

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	FC 11/15/23 BC 11/28/23
<b>Subject:</b>	Personal Services Contract with Stephenson Computer Consulting
<b>Presenter:</b>	N/A
<b>Prepared By:</b>	Rosa Garcia
<b>Reviewed By:</b>	David Wheeler
<b>PA Review, Approval to Form:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A (If no, include reasoning for no approval)
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> (Multiple boxes can be checked, if necessary)
<input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Discussion Only <input type="checkbox"/> Pass Motion
<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Decision / Direction <input checked="" type="checkbox"/> Pass Resolution
<input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Sign Letter / Document <input type="checkbox"/> Pass Ordinance
	<input checked="" type="checkbox"/> Execute Contract

## Summary / Background Information

Stephenson Computer Consulting is an expert in their industry and has provided development and maintenance for the Benton-Franklin Counties Juvenile Justice Center Juvenile Tracking System (JTS) since 2006. Stephenson's staff is extremely familiar with the many facets of the Juvenile Center's complex computer system and they are timely and quick in their ongoing service. This Personal Services Contract that is presented would continue uninterrupted service from January 1, 2024 through December 31, 2025.

## Fiscal Impact

Amount not to exceed \$30,000.00 to be paid out of Juvenile Funds Dept. 173 budget. No Supplemental required.

## Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Personal Services Contract between Stephenson Computer Consulting and the Benton-Franklin Counties Juvenile Justice Center.

## Suggested Motion

Approved as part of consent agenda.

**JOINT RESOLUTION**

**BENTON COUNTY RESOLUTION NO. \_\_\_\_\_**

**FRANKLIN COUNTY RESOLUTION NO. \_\_\_\_\_**

**BEFORE THE BOARDS OF THE COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,  
WASHINGTON;**

**IN THE MATTER OF AWARDING THE PERSONAL SERVICES CONTRACT BETWEEN THE JUVENILE  
JUSTICE CENTER AND STEPHENSON COMPUTER CONSULTING**

**WHEREAS**, the Benton-Franklin Counties Juvenile Justice Center had a contract with Stephenson Computer Consulting from January 1, 2022, through December 31, 2023, via Benton County Resolution 2021 766 and Franklin County Resolution 2021 225; and

**WHEREAS**, the Juvenile Administrator recommends entering into a contract with Stephenson Computer Consulting for continued development and maintenance of the Juvenile Tracking System (JTS); **NOW THEREFORE**

**BE IT RESOLVED**, by the Board of Benton County Commissioners, Benton County, Washington and by the Board of Franklin County Commissioners, Franklin County, Washington the Boards concur with the Juvenile Administrator's recommendation and hereby award the personal services contract to Stephenson Computer Consulting in an amount not to exceed \$30,000.00; and

**BE IT FURTHER RESOLVED**, that the Chairs or Chair Pro-Tems are authorized to sign the attached personal service contract; and

**BE IT FURTHER RESOLVED**, the term of the attached contract commences on January 1, 2024, and expires on December 31, 2025.

**DATED** this \_\_\_\_ day of \_\_\_\_\_ 2023

**BENTON COUNTY BOARD OF COMMISSIONERS**

**DATED** this \_\_\_\_ day of \_\_\_\_\_ 2023

**FRANKLIN COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

Constituting the Board of  
County Commissioners,  
Benton County, Washington

Attest:

\_\_\_\_\_  
Commissioner

Constituting the Board of  
County Commissioners,  
Franklin County, Washington

Attest:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Clerk of the Board

**BENTON-FRANKLIN COUNTIES  
PERSONAL SERVICES CONTRACT  
TERMS AND CONDITIONS**

**THIS CONTRACT** is made and entered into by and between Benton County, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the **Benton-Franklin Counties Juvenile Justice Center**, a bi-county agency located at 5606 W. Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter "COUNTIES"), and **Stephenson Computer Consulting**, a corporation organized under the laws of the State of Idaho with its principal offices at 328 Idaho Street, PO Box 1713, Twin Falls, Idaho 83303-1713 (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

**1. CONTRACT DOCUMENTS**

This Contract consists of these Terms and Conditions and the following documents:

- a. Exhibit A - CONTRACTOR Maintenance Support and Program Enhancement/Development Responsibilities; and
- b. Exhibit B - COUNTIES Responsibilities.

