

**INTERIM CONTRACT FOR  
JAIL HEALTH SERVICES**

**Between  
PACIFIC COUNTY, WASHINGTON  
And  
DAVE CUNDIFF, M.D.**

**THIS INTERIM CONTRACT** is entered into by Dave Cundiff, MD, MPH, FASAM, P O Box E, Ilwaco, Washington, 98624, hereinafter known as the CONTRACTOR and Pacific County, P O Box 6, South Bend, Washington, hereinafter known as the COUNTY.

**WHEREAS**, the COUNTY is responsible by state law to provide Jail Health Services, and

**WHEREAS**, the COUNTY is unable to employ a full time Jail Health Officer, and

**WHEREAS**, the CONTRACTOR is a fully qualified and licensed health care provider and is capable of providing Jail Health Services, and

**WHEREAS**, the CONTRACTOR is willing and prepared to assume the responsibilities as set forth within this Contract

**NOW THEREFORE**, in consideration of the mutual benefits to be derived and all the terms, conditions and covenants hereafter set forth, the parties agree as follows:

**1. DEFINITION: CONTRACTOR** - As used herein and for all purposes of this contract, CONTRACTOR shall mean and include Dave Cundiff and all persons designated by Dave Cundiff that are certified to perform the duties and obligations binding upon Dave Cundiff pursuant to and included in this contract.

**2. DURATION OF INTERIM CONTRACT**

The term of this Contract shall be effective upon signature by both parties, and shall remain in effect through March 31, 2024, unless terminated sooner as provided herein. Either party may terminate this contract, as provided under Section 12.

This contract may be further amended from time to time, as agreed in writing by the parties consistent with the provisions herein. No amendment, modification or renewal shall be made to this Contract unless set forth in a written Contract Amendment, signed by each party. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

**3. DUTIES OF THE CONTRACTOR**

The CONTRACTOR shall perform the following duties:

- a.** Provide at least twice weekly visits to the Pacific County Jail Facility on a regular schedule to provide examination and treatment of inmates that require sick-call attention. The schedule shall be approved in advance by the Sheriff or his designee. The CONTRACTOR may rearrange the schedule of work hours to provide for a reasonable amount of time off for vacation/medical purposes. Any such schedule changes shall be approved by the Sheriff or his designee in advance. In addition, if the CONTRACTOR is scheduled to work but is unable to appear in person, the CONTRACTOR shall notify the Sheriff's Office as soon as possible, and provide a replacement qualified licensed health care provider.

- b. Refer inmates for necessary treatment that is beyond the scope of the Jail Health Program. Consult and coordinate any referrals to specialists with County Corrections Staff.
- c. Serve as liaison with outside health care providers or hospitals to coordinate discharge planning.
- d. Document in writing or electronically all medical evaluation, treatment and services provided to inmates by the CONTRACTOR.
- e. Maintain medical records. All medical records are the property of the COUNTY.
- f. CONTRACTOR shall share sufficient information about the inmate's condition and treatment so the CONTRACTOR's medical instructions can be carried out.
- g. Oversee medication distribution when onsite and available to do so, including those medications brought into the facility by inmates.
- h. 24-hour phone and text triage and consultation by qualified licensed health care personnel, with consistent, prompt availability of CONTRACTOR or Licensed Independent Prescribers such as physician, nurse practitioner, or physician assistant/associate.

#### **4. DUTIES OF THE COUNTY**

The COUNTY shall perform the following tasks:

- a. Provide a complete written or electronic log of inmates requesting sick call attention including the nature of their complaint.
- b. Provide a medical examination room sufficient for use and a corrections deputy who will observe medical appointments as appropriate for the security needs of all affected persons, considering the need and desire of the inmate for auditory privacy. If, in the opinion of CONTRACTOR or CONTRACTOR's representative, the inmate's auditory privacy must be compromised without inmate consent, any such compromises will be documented along with the reason why that compromise is needed.
- c. Provide necessary medical and recording supplies for carrying out the duties of the CONTRACTOR.
- d. Provide the CONTRACTOR with a copy of the laws regarding or pertaining to Jail Health Services.
- e. Integrate the medical record created by the CONTRACTOR into the County Inmate Management System.
- f. COUNTY corrections staff will keep medical information about its inmates confidential to the extent possible. In particular, medical information should not be used to punish inmates or to compromise their legal defenses in any way.
- g. COUNTY will provide CONTRACTOR with communications and laptop computer equipment, sufficiently capable so that all clinically needed texting, recordkeeping, and long-distance telecommunications (including remote videoconferencing, when available) can be done on COUNTY equipment.

- h. COUNTY may provide qualified health professional services, such as RN, LPN, medical assistant or EMT on an as needed basis.

## **5. COMPENSATION**

The COUNTY agrees to pay the CONTRACTOR \$300.00 per hour, not to exceed \$12,000.00 per month. Compensation includes, but is not limited to on-site visits, remote consultation, and reasonable travel time.

