy to:

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

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

Phamatech, Inc.
ATT: Dana Conde
15175 Innovation Drive
San Diego, CA 92128

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 Resolutions R2013-1470 and R2015-0572, 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 sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, 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. Pursuant to F.S. 287.135(3)(b), if CONSULTANT is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Contract may be terminated at the option of the COUNTY.

- 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.

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.

ARTICLE 32 - COUNTERPARTS

This Contract, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Contract. The COUNTY may execute the Contract through electronic or manual means. CONSULTANT shall execute by manual means only, unless the COUNTY provides otherwise.

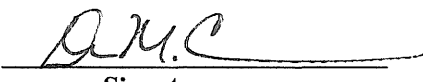
IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

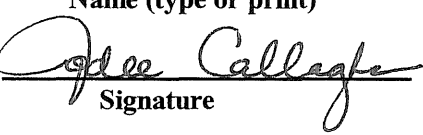
ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:

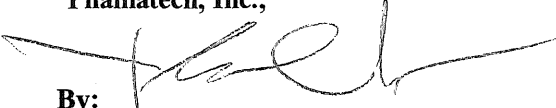
By: _____
Deputy Clerk

By: _____
Mayor

WITNESS:

Signature
Dana M Conde

Name (type or print)

Signature
Jodee Callaghan

Name (type or print)

CONSULTANT:
Phamatech, Inc.,

By: _____
Tuan Pham, President

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

(corp. seal)

By _____
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By  _____
Department Director

SCOPE OF WORK

Drug Testing General Services Description

The Consultant shall conduct drug testing on the participants selected for random drug testing by the 15th Judicial Circuit Court. The Pretrial Services Supervision office shall select a group of participants (by computer generation) to report for their drug and alcohol test each day Monday through Saturday. The drugs of abuse for which testing is conducted shall include the 7- panel test (elements such as cocaine, marijuana, opiates, benzodiazepine, amphetamines, or any substance of abuse that a participant may be most likely to use). The Consultant shall provide the following:

- A qualified same sex staff person to observe all collections.
- Drug testing days and hours of operation will be Monday through Saturday 8:00 a.m. to 8:00 p.m.
- Experience supervising a drug testing program which oversees the testing of criminal justice involved substance-abusing clients.

Method of Drug Testing to be used

For Pretrial Services all drug testing will be conducted using urine. All urine collections will be observed. The collection site locations are Phamatech locations along with two (2) subcontracted locations in the Northern and Western Region respectively. See attached Drug Testing Locations for Pretrial Indigent Clients. Drug testing locations are subject to change upon agreement of Consultant and the COUNTY, and notice of any changed location will be provided to the Pretrial Services Supervision office.

Reporting Drug Testing Results

Results will be reported via a secured web-based electronic reporting system. The Consultant shall submit negative test results within 48 hours following collection, and positive results within 72 hours.

Procedures for Direct Observation

1. **Pretrial supervisors will forward custody forms to locations for those individuals who are considered indigent and need to be tested.**

EXHIBIT “B”

SCHEDULE OF PAYMENTS

The Scope of Work to be completed by CONSULTANT as defined in EXHIBIT “A” consist of specific completion phases which shall be clearly identified on a unit type basis upon submission to the COUNTY of certain “deliverables” as expressly indicated below. Compensation for the work task stated herein shall be in accordance with the following Schedule of Payments:

The CONSULTANT will prepare and submit monthly invoices to the Pretrial Services office. Invoices must include the Pretrial Services Client Identification Number, client name, dates of services, amount due for each service and the total amount due. Invoices will be reviewed and approved by the County’s representative to verify that services have been rendered in conformity with the contract. Approved invoices will then be sent to the Finance Department for payment.

Reimbursement per calendar year is limited to \$58,000.

Total reimbursement during the contract is \$116,000.

Service/Program

Pretrial Services Supervision Random Drug Testing:

| Service | Unit Type | Rate | Lab Location(s) |
|--------------------|--------------|---------|--------------------------------|
| 7- Panel Drug Test | 1 test | \$35.00 | See list of locations attached |

Drug Testing Locations for Pretrial Indigent Clients

Phamatech, Inc. Collection Facility (Southern Region)
Lakeview Corporate Center
6415 Lake Worth Road STE 205
Greenacres, FL 33463

Phamatech, Inc. Collection Facility (Central Region)
(Courthouse)
205 N Dixie Highway
Suite 3.1003 Juvenile Side, Drug Testing Office
West Palm Beach, FL 33401

Helix Urgent Care (Northern Region)
225 US-1
Tequesta, FL 33469

Palm Glades Rural Health (Western Region)
217 W Ave A Suite. 100
Belle Glade, FL 33430



Palm Beach County Department of Public Safety
Justice Services Division

Palm Beach County Pretrial Supervision Program

Drug Testing

Request for Proposal

Release Date: March 30, 2020

Due Date: April 28, 2020

General Overview:

The Palm Beach County Pretrial Services Program is operational under the management of the Palm Beach County Department of Public Safety and Division of Justice Services. The Pretrial Services Program is funded by the Board of County Commissioners. The Palm Beach County Pretrial Services Program under Florida statutes gathers and presents information to the Court through the Pretrial Interview and Assessment to determine the level of pretrial release for defendants booked into the Palm Beach County jail. The Court determines the type of release, level of supervision and special court-ordered conditions. Some of these special conditions may include but not limited to Random Drug and/or Alcohol testing.

