

AGENDA SHEET

SUBMITTING DEPARTMENT: *Criminal Justice Administrator*

CONTACT PERSON: *John Dickson*

PHONE NUMBER: *(509) 477-5770*

CHECK TYPE OF MEETING ITEM BELOW:

9:00 AM CEO MEETING:

2:00 PM CONSENT AGENDA:
BY LEAVE:

5:30 PM LEGISLATIVE SESSION:
BY LEAVE:

SPECIAL SESSION:

BELOW FOR CLERK'S USE ONLY:

Clerk's Resolution No. _____
Approved: Majority/Unanimous _____
Denied: Majority/Unanimous _____
Renews/Amends No. _____
Public Works No. _____
Purchasing Dept. No. _____

AGENDA TITLE: *IN THE MATTER OF EXECUTING A PROFESSIONAL SERVICES AGREEMENT BETWEEN SPOKANE COUNTY AND UPTRUST INC. FOR CUSTOMIZED SOFTWARE TO FACILITATE INCREASED COMMUNICATION AND ENGAGEMENT BETWEEN THE SPOKANE COUNTY PUBLIC DEFENDERS' OFFICE AND CLIENTS*

BACKGROUND: *(Attach separate sheet(s) if necessary): To meet the objectives of the MacArthur Foundation Safety and Justice Challenge grant Spokane County is desirous to contract with UPTRUST, Inc. who will provide a customized software system to assist the Spokane County Public Defenders' Office in its' communication with clients in an attempt to reduce the number of Failure-to-Appears in Spokane County.*

FISCAL IMPACT: *Forty Thousand Dollars (\$40,000)*

REQUESTED BOARD ACTION: *Approval*

SIGNATURES:

Department Head/Elected Official or Designated Authority (Requesting Agenda Item)

Gerry Gemmill, Chief Executive Officer

Grants Administrator (sign-off)

Auditor's Office

Budget Office

Other

This item will need to be codified in the Spokane County Code.

NO. _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING A)
PROFESSIONAL SERVICES AGREEMENT)
BETWEEN SPOKANE COUNTY AND UPTRUST)
INC. FOR CUSTOMIZED SOFTWARE TO)
FACILITATE INCREASED COMMUNICATION)
AND ENGAGEMENT BETWEEN THE SPOKANE)
COUNTY PUBLIC DEFENDERS' OFFICE AND)
CLIENTS)

RESOLUTION

WHEREAS, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County (hereinafter sometimes referred to as the "Board") has the care of County property and the management of County funds and business; and

WHEREAS, on April 14, 2016, Spokane County was awarded funding from the John D. and Catherine T. MacArthur Foundation (Foundation) as part of a network of sites participating in the Safety and Justice Challenge, the Foundation's criminal justice reform initiative; and

WHEREAS, to meet objectives contained within the Agreement with the MacArthur Foundation, Spokane County is desirous to contract with UPTRUST, Inc. in the amount of Forty Thousand Dollars (\$40,000). This Agreement will provide a customized software system to assist the Spokane County Public Defenders' Office in its' communication with clients in an attempt to reduce the number of Failure-to-Appears in Spokane County; and

WHEREAS, the County has adopted a Financial Assistance Policy under Resolution Nos. 12-1017 and 13-0219 (the "Policy"). Based on the Policy, Spokane County Grants Administrator Kari Grytdal has recommended that the Board of County Commissioners execute the Professional Services Agreement with UPTRUST, Inc.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of County Commissioners of Spokane County that pursuant to the provisions of the County's Financial Assistance Policy adopted under Resolution Nos. 12-1017 and 13-0219, that:

- (1) the Board does hereby execute the Professional Services Agreement between Spokane County and UPTRUST, Inc. in amount of Forty Thousand, Dollars (\$40,000 to provide a customized software system to assist the Spokane County Public Defenders' Office in its' communication with clients in an attempt to reduce the number of Failure-to-Appears in Spokane County; and
- (2) either the Chairman of the Board, majority of the Board, Chief Executive Officer, Chief Operations Officer, Chief Budget Officer or the elected official of the office receiving the award, is hereby authorized to execute, at other than an open meeting, any and all documents to implement this award as well as any subsequent amendments after review by the Spokane County Grants Administrator.