The COUNTY agrees it is responsible for all jail/inmate health care costs outside of the scope of this Contract. CONTRACTOR will submit invoices for payment to the COUNTY within thirty (30) days of the end of each calendar month.

## **6. EVALUATION AND MONITORING**

The CONTRACTOR shall, on COUNTY provided equipment, maintain books, records, documents and other evidence and accounting procedures and practices that sufficiently and properly reflect the performance of this Contract. COUNTY provided equipment shall remain on COUNTY premises at all times, with the exception of COUNTY provided computer and telecommunications equipment.

The COUNTY or the State Auditor and any of their representatives shall have full access to and the right to examine during normal business hours and as often as the COUNTY or the State Auditor may deem necessary, those books, records, documents and other evidence retained by the CONTRACTOR with respect to all matters covered in this Contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this Contract. These rights shall last for six (6) years after expiration of the Contract, or from the date final payment hereunder is made, whichever is later.

The COUNTY will use reasonable security procedures and protections to assure that related records and documents provided by the CONTRACTOR are not erroneously disclosed to third parties. To the extent chapter 42.56 RCW permits, pertinent records and other documents in any medium furnished by the CONTRACTOR will remain its property unless otherwise agreed.

The CONTRACTOR will use reasonable security procedures and protections to avoid inappropriate third-party disclosures.

The CONTRACTOR will be reimbursed for the reasonable time and expenses of cooperating with needed monitoring or evaluation activities, except where that time and those expenses are the result of the CONTRACTOR's negligence in tracking or recordkeeping. CONTRACTOR will provide record of time and provide documentation of expenses to COUNTY by the 15<sup>th</sup> of the following month.

## **7. PUBLIC RECORDS ACT**

This Contract and all public records associated with this Contract shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the CONTRACTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the COUNTY. If the CONTRACTOR considers any portion of any record provided to the COUNTY under this Contract, whether in electronic or hard copy form, to be protected from disclosure under law, the CONTRACTOR shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the CONTRACTOR and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations

shall be to notify the CONTRACTOR (a) of the request and (b) of the date that such information will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the CONTRACTOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONTRACTOR for releasing records not clearly identified by the CONTRACTOR as confidential or proprietary. The COUNTY shall not be liable to the CONTRACTOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

CONTRACTOR agrees to indemnify and, to the greatest extent legally possible, to hold harmless the COUNTY in any action by a third party due to the negligence, recklessness or intentional actions by the CONTRACTOR relating to its performance of this contract. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

#### **8. COMPLIANCE WITH STATE AND FEDERAL LAWS**

CONTRACTOR will comply with any requirements by the COUNTY in order to complete a criminal background check and will also do so for all staff members or volunteers who assist in the performance of this contract.

The CONTRACTOR and COUNTY shall ensure that requirements of WAC 110-04-0040 are met, if providing services to youth.

The CONTRACTOR, its assignees, delegates or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, ethnicity, religion, national origin, age, sex, marital status, veteran or military status, sexual orientation or the presence of any sensory, mental, or physical disability. Implementation of this provision shall be consistent with RCW 49.60.400.

The CONTRACTOR shall comply with all federal and state laws, including, but not limited to Chapter 49.60 RCW-Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq. - the Americans with Disabilities Act (ADA), and Public Law 104-91, Health Insurance Portability and Accountability Act of 1996 (HIPAA).

#### **9. EMPLOYMENT RELATIONSHIPS**

- 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 COUNTY. 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 the CONTRACTOR is not entitled to any COUNTY 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 Pacific County 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 or deem to be or act or purport to act as an employee, agent or representative of the COUNTY.
- d. The CONTRACTOR shall assume full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal or state legislation which is now or may during the term of this Contract be enacted as to all persons employed by the CONTRACTOR and as to all duties, activities and requirements by the CONTRACTOR in performance of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees, representatives or agents from assignment to perform services under this Contract upon receipt of a written request to do so from the County's Contract representative or designee.
- f. No portion of this contract may be subcontracted to a third party by the CONTRACTOR without prior written approval of the COUNTY, except as specified in 3.a.
- g. The CONTRACTOR assumes full responsibility for the payment of all assessments, payroll taxes, or contributions, whether State or Federal, as to the CONTRACTOR and all of CONTRACTOR's employees, if any, engaged in the performance of work under this Contract. The CONTRACTOR shall furnish to the COUNTY, on its request, a certificate or other evidence of compliance with all State or Federal laws concerning contributions, taxes, and payroll assessments. In addition, the CONTRACTOR agrees to pay any and all taxes or assessments of whatever nature or kind levied or assessed as a consequence of the work performed or on the compensation to be paid under this contract.

#### **10. INDEMNIFICATION/HOLD HARMLESS**

**Indemnification by Contractor.** To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property, including the loss of use resulting therefrom. The indemnity includes but is not limited to: 1) liability arising in whole or in part by any action or omission, negligent or otherwise, of the CONTRACTOR, its employees, agents or volunteers or CONTRACTOR's subcontractors and their employees, agents or volunteers; or 2) liability directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) liability based upon the CONTRACTOR'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the CONTRACTOR shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the CONTRACTOR shall not be limited in any way by the Washington State Industrial Insurance Act RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the CONTRACTOR hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into the Contract, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties.