**2. DURATION OF CONTRACT**

The term of this Contract shall begin on **January 1, 2024** and shall expire on **December 31, 2025**. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

**3. SERVICES PROVIDED**

- a. The CONTRACTOR shall perform Maintenance Support and Program Enhancement/Development for the COUNTIES as detailed in Exhibit **A** on no less often than a quarterly basis unless approved otherwise in writing by the COUNTIES' Contract Representative, which is attached hereto and incorporated herein by reference.
- b. **System Administrators:** The COUNTIES shall designate two (2) System Administrators and one (1) alternate as follows:

Primary: Carol Vance  
(509) 736-2716  
carol.vance@co.benton.wa.us

Secondary: Crystal Garcia  
(509) 736-2721  
crystal.garcia@co.benton.wa.us

Alternate: Rudy Ruelas  
(509) 736-2706  
rudy.ruelas@co.benton.wa.us

- c. **Updates:** The CONTRACTOR shall provide new releases, upgrades or maintenance patches to the Software, along with appropriate documentation, on no less often than a quarterly basis unless approved otherwise in writing by the COUNTIES' Contract Representative. COUNTIES are responsible for obtaining any upgrades or purchases of third-party hardware and/or software required to operate the Update. The CONTRACTOR is responsible to notify the COUNTIES of upgrades to third party hardware or software that will be required for any Updates and to provide notification to the COUNTIES within a minimum of six (6) months of the date that the Update is provided to the COUNTIES. Upgrades to hardware and third-party software required by Updates must be agreed to by CONTRACTOR and COUNTIES. CONTRACTOR may charge the COUNTIES at its then-current rates to perform Maintenance Services required as a result of COUNTIES' failure to install an Update in accordance with a schedule agreed to by the CONTRACTOR and COUNTIES. The COUNTIES shall report any failure of performance of an Update within twelve (12) business days after the Update is, or is required to be, installed.
- d. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTIES.
- e. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- f. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- g. The CONTRACTOR shall confer with the COUNTIES from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as requested by the COUNTIES.



- h. CONTRACTOR shall immediately contact the COUNTIES' Contract Representative in the event any of the following interferes with CONTRACTOR'S performance of services under this Contract:
1. The hardware and software used with the CONTRACTOR'S Software is not in good operating order or is not installed in a suitable operating environment;
  2. The data and/or the database structure used in conjunction with the CONTRACTOR software is manipulated using application software other than the CONTRACTOR software; and/or
  3. The failure of performance is solely caused by the actions of the COUNTIES, its employees or authorized representatives, or any third party with the exception of actions that may be reasonable construed as accidental or inadvertent in nature.
- i. COUNTIES shall be responsible for those items detailed in Exhibit B, which is attached hereto and incorporated herein by reference.

#### **4. CONTRACT REPRESENTATIVES**

Each party to this Contract shall have a Contract Representative. Each party may change its representative upon providing written notice to the other party. The parties' Contract Representatives are as follows:

a. For CONTRACTOR:

Name: James H. Stephenson  
Address: PO Box 1713  
Twin Falls, ID 83303-1717  
Phone: (208) 733-4747  
Email: [jstephen@scc-i.com](mailto:jstephen@scc-i.com)

b. For COUNTIES:

Name: David Wheeler, Administrator  
Address: 5606 W. Canal Place, Suite 106  
Kennewick, WA 99336  
Phone: (509) 737-2745  
Email: [David.Wheeler@co.benton.wa.us](mailto:David.Wheeler@co.benton.wa.us)

#### **5. COMPENSATION**

- a. For the services performed under this Contract, the CONTRACTOR shall be paid a rate of eighty dollars (\$85.00) for each hour rendered for JTS Program Enhancement, Maintenance and Development

services as requested by the Counties. Time spent will be rounded to the nearest fifteen (15) minutes and hourly rate prorated accordingly.