PASSED AND ADOPTED this _____ day of _____, 2018.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

JOSH KERNS, Chair

ATTEST:
CLERK OF THE BOARD

MARY KUNEY, Vice Chair

By: _____
Ginna Vasquez

AL FRENCH, Commissioner

**PROFESSIONAL SERVICES AGREEMENT BETWEEN SPOKANE COUNTY
AND
UPTRUST, INC.**

1. Grantee Uptrust, Inc. 156 2 nd Street San Francisco, CA 94105	2. Contract Amount <p style="text-align: center;">\$40,000.00</p>	3. Tax ID# 47-3356062 4. DUNS#
5. Grantee Representative Jacob Sills Uptrust, Inc. 156 2 nd Street San Francisco, CA 94105 (860) 539-0999 jsills@uptrust.co	6. County's Representative Kari Grytdal Spokane County Grants Administrator 1116 W Broadway Avenue Spokane, WA 99260 (509) 477-7273 kgrytdal@spokanecounty.org	
8. Original Grant ID# <p style="text-align: center;">N/A</p>	9. Start Date <p style="text-align: center;">6/1/2018</p>	10. End Date <p style="text-align: center;">12/31/2018</p>
11. Funding Authority: <p style="text-align: center;">John D. and Catherine T. MacArthur Foundation</p>		
12. Federal Funds (as applicable) N/A	13. CFDA # N/A	14. Federal Agency: <p style="text-align: center;">N/A</p>
15. Contractor Selection Process: (check all that apply or qualify) <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E Services <input type="checkbox"/> Competitive Bidding <input checked="" type="checkbox"/> Pre-approved by Funder	16. Contractor Type: (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> VENDOR <input type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> Non-Profit <input type="checkbox"/> For-Profit	
17. Grant Purpose: To provide the Uptrust system to the Spokane County Public Defender's Office in order to eliminate Court failure-to-appears by reminding defendants of their Court obligations.		
18. COUNTY and the GRANTEE, as identified above, acknowledge and accept the terms of this AGREEMENT and attachments and have executed this AGREEMENT the date below to start as of the date and year referenced above. The rights and obligations of both parties to this AGREEMENT are governed by this AGREEMENT and the following other documents incorporated by reference: (1) General Terms and Conditions, (2) Attachment "A" Scope of Work, and Budget.		
FOR THE GRANTEE: <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;"> <hr/> Signature </div> <div style="text-align: center;"> 6/19/18 <hr/> Date </div> </div> <div style="margin-top: 10px;"> Jacob Sills <hr/> Name CEO <hr/> Title </div>	FOR COUNTY: <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;"> <hr/> Signature </div> <div style="text-align: center;"> <hr/> Date </div> </div> <div style="margin-top: 10px;"> <hr/> Name <hr/> Title </div>	

(FACE SHEET)

SECTION NO. 1: SERVICES

The GRANTEE shall provide those services set forth in the Scope of Work attached hereto as Attachment "A" and incorporated by reference.

SECTION NO. 2: TERM

The term of this AGREEMENT shall commence on June 1, 2018 and shall terminate on December 31, 2018.

SECTION NO. 3: COMPENSATION

COUNTY shall reimburse GRANTEE an amount not to exceed the amount set forth in Attachment "A" Budget, attached hereto and incorporated herein by reference for the performance of all things necessary for or incidental to the performance of Scope of Work as set forth in Attachment "A".

Invoices must be submitted with supporting documentation, including copies of receipts, etc., as directed by the COUNTY's representative and must set forth a breakdown of the services performed and costs associated.

Payment will be made upon invoice and shall be considered timely if made by COUNTY within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the GRANTEE. The final reimbursement request must be received no later than thirty (30) days after the end of the contract.

Requests for reimbursement shall be submitted to:

Kari Grytdal
Spokane County Grants Administrator
1116 W. Broadway Ave
Spokane, WA 99260
kgrytdal@spokanecounty.org

SECTION NO. 4: RELATIONSHIP OF THE PARTIES

No agent, employee, servant or otherwise of the GRANTEE shall be deemed to be an employee, agent, servant, or otherwise of the COUNTY for any purpose, and the employees of the GRANTEE are not entitled to any of the benefits that the COUNTY provides for COUNTY employees. The GRANTEE will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors or otherwise, during the performance of this AGREEMENT.