**Participation County – No Waiver.** The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONTRACTOR's indemnity obligations under the Contract.

**Survival of Contractor's Indemnity Obligations.** The CONTRACTOR agrees all CONTRACTORS's indemnity obligations shall survive the completion, expiration or termination of this Contract.

## **11. INSURANCE**

Without limiting the CONTRACTOR'S indemnification of COUNTY, and prior to commencement of this Contract, CONTRACTOR shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

- a. General Liability Insurance.** CONTRACTOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

The CONTRACTOR shall provide the COUNTY with properly executed certificate of insurance and provide a policy endorsement naming the COUNTY as an additional insured. CONTRACTOR agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state.

- b. Professional Liability (Errors & Omissions) Insurance.** CONTRACTOR shall maintain professional liability insurance that covers the services to be performed in connection with this Contract, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and CONTRACTOR agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Contract.
- c. Workers' Compensation Insurance.** CONTRACTOR shall, at its own expense, maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) in compliance with Washington state laws.

CONTRACTOR shall submit to COUNTY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of COUNTY, its officers, agents, employees and volunteers.

- d. Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
- e. Automobile Liability Insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

## **12. TERMINATION OF CONTRACT**

If, through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the CONTRACTOR shall violate any of its covenants, agreements or stipulations, the COUNTY shall thereupon have the right to terminate this Contract and withhold the remaining allocation if such default or violation is not corrected within twenty (20) days after submitting written notice to the CONTRACTOR describing such default or violation.

Notwithstanding any provisions of this Contract, either party may terminate this Contract by providing written notice of such termination, specifying the effective date thereof, at least twenty (20) days prior to such date. Payment for Project-related expenses incurred by the CONTRACTOR and not otherwise paid for by the COUNTY prior to the effective date of such termination shall be as the COUNTY reasonably determines.

Termination by Necessity: In the event that Governmental funding is provided for this project, and that funding is withdrawn, reduced or limited in anyway after the effective date of this Contract and prior to normal completion, the COUNTY may elect to suspend or terminate this Contract, in whole or in part, as a termination for convenience with a ten calendar day notice to CONTRACTOR, to the extent possible, subject to renegotiation at the COUNTY's discretion under those new funding limitations and conditions. Termination or suspension under this paragraph shall be effective upon the date specified in the written notice of termination or suspension sent by the COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract are allowable.

Notwithstanding any provision to the contrary, funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the Board of County Commissioners of sufficient funds to support the work described in this Contract. Should such an appropriation not be approved, this Contract shall terminate at the close of the current appropriation year, and the COUNTY shall not be obligated for the CONTRACTOR's performance hereunder or by any provision of this Contract after the date of termination.

## **13. SPECIAL PROVISION**

The failure of the COUNTY to insist upon the strict performance of any provision of this Contract 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 Contract.

## **14. SEVERABILITY**

In the event any provision, or any portion thereof, contained in this Contract is held to be unconstitutional, invalid or unenforceable, said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this Contract shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

## **15. DISPUTE RESOLUTION**

Except as otherwise provided in this Contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the COUNTY, a representative appointed by the CONTRACTOR, and a third party mutually agreed upon by both parties. This team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

## 16. ATTORNEY'S FEES/COST OF SUIT AND VENUE

If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.

- a. Disputes.** Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY 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 CONTRACTOR shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to the parties' right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue**.
- b. Choice of Law, Jurisdiction and Venue.** 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.

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 Pacific County, Washington.

- c. Severability.** 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 the Contract did not contain the particular provision held to be invalid.

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

Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

## 17. ADMINISTRATION

The following individuals are designated to co-administer this Contract. They shall also serve as their respective party's contact person for any and all communications relative to this Contract.

Dave Cundiff, MD, MPH, FASAM  
P O Box E  
Ilwaco, WA 98624  
360/867-0949

Mike Parker, Inspector  
Pacific County Jail  
P O Box 27  
South Bend, WA 98586  
360/875-9396

## 18. ENTIRE CONTRACT

This contract represents all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any parties hereto.



**IN WITNESS WHEREOF**, representatives of both the CONTRACTOR and the COUNTY executed this Contract the date(s) so noted below.

**CONTRACTOR**

**BOARD OF COUNTY COMMISSIONERS  
PACIFIC COUNTY, WASHINGTON**

\_\_\_\_\_  
Dave Cundiff  
MD, MPH, FASAM

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lisa Olsen, Chair

\_\_\_\_\_  
Jerry Doyle, Commissioner

APPROVED AS TO FORM

\_\_\_\_\_  
Prosecutor's Office

\_\_\_\_\_  
WSBA#

\_\_\_\_\_  
Dave Tobin, Commissioner

ATTEST

\_\_\_\_\_  
Amanda Bennett  
Clerk of the Board

\_\_\_\_\_  
Date