- b. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this Contract shall not exceed Thirty Thousand Dollars (\$30,000.00).
- c. Travel costs to and from COUNTIES' premises will be paid to CONTRACTOR based on actual costs incurred.
- d. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.
- e. The CONTRACTOR may, in accordance with Exhibit **A**, submit invoices to the COUNTIES not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTIES during the billing period. The COUNTIES shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.
- f. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTIES.
- g. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTIES, the COUNTIES may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.
- h. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

**6. AMENDMENTS AND CHANGES IN WORK**

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without

additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTIES.

- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTIES.

**7. HOLD HARMLESS AND INDEMNIFICATION**

- a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTIES and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTIES. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTIES or its officers, officials, employees, or agents.
- b. In any and all claims against the COUNTIES and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.**
- c. The CONTRACTOR'S obligations hereunder shall include, but are not

limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents, or subcontractors.

## 8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

- a. **Professional Liability Insurance:** Prior to the start of work under this Contract, the CONTRACTOR shall secure and maintain at its own expense Professional Liability Insurance appropriate to the CONTRACTOR'S profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) each claim and in the aggregate. Such insurance must be provided by an insurance carrier with a Best's Rating of not less than A-VII.

The coverage shall apply to liability for a professional error, act, or omission arising out of the scope of the CONTRACTOR'S services defined in this Contract. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract. If the policy is claims made, the retroactive date shall be prior to or coincident with the effective date of this Contract. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of 36 months after the completion of work. The CONTRACTOR shall annually provide the COUNTIES with proof of all such insurance.

- b. **Workers Compensation:** CONTRACTOR shall comply with all State of Idaho workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage from the Idaho State Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTIES for recovery of damages to the extent they are covered by workers compensation and employers liability.

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Idaho workers compensation statutes and regulations and COUNTIES incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTIES. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTIES by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTIES to CONTRACTOR for performance of this Contract.

- c. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the CONTRACTOR from claims for wrongful death, bodily injury, personal injury, and property damage that may arise from any actions or inactions under this Contract by CONTRACTOR or by anyone directly employed by or contracting with CONTRACTOR. The minimum commercial general liability insurance limits shall be as follows:

\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury and Advertising Injury  
\$1,000,000 Each Occurrence

The commercial general liability policy must contain an endorsement naming the COUNTIES and its elected and appointed officials, employees, and agents as an Additional Insured and an endorsement that specifically states that CONTRACTOR'S commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTIES.

The CONTRACTOR must provide commercial general liability coverage that does not exclude activities to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 7. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

CONTRACTOR shall also provide Stop Gap Employer's Liability

Insurance coverage with minimum limits as follows:

\$1,000,000 Each Accident

\$1,000,000 Policy Limit for Disease

\$1,000,000 Each Employee for Disease

- d. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any autos owned by the CONTRACTOR (Symbol 1), or if the CONTRACTOR has no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars (\$1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.
- e. **Cyber Liability:** The CONTRACTOR shall maintain cyber liability insurance for not less than one million dollars (\$1,000,000) per occurrence and an annual aggregate of two million dollars (\$2,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, extortion, and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to COUNTIES and for claims involving any professional services for which the CONTRACTOR is engaged with COUNTIES for such length of time as necessary to cover any and all claims.
- f. **Other Insurance Provisions:**
  - 1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTIES or its elected and appointed officers, officials, employees, or agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTIES shall be excess and not contributory to CONTRACTOR'S insurance policies.
  - 2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTIES as an additional insured.
  - 3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTIES or its officers, officials, employees, or agents.



4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this Contract, the COUNTIES shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**
7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. All liability insurance required under this Contract, except for professional liability under Section 8(a), shall be written on an Occurrence Policy form.
8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.
9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

g. **Verification of Coverage and Acceptability of Insurers:**

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington that have an A.M. Best's rating of at least A-VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Benton and Franklin Counties Risk Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other than Professional Liability, Auto Liability, and Workers' Compensation, shall specifically include the COUNTIES and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or cancelled without thirty (30) days prior written notice to the COUNTIES. Any insurance or self-insurance maintained by the COUNTIES and its elected or appointed officials, employees, and agents shall be excess of the CONTRACTOR'S insurance and shall not contribute to it.
2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTIES' Contract Representative referenced in Section 4.
3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTIES' Contract Representative referenced in Section 4.
4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton-Franklin Counties Risk Manager to the following address: 5606 West Canal Place, Suite 106, Kennewick, WA 99336.