SECTION NO. 5: PERSONNEL

The GRANTEE represents that it has, or will secure at its own expense, all necessary personnel

required to perform the services under this AGREEMENT. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required herein shall be performed by the GRANTEE 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 of the GRANTEE's key personnel as may be listed herein must be made known to the COUNTY's representative prior to execution and written approval granted by the COUNTY before said change or substitution can become effective.

GRANTEE warrants that all services shall be performed by skilled and competent personnel who shall meet or exceed the professional standards in the field of the work and that services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the services.

SECTION NO. 6: VENUE STIPULATION

This AGREEMENT has and shall be construed as having been made and delivered in the State of Washington and the laws of the State of Washington shall be applicable to its construction and enforcement. Any action at law, suit in equity or judicial proceeding for the enforcement of this AGREEMENT or any provision hereto shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

SECTION NO. 7: COMPLIANCE WITH LAWS

The PARTIES hereto specifically agree to observe federal, state and local laws, ordinances and regulations to the extent that they may have any bearing on either providing any money under the terms of this AGREEMENT or the services actually provided under the terms of this AGREEMENT.

SECTION NO. 8: NON-DISCRIMINATION

The PARTIES hereto specifically agree that no person shall, on the grounds of race, creed, color, sex, sexual orientation, national origin, marital status, age or the presence of any sensory, mental, or physical disability or Vietnam era or disabled veterans status be excluded from full employment rights and participation in, or be denied the benefits of, or be otherwise subject to, discrimination in conjunction with any Services which the GRANTEE will receive payment under the provisions of this AGREEMENT.

SECTION NO. 9: TERMINATION FOR CAUSE / SUSPENSION

In the event the COUNTY determines that the GRANTEE failed to comply with any term or condition of this AGREEMENT, the COUNTY may terminate the AGREEMENT in whole or in part upon written notice to the GRANTEE. Such termination shall be deemed "Termination for

Cause." Termination shall take effect on the date specified in the notice.

In the alternative, the COUNTY, upon written notice may allow the GRANTEE a specific period of time in which to correct the non-compliance. During the corrective-action time period, the COUNTY may suspend further payment to the GRANTEE in whole or in part, or may restrict the GRANTEE's right to perform duties under this AGREEMENT. Failure by the GRANTEE to take timely corrective action shall allow the COUNTY to terminate the AGREEMENT upon written notice to the GRANTEE.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the COUNTY determines that the GRANTEE did not fail to comply with the terms of the AGREEMENT or when the COUNTY determines the failure was not caused by the GRANTEE's actions or negligence.

In the event of termination or suspension, the GRANTEE shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original AGREEMENT and the replacement or cover agreement and all administrative costs directly related to the replacement agreement, e.g. cost of the competitive bidding, mailing, advertising and staff time.

SECTION NO. 10: TERMINATION FOR CONVENIENCE

Except as otherwise provided in this AGREEMENT, the COUNTY may, by ten (10) business days' written notice, beginning on the second day after the mailing, terminate this AGREEMENT, in whole or in part. If this AGREEMENT is so terminated, the COUNTY shall be liable only for payment required under the terms of this AGREEMENT for services rendered prior to the effective date of termination.

SECTION NO. 11: TERMINATION PROCEDURES

After receipt of a Notice of Termination, except as otherwise directed by the COUNTY, the GRANTEE shall:

- A. Stop work under the AGREEMENT on the date, and to the extent specified, in the notice;
- B. Place no further orders for materials, services, or facilities related to the AGREEMENT;
- C. Assign to the COUNTY all of the rights, title, and interest of the GRANTEE under the orders and subcontracts so terminated, in which case the COUNTY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the GRANTEE to settle such claims must have the prior written approval of the COUNTY; and
- D. Preserve and transfer any materials, AGREEMENT deliverables and/or COUNTY property in the GRANTEE's possession as directed by the COUNTY.

Upon termination of the AGREEMENT, the COUNTY shall pay the GRANTEE for any service provided by the GRANTEE under the AGREEMENT prior to the date of termination. The COUNTY may withhold any amount due as the COUNTY reasonably determines is necessary to

protect the COUNTY against potential loss or liability resulting from the termination. The COUNTY shall pay any withheld amount to the GRANTEE if the COUNTY later determines that loss or liability will not occur.