Drug testing services for indigent criminal defendants on supervised pretrial release status will be offered through a John D. and Catherine T. MacArthur Foundation Safety and Justice Challenge grant program at an annual amount of 58,000 in temporary funding.

How to Apply/Deadline:

Applications are due to Latronda Hayes, Court Services Manager, Department of Public Safety, Justice Services Division by **5:00 p.m. on April 28, 2020**. Electronic submissions are preferred at lhayes@pbcgov.org. You may hand deliver or mail applications to 205 North Dixie Highway, Room 2.2400, (2nd Floor, Main Courthouse), West Palm Beach, FL 33401. Applications must be typed, double-spaced, in 12-point standard font with 1-inch standards margins. Late applications (applications received after 5:00 p.m. on **April 28, 2020**) will not be accepted.

Eligibility:

Applicants must be agencies with a minimum of two (2) years of experience providing drug testing and/or substance abuse treatment to criminal justice-involved clients.

Term of Contracts:

The term of the contract is for approximately months (12) months, with services beginning on October 1, 2020 (the date of contract execution) and ending on September 30, 2021. Applicants must be able to contract with the Palm Beach County Board of County Commissioners (see attached Contract for Professional Services).

Requirements

Drug Testing Services for defendants released on Supervised O.R

The Applicant shall conduct drug testing on the participants selected for random drug testing by court order to the Palm Beach County Pretrial Services Program. The drug(s) to be tested shall also be determined by the Palm Beach County Pretrial Services Program in conjunction with the Court of the 15th Judicial Circuits. The Palm Beach County Pretrial Services Program shall select a group of participants to report for their drug test each day, Monday through Sunday. The drugs of abuse for which testing is conducted shall include but not limit to elements such as: cocaine, marijuana, opiates, benzodiazepine, amphetamines, Fentanyl, **OxyContin®** (oxycodone), E.T.G (alcohol) or any substance of abuse that a participant may be most likely to use. Preferences will be given to applicants providing the following:

- **Minimum seven panels test.**
- Sufficient space to accommodate observed urine collection from participants; A minimum of 4 office testing locations throughout Palm Beach County, including the north, western, south and central areas.
- A qualified same sex staff person to observe all collections available during all testing hours.
- Availability to provide testing services on weekends and evening hours.
- Program site(s) accessible to bus routes/public transportation and availability of day and evening observations for participants,
- A minimum of one (1) bi-lingual staff person shall be employed in order to provide services.
- Experience supervising a drug testing program which oversees the testing of criminal justice involved substance-abusing clients.

Method of Drug Testing to be Used - All drug testing will comply with the Department of Health and Clinical Laboratory Improvement Amendments (CLIA). Describe the methods of testing including reagents used, staff certifications, and chain of custody.

Reporting Results of Drug Testing – The Applicant shall submit the test results by two business days, from the date the specimen was collected, to the Pretrial Services Program either by email or through a web-based secure site. The information will include participant's test results, diluted test, abnormal test, and no-shows for test results.

What an application must include:

1. **Services Overview:** (no more than 5 pages, double-spaced, 12 point font with one-inch margins on 8½ x 11 paper). **Services Overview should:**
 - Provide a detailed delivery of services including any restrictions or limitations to services.
 - Describe geographical area to be served, office locations and hours of operation.
 - Define how the drug testing specimen will be collected and results delivered to the Pretrial Office.
2. **Budget narrative:** (no more than 2 pages, double-spaced, 12 point font with one-inch margins on 8 ½ x11 paper)
3. **Agency Experience:** (no more than 2 pages, double-spaced, 12 point font with one-inch margins on 8½ x 11 paper)

Agency experience should:

- Describe the organization's capacity, capabilities and experience.
- Describe the organization's financial capacity to contract with the county including information on insurance, staffing and organizational structure.
- Describe the organization's experience providing drug testing services.
- Define experiences and successes in serving the criminal justice-involved substance-abusing clients, number of years and scope of services provided.

Review Process:

Applications will be reviewed and scored by the Pretrial Services Selection Committee. Applicants will be invited to attend a Selection Committee meeting that will be held to answer any questions that Committee or Applicant might have. Final selection of the provider(s) will be announced by **June 30, 2020.**