9. **TERMINATION**

- a. The COUNTIES may terminate this Contract in whole or in part whenever the COUNTIES determines in its sole discretion that such termination is in the best interests of the COUNTIES. The COUNTIES may terminate this Contract upon giving thirty (30) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTIES shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

- b. In the event that funding for this project is withdrawn, reduced, or limited in any way after the effective date of this Contract, the COUNTIES may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this subsection shall be effective upon the date specified in the written notice of termination sent by COUNTIES to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTIES, the COUNTIES may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTIES shall pay the CONTRACTOR only for the costs of services accepted by the COUNTIES, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTIES, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTIES in completing the work and all damage sustained by the COUNTIES by reason of the CONTRACTOR'S breach.

**10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING**

- a. The CONTRACTOR shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTIES.
- b. The CONTRACTOR warrants that it has not paid, nor has it agreed to pay, any company, person, partnership, or firm, other than a bona fide employee working exclusively for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

**11. NON-WAIVER OF RIGHTS**

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

## **12. INDEPENDENT CONTRACTOR**

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee, or servant of the COUNTIES. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONTRACTOR, nor its employees are entitled to any COUNTIES benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTIES employees.
- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTIES.
- d. The CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state, or local law that are now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTIES' Contract Representative, or designee.

## **13. COMPLIANCE WITH LAWS**

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract.

## **14. DEBARMENT CERTIFICATION**

The CONTRACTOR, by signature to this Contract, certifies that the CONTRACTOR is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any State or Federal department or agency from participating in transactions (Debarred). The CONTRACTOR also agrees to include the above requirement in any and all Subcontracts into which it enters. The CONTRACTOR shall immediately notify the Contact designated as the representative to the

COUNTIES of this Contract if, during the term of this Contract, the CONTRACTOR becomes debarred. The COUNTIES may immediately terminate this Contract by providing CONTRACTOR written notice if CONTRACTOR becomes Debarred during the term of this Contract.

**15. INSPECTION OF BOOKS AND RECORDS**

The COUNTIES may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, and make available to the COUNTIES upon request, all records relating to the performance of this Contract for six (6) years after Contract termination or expiration.

**16. NONDISCRIMINATION**

The CONTRACTOR and its assignees, delegates, and subcontractors shall not discriminate against any person in the performance of any of their obligations hereunder on the basis of race, religion, color, national origin, sex, age, honorably discharged veteran or military status, sexual orientation, marital status, the presence of any sensory, mental, or physical disability, or any other protected status.

**17. OWNERSHIP OF MATERIALS/WORKS PRODUCED**

- a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTIES. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTIES agree that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.
- b. An electronic copy of all word processing documents shall be submitted to the COUNTIES upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTIES.

**18. PATENT/COPYRIGHT INFRINGEMENT**

The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTIES and its officers, officials, employees, and agents from and against any claimed action, cause, or demand brought against the COUNTIES, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTIES of any

notice of such claim.

**19. DISPUTES**

Disputes between the CONTRACTOR and the COUNTIES, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTIES at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTIES' Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTIES' Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

**20. CONFIDENTIALITY**

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of all information provided by the COUNTIES or acquired by the COUNTIES in performance of this Contract, except upon the prior written consent of the COUNTIES or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTIES written notice of any judicial proceeding seeking disclosure of such information.

**21. CHOICE OF LAW, JURISDICTION, AND VENUE**

- a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.
- b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton and Franklin Counties, Washington.