The rights and remedies of the COUNTY under this Section are in addition to any other rights and remedies provided under this AGREEMENT or otherwise provided under law. Provided, further, in the event that the GRANTEE fails to perform this AGREEMENT in accordance with state laws, federal laws, and/or the provisions of this AGREEMENT, the COUNTY reserves the right to recapture funds in an amount to compensate the COUNTY for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the GRANTEE of funds under this recapture provision shall occur within the time period specified by the COUNTY. In the alternative, the COUNTY may recapture such funds from payments due under this AGREEMENT.

SECTION NO. 12: EXCUSABLE DELAYS

The GRANTEE shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the GRANTEE's control and without its fault or negligence. Such causes may include, but are not limited to: acts of God, the COUNTY's omissive and commissive failures; natural or public health emergencies; labor disputes; freight embargoes and severe weather conditions.

Upon the GRANTEE's request, the COUNTY shall consider the facts and extent of any failure to perform the work and if the GRANTEE's failure to perform was without it or its subcontractors fault or negligence, the AGREEMENT end date and/or any other affected provision of this AGREEMENT shall be revised accordingly; subject to the COUNTY's rights to change, terminate, or stop any or all of the work/services at any time.

SECTION NO. 13: REMEDIES

No remedy herein conferred upon by 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 or 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.

SECTION NO. 14: NOTICES

All notices or other communications given hereunder shall be deemed given on: (i) the day such notices or other communications are received when sent by personal delivery; or (ii) the third day following the day on which the same have been mailed by first class delivery, postage prepaid addressed to the COUNTY or the GRANTEE at the address set forth hereinabove for such PARTY, or at such other address as either PARTY shall from time-to-time designate by notice in writing to the other PARTY.

SECTION NO. 15: MODIFICATION

No modification or amendment to this AGREEMENT shall be valid until the same is reduced to writing, in the form of an amendment, and executed with the same formalities as this AGREEMENT.

SECTION NO. 16: WAIVER

No officer, employee, agent or otherwise of the COUNTY has the power, right or authority to waive any of the conditions or provisions to this AGREEMENT. No waiver of any breach of this AGREEMENT shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this AGREEMENT or at law, shall be taken and construed as cumulative that is, in addition to every other remedy provided herein or by law. Failure of the COUNTY to enforce at any time any of the provisions of this AGREEMENT, or to require at any time performance by the GRANTEE of any provision hereof, shall in no way be construed to be a waiver of such provisions, nor in any way effect the validity of this AGREEMENT of any part hereof, or the right of the COUNTY to hereafter enforce each and every such provision.

SECTION NO. 17: INDEMNIFICATION

The COUNTY shall protect, defend, indemnify, and hold harmless the GRANTEE, its officers, officials, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property). The COUNTY will not be required to indemnify, defend, or save harmless the GRANTEE if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the GRANTEE. Where such claims, suits, or actions result from the concurrent negligence of both PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each party's own negligence.

The GRANTEE agrees to protect, defend, indemnify, and hold harmless the COUNTY, its officers, officials, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, judgments and/or awards of damages (both to persons and/or property). The GRANTEE will not be required to indemnify, defend, or save harmless the COUNTY if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the COUNTY. Where such claims, suits, or actions result from the concurrent negligence of both PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each party's own negligence.

The COUNTY and GRANTEE agree that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any COUNTY or GRANTEE employees or agents while performing work authorized under this AGREEMENT. For this purpose, the COUNTY and GRANTEE, by mutual negotiation, hereby waives any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions

of chapter 51.12 RCW.

Those indemnifications and waiver shall survive the termination of this AGREEMENT.

No officer or employee of the GRANTEE or the COUNTY shall be personally liable for any act, or failure to act, in connection with this AGREEMENT, it is understood that in such matters they are acting solely as agents of their respective agencies.

SECTION NO. 18: COUNTY REPRESENTATIVE

The COUNTY hereby appoints and GRANTEE hereby accepts the COUNTY's representative or his/her designee as identified on the Face Sheet as the COUNTY's liaison for the purpose of administering this AGREEMENT. GRANTEE hereby appoints and COUNTY hereby accepts GRANTEE's representative or his/her designee as identified on the Face Sheet as GRANTEE's liaison for the purpose of administering this AGREEMENT.

SECTION NO. 19: MAINTENANCE OF RECORDS

The GRANTEE shall maintain all books, records, documents, data and other evidence relating to this AGREEMENT and performance of the Services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this AGREEMENT. The GRANTEE shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

At no additional cost, the GRANTEE shall make available to the COUNTY, Washington State Auditor, federal and state officials so authorized by law, or their duly authorized representatives at any time during their normal operating hours, all records, books or pertinent information which the COUNTY may be required by law to make part of its auditing procedures, an audit trail, or which may be required for the purpose of funding the Services contracted for herein. The GRANTEE shall provide access to its facilities for this purpose.

SECTION NO. 20: ALL WRITINGS CONTAINED HEREIN

This AGREEMENT contains all the terms and conditions agreed upon by the PARTIES. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the PARTIES hereto. The GRANTEE has read and understands all of this AGREEMENT and now states that no representation, promise or condition not expressed in this AGREEMENT has been made to induce the GRANTEE to execute the same.

SECTION NO. 21: SEVERABILITY

It is understood and agreed between the PARTIES that if any parts, terms or provisions of this AGREEMENT are held by the courts to be illegal, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the PARTIES shall not be affected in regard to the remainder of the AGREEMENT. If it should appear that any part, term or provision of this AGREEMENT is in conflict with any statutory provisions of the State of Washington, then the part, term or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this AGREEMENT shall be deemed to modify to conform to such statutory provision.

SECTION NO. 22: EXECUTION AND APPROVAL

The PARTIES warrant that the officers/individuals executing above have been duly authorized to act for and on behalf of the party for purposes of confirming this AGREEMENT.

SECTION NO. 23: COUNTERPARTS

This AGREEMENT may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

SECTION NO. 24: 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 subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this AGREEMENT.

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

SECTION NO. 25: CONFLICT OF INTEREST

No officer or employee of the COUNTY; no member, officer, or employee of the GRANTEE or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the GRANTEE who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this AGREEMENT. The GRANTEE shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

SECTION NO. 26: DISPUTE RESOLUTION

Any dispute between the PARTIES which cannot be resolved between the PARTIES shall be subject to arbitration. Except as provided for to the contrary herein, such dispute shall first be reduced to writing. If the COUNTY and the GRANTEE representatives cannot resolve the dispute it will be submitted to arbitration. The provisions of chapter 7.04A RCW shall be applicable to any arbitration proceeding.

The COUNTY and the GRANTEE shall have the right to designate one person each to act as an arbitrator. The two selected arbitrators shall then jointly select a third arbitrator. The decision of the arbitration panel shall be binding on the PARTIES and shall be subject to judicial review as provided for in chapter 7.04A RCW.

The costs of the arbitration panel shall be equally split between the PARTIES.

SECTION NO. 27: STANDARD OF CARE

The standard of care applicable to the GRANTEE's services will be the degree of skill and diligence normally employed by the GRANTEE performing the same or similar services at the time said services are performed.

The GRANTEE shall be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all reports, plans, specifications and other services furnished by the GRANTEE under the terms of this AGREEMENT.

The GRANTEE shall, without additional compensation, correct or otherwise revise any errors, omissions, or other deficiencies in the reports, plan specifications and other similar documents/data prepared or furnished by the GRANTEE. The GRANTEE shall also be liable for all damages to the COUNTY caused solely by the GRANTEE's negligent performance of any of the services furnished under this AGREEMENT.

Approval by the COUNTY representative of any reports, plans, specifications and incidental consulting service work or materials furnished shall not relieve the GRANTEE of the responsibility for the technical adequacy and accuracy of the services and/or work performed.

The COUNTY's review, approval or acceptance of or payment for any of the GRANTEE's services shall not be construed as a waiver of any rights under this AGREEMENT or any cause of action arising out of the performance of this AGREEMENT.

SECTION NO. 28: NO THIRD PARTY BENEFICIARIES

Nothing in this AGREEMENT is intended to give, or shall give, whether directly or indirectly, any benefit or right, greater than that enjoyed by the general public, to third persons.

SECTION NO. 29: SURVIVAL

Any Sections of this AGREEMENT which, by their sense and context, are intended to survive shall survive the termination of this AGREEMENT.

SECTION NO. 30: HEADINGS

The section headings in this AGREEMENT have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to, define, limit, or extend the scope or intent of the sections to which they appertain.

SECTION NO. 31: OTHER EMPLOYMENT

This AGREEMENT is not an exclusive services agreement. The GRANTEE may take on other professional assignments while completing the work set forth herein.

SECTION NO. 32: PAYMENT OF TAXES

This AGREEMENT is for the employment of the GRANTEE as an independent contractor. The GRANTEE holds itself out as an independent GRANTEE doing business as listed above and is solely responsible for paying any and all taxes associated with the work of this AGREEMENT including but not necessarily limited to income and social security taxes.