**22. SUCCESSORS AND ASSIGNS**

The COUNTIES, to the extent permitted by law, and the CONTRACTOR each bind themselves and their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

**23. SEVERABILITY**

- a. If a court of competent jurisdiction holds any part, term, or



provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

#### **24. ENTIRE AGREEMENT**

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

#### **25. NOTICES**

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing addresses set out in Section 4 of this Contract. Notice may also be given via e-mail to the Contract Representatives' e-mail addresses identified in Section 4 of this Contract, with the original notice to follow by regular mail. Notice shall be deemed to be given three (3) days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

#### **26. SURVIVABILITY**

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to: indemnification provisions (Sections 7 and 17); extended reporting period requirements for professional liability insurance (Section 8(a)); inspection and keeping of records and books (Section 14); litigation hold notice (Section 26); Public Records Act (Section 27); and confidentiality (Section 19).

#### **27. LITIGATION HOLD NOTICE**

In the event the COUNTIES learn of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTIES may issue written notice to CONTRACTOR of such

circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTIES is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section 14 of this Contract.

## **28. PUBLIC RECORDS ACT**

The CONTRACTOR hereby acknowledges that the COUNTIES are a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTIES may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTIES that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. The CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTIES' release of records covered under the Public Records Act. The COUNTIES agree to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

- This section left blank intentionally -

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives, and it is effective on January 1, 2024.

<b>Stephenson Computer Consulting</b>	<b>Benton Franklin Counties Juvenile Justice Center</b>
<i>James H Stephenson</i> 10/18/2023	<i>[Signature]</i> 10/13/2023
James H. Stephenson CEO	David Wheeler Juvenile Court Administrator
<b>BENTON COUNTY APPROVAL</b>	<b>FRANKLIN COUNTY APPROVAL</b>
Approved as to Form:	Approved as to Form:
<i>[Signature]</i> 10/18/2023	<i>[Signature]</i> 10/24/23
Stephen Hallstrom, Deputy Prosecuting Attorney	Civil Deputy Prosecuting Attorney
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____
Attest:	Attest:
Clerk of the Board: _____	Clerk of the Board: _____

## EXHIBIT A

### CONTRACTOR Maintenance Support and Program Enhancement / Development Responsibilities

Maintenance Support	Program Enhancement / Development
<p><u>Definition:</u> Services that are needed to maintain the current (as of date of execution of Contract) program condition, operation, maintenance, functionality and scope, to include upgrading, troubleshooting, and operation.</p>	<p><u>Definition:</u> Services provided, at the request of the COUNTIES that enhance, modify, change, expand, and/or increase program abilities and functionality.</p>
<ul style="list-style-type: none"> <li>➤ JTS Program maintenance support</li> <li>➤ Program expertise and forethought of any issues, problems, and glitches that may arise as a result of Program enhancement requests and appropriate development of Program to avoid such issue</li> <li>➤ Support of third-party software required to run JTS Program</li> <li>➤ Notification of necessary Service Packs approved by CONTRACTOR</li> <li>➤ Upgrade impact planning and assistance</li> <li>➤ Proper scheduling of upgrades to third-party software programs</li> </ul>	<ul style="list-style-type: none"> <li>➤ Develop / make changes to current JTS Program to meet the changing and growing need of the COUNTIES</li> <li>➤ Offer programming recommendations that would best accomplish COUNTIES' needs taking into consideration all current Program functionalities and the effects on each module</li> </ul>

## **EXHIBIT B**

### **COUNTIES' Responsibilities**

- Hardware problem diagnosis and resolution
- Third-party software problem diagnosis and resolution
- Support of client and server operating systems
- Provide remote access to JTS (e.g., GoToMyPC) at reasonable times and dates as agreed to by COUNTIES and CONTRACTOR
- Become reasonably familiar with JTS Program
- Reasonably understand proper use of JTS Program functions and proper use of JTS Program in the conduct of the Benton and Franklin Counties Juvenile Justice Center management and administration
- Inquire directly with CONTRACTOR support for questions regarding use of JTS Program
- Routine backup of JTS data
- Validate any data input and output in the day to day use of JTS Program
- Maintain and manage software license compliance and hardware warranty agreements
- Provide third-party software required for operation of JTS
- Maintain a set of change and configuration logs defined by CONTRACTOR