SECTION NO. 33: ANTI-KICKBACK

No officer or employee of the COUNTY, having the power or duty to perform an official act or action related to this AGREEMENT, shall have or acquire any interest in this AGREEMENT, or have solicited, accepted or granted a present or future gift, favor, service, or other thing of value from or to any person involved in this AGREEMENT.

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

SECTION NO. 34: INSURANCE

UPTRUST shall furnish and maintain all insurance as required herein and comply with all limits, terms and conditions stipulated therein, at their expense, for the duration of the AGREEMENT. The following is a list of the required AGREEMENT coverage requirements:

GENERAL LIABILITY INSURANCE: UPTRUST shall have Commercial General Liability with limits of \$1,000,000.00 per occurrence, which includes general aggregate, products, completed operation, personal injury and fire damage.

ADDITIONAL INSURED ENDORSEMENT: UPTRUST's General Liability Insurance must provide that the COUNTY, its officers, agents and employees, and any other entity specifically required by the provisions of this AGREEMENT will be specifically named additional insured(s) for all coverage provided by this policy of insurance and shall be fully and completely protected by this policy from all claims. Language such as the following should be used "Spokane County, Its' Officers, Agents And Employees, Are Named As An Additional Insured With Respect To The 2018 AGREEMENT BETWEEN SPOKANE COUNTY AND UPTRUST, INC.".

WORKERS COMPENSATION: If UPTRUST has employees, it shall show proof of Worker's Compensation coverage effective in Washington State by providing its State Industrial Account Identification Number. Provision of this number will be UPTRUST's assurance that coverage is in effect.

PROFESSIONAL LIABILITY INSURANCE: UPTRUST shall provide errors & omissions coverage in the form of Professional liability insurance coverage in the minimum amount of \$1,000,000.00.

Any exclusion to UPTRUST's insurance policies that may restrict coverage required in the AGREEMENT's insurance requirements must be pre-approved by the Spokane County Risk Management Department. UPTRUST's insurer shall have a minimum A.M. Best's rating of A-VII and shall be authorized to do business in the State of Washington. Evidence of such insurance shall consist of a completed copy of the certificate of insurance and additional insured endorsement, signed by the insurance agent for UPTRUST and either the additional insured policy language or a copy of any required endorsement(s) and returned to the Spokane County Risk Manager. The insurance policy or policies will not be canceled, materially changed or altered without forty-five (45) days prior notice submitted to the COUNTY. The policy shall be endorsed and the certificate shall reflect that the COUNTY is named as an additional insured on UPTRUST's general liability policy with respect to activities under the AGREEMENT. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

The policy shall be endorsed and the certificate shall reflect that the insurance afforded therein shall be primary insurance and any insurance or self-insurance carried by the COUNTY shall be excess and not contributory insurance to that provided by UPTRUST.

UPTRUST shall not commence providing services until a Certificate of Insurance, meeting the requirements set forth herein, has been approved by the Spokane County Risk Management Department. Said proof of insurance should be mailed to the Risk Management Department: 2018 UPTRUST, INC. AGREEMENT. Upon request, UPTRUST shall forward to the Risk Management Department the original policy, or endorsement obtained.

Failure of UPTRUST to fully comply with the insurance requirements set forth herein, during the term of the AGREEMENT, shall be considered a material breach of contract and cause for immediate termination of the AGREEMENT at the COUNTY's discretion.

Providing coverage in the above amounts shall not be construed to relieve UPTRUST from liability in excess of such amounts.

SECTION NO. 35: ASSIGNMENT

Neither this AGREEMENT, nor any claim arising under this AGREEMENT, shall be transferred or assigned by the GRANTEE without prior written consent of the COUNTY.

SECTION NO. 36: ATTORNEYS' FEES

Unless expressly permitted under another provision of the AGREEMENT, in the event of litigation or other action brought to enforce the terms of the AGREEMENT, each party agrees to bear its own attorneys' fees and costs.

SECTION NO. 37: LOSS OF FUNDING

In the event funding from the MACARTHUR FOUNDATION, which is the source of funding by the COUNTY for this AGREEMENT, is withdrawn, reduced, or limited in any way after the effective date of this AGREEMENT, and prior to normal completion, the COUNTY may terminate the AGREEMENT under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the AGREEMENT may be amended to reflect the new funding limitations and conditions.

SECTION NO. 38: FEDERAL DEBARMENT AND SUSPENSION VERIFICATION

The GRANTEE certifies, by signing this AGREEMENT that neither it nor its' principals nor any subcontractor nor its' principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The GRANTEE shall provide immediate written notice to the COUNTY if at any time it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

SECTION NO. 39: DISCLAIMER OF WARRANTIES

Services furnished under this AGREEMENT are provided "as is" and unless otherwise expressly stated in this instrument, without representation or warranties of any kind, either express or implied. To the fullest extent permitted by law, UPTRUST disclaims all warranties, express, implied or statutory, including, but not limited to, implied warranties of title, non-infringement, merchantability and fitness for a particular purpose. UPTRUST does not guarantee that the COUNTY's use of the services will produce any specific results. UPTRUST does not warrant that

use of software or equipment furnished by UPTRUST will be uninterrupted, error-free, non-infringing, or secure, or that defects will be corrected.

SECTION NO. 40: PUBLICITY

Any use of the COUNTY's name and content, including COUNTY's website content, is subject to the COUNTY's prior written approval, which may be in the form of an email.

SECTION NO. 41: CONFIDENTIALITY

Any confidential information provided to or developed by either PARTY in the performance of this AGREEMENT shall be kept confidential and shall not be made available to any individual or organization by such PARTY without the prior written approval of the other PARTY. For purposes of this AGREEMENT. "Confidential Information" means information not generally known or available in the public domain, information identified as "Confidential Information" by either PARTY and/or information entrusted to either PARTY in confidence by third parties. This confidentiality provision shall survive the termination of the AGREEMENT. Confidential information shall not include information that:

- At the time of disclosure or thereafter becomes published or otherwise part of the public domain without breach of this AGREEMENT by either PARTY;
- Is subsequently disclosed to a PARTY by a third party who has the right to make such disclosure;
- Is developed by a PARTY independently of the confidential information or other information received from the other PARTY and such independent development can be properly demonstrated by such PARTY;
- Is necessary to be disclosed to agents, consultants, affiliates and/or other third parties for the services to be provided in accordance with this AGREEMENT on the condition that such third parties agree to be bound by the confidentiality obligations contained in this AGREEMENT; or
- Is required to be disclosed by law or court order.

SECTION NO. 42: IP OWNERSHIP

The COUNTY grants to UPTRUST the right to use any data generated through the use of the UPTRUST System, other than personally identifiable data, for the term of this AGREEMENT for the sole purpose of improving the services to the COUNTY by UPTRUST. No license, express or implied is granted except as provided herein. Title to UPTRUST's software and the UPTRUST System and all copies thereof shall be and remain in the control of UPTRUST and no title to or ownership of UPTRUST's software or to the UPTRUST System or any portion thereof is conveyed or transferred to the COUNTY.

SECTION NO. 43: SPECIAL PROVISION

The COUNTY's failure to insist upon the strict performance of any provision of this AGREEMENT or to exercise any right based upon breach thereof or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this AGREEMENT.

ATTACHMENT “A”
SCOPE OF WORK

The purpose of this AGREEMENT is to provide the UPTRUST System to the Spokane County Public Defender’s Office. The UPTRUST System eliminates court failure-to-appears by reminding Spokane County Public Defender clients of their obligations. The UPTRUST System also connects clients to social services based upon client need.

The following are services included within this AGREEMENT:

- Integration with Spokane County IT system(s);
- Customized software to facilitate client communication and engagement;
- Unlimited staff member accounts for access;
- Customized text message copy to deliver maximum client engagement;
- Ability to determine whether client phone numbers are land-line or cell phone;
- Unlimited inbound and outbound text messages;
- 24-7 customer support, maintenance and in-person training by UPTRUST staff;
- Real-time status reports on messages sent/received, FTA rates and key metrics;
- Development of customized dashboard with FTA data and root causes, and
- Continual dialogue and consulting regarding FTA reduction best practices.

ATTACHMENT "B"
BUDGET

<u>Funding Category</u>	<u>Amount</u>
One-time system integration fee – to be paid after AGREEMENT entry	\$20,000.00
Annual service cost – to be paid after AGREEMENT entry: June 1, 2018 to May 31, 2019	\$20,000.00
Total Budget	\$40,000.00