



Yamhill County Department of Community Justice

615 E. Sixth Street, McMinnville, Oregon 97128 · Phone: 503-434-7513 · Fax: 503-472-5216

To: Board of Commissioners

From: Ted Smietana, Director
Community Justice

Date: July 7, 2016

Re: Contract with Tom O'Connor

Attached is a proposed contract with Tom O'Connor, who will continue to provide technical assistance to Community Justice, and the Evidence-Based Decision Making Initiative Policy Team. Mr. O'Connor was initially contracted to perform these services through a funding agreement with the Oregon Criminal Justice Commission. The window period for using those funds passed and he was then hired under a County contract which has expired. Now it is desired to continue to have Mr. O'Connor assist us.

Mr. O'Connor will be compensated at the rate of \$125 per hour, which is substantially lower than the market rate for a provider of similar qualifications. Mr. O'Connor will provide 16-20 hours of assistance per month for the duration of the agreement.

Please note that County Counsel has reviewed and approved this agreement.

This contract is being submitted to the Board of Commissioners for approval, with my positive recommendation.

Thank you, and please let me know if you require any further information.

Accepted by Yamhill County
Board of Commissioners on
7.14.16 by Board Order
16-296

AGREEMENT FOR CONSULTING SERVICES
Yamhill County EBDMI Policy Team
(Yamhill County and Tom O'Connor)

THIS AGREEMENT ("Agreement") is made effective the last date set forth adjacent to the signatures of the parties below between **Yamhill County**, a political subdivision of the State of Oregon (referred to as County in this Agreement) and **Tom O'Connor**, operating under the assumed business name "Transforming Corrections", located at 1420 Court St NE, Salem, OR 97301 (referred to as Consultant in this Agreement) for performance of consulting services with the County's EBDMI Task Force.

STATEMENT OF PURPOSE AND IDENTIFICATION OF AGREEMENT DOCUMENTS

A. County has grant funds available to retain a qualified consultant to perform consulting services with its EBDMI Policy Team, a group established to implement evidence-based practices in the County's criminal justice system.

B. Consultant is an experienced consultant in the field of evidence-based practices who is qualified to assist the County in implementing evidence-based practices in the County's criminal justice system. Consultant desires to enter into this Agreement and County desires to have Consultant enter into this Agreement for Consultant to perform the services described herein. NOW, THEREFORE,

AGREEMENT: In consideration of the mutual covenants contained below, County and Consultant hereby agree as follows:

1. **Scope of work.** The Consultant will perform those consulting services identified in Exhibit A (the "Services") to assist the County's EBDMI Policy Team.
2. **Agreement performed at Consultant's expense.** The Consultant will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the completion of the Services. Consultant and County acknowledge and agree that Consultant may perform certain Services at County offices.
3. **Commencement and completion date.** The Consultant will commence providing the Services as soon as reasonably practicable after this Agreement is approved by County and will complete the same as soon as reasonably practicable. The effective dates for this Agreement are July 1, 2016 to June 30, 2017.
4. **Compensation.** The Consultant agrees to perform the Services as detailed in the Scope of Work in Exhibit A at the rate of \$125.00 per hour. The County will not pay more than \$35,000.00 for Services performed by the Consultant under this Agreement without a written change order signed by both parties. Payment will be made on a monthly basis within 15 days of County's receipt, review and approval of the Consultant's invoice identifying the Services performed and the time spent performing the Services. Exhibit B to this Agreement is an estimated budget for the Services.
5. **Incorporation of statutory provisions required for public contracts.** The Consultant certifies it shall comply with all applicable Public Contract Laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.530. ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.530 are incorporated into this Agreement by reference.

6. **Workers' compensation.** The Consultant, its subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

7. **Independent Contractor.** Consultant is engaged hereby as an independent contractor, and will be so deemed for purposes of the following:

- a. Consultant will be solely responsible for payment of any federal or state taxes required as a result of this Agreement. County will not withhold any state or federal income taxes from payments owed Consultant.
- b. As an independent contractor, Consultant acknowledges and agrees that Consultant is not entitled to any benefits granted to County employees. Without limitation, but by way of illustration, the benefits which are not granted to Consultant include vacation, holiday and sick leave, other leaves with pay, tenure, medical, and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits, except insofar as any such benefits are otherwise required by law.
- c. Consultant is an independent contractor for purposes of the Oregon Workers' Compensation law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this Agreement. If Consultant has the assistance of other persons in the performance of this Agreement, Consultant will qualify and remain qualified for the term of this Agreement as a carrier-insured employer or a self-insured employer under ORS 656.403 et. seq.

8. **Insurance.** Consultant, at its own expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

- a. Workers' Compensation Insurance in compliance with statutory requirements;
- b. Commercial General Liability Insurance (including contractual liability and completed operations coverage, and coverage for liability resulting from hazardous substances), on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;
- c. Professional Liability Insurance, including errors and omissions coverage, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to provision of the Services;
- d. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Consultant's vehicles, whether owned, hired, or non-owned, assigned to, or used by Consultant in connection with the Services;

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. At

County's request Consultant shall furnish County with certificates of insurance for each of the required insurance coverages. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to County.

The Commercial General Liability and Commercial Automobile Liability shall (i) name County, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of County and that any insurance maintained by County is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause.

9. **Confidentiality.** Consultant acknowledges that Consultant may, in the course of its performance under this Agreement, be exposed to or acquire information that is the confidential information of County or County's clients. Any and all (i) client information, (ii) information provided by County and marked confidential, (iii) Protected Health Information or EPHI, including alcohol and drug abuse treatment records, or (iv) information identified as confidential in a separate writing, that becomes available to Consultant in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items, including software, that result from Consultant's use of the Confidential Information are also deemed Confidential Information. Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of Consultant's own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this Agreement or in conformance with Exhibit A. Consultant agrees that, upon termination of this Agreement or at County's request, Consultant will turn over to County all documents, papers and other matter in Consultant's possession that embody Confidential Information.

10. **Certification of compliance with tax laws.** The Consultant certifies, under penalty of perjury, that the Consultant's Company is not in violation of any Oregon tax laws. Consultant further certifies that Consultant has complied with the tax laws of the State of Oregon or any political subdivision of the State of Oregon, including ORS 305.620 and ORS Chapters 316, 317 and 318.

11. **Status of the Project Supervisor.** Ted Smietana, facilitator for the EBDMI Policy Team is the Project Supervisor for County for this Agreement (the "Supervisor"). The Supervisor or his designee shall decide questions that arise in the execution of the Scope of Work.

12. **Prohibition of Discrimination.** In hiring employees for performance of work under this Agreement, no contractor, subcontractor or any person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap or sex discriminate against a person who is qualified and available to perform work to which employment relates.

13. **Indemnification.** Consultant shall indemnify, defend and save harmless County from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorney fees, arising from or related to the wrongful or negligent acts, errors or omissions of Consultant and those whom the Consultant is legally liable under this Agreement.

14. **Nonwaiver.** 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 shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of County to enforce at any time any of the terms of this Agreement, or to exercise any option which is provided, or to require at any time performance by Consultant of any of the provisions, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of any part of this Agreement, or the right of County to thereafter enforce each and every provision.

15. **Ownership of documents.** All documents prepared or furnished by Consultant or its subcontractors, pursuant to this Agreement are instruments of service. As such, County shall retain ownership and property interest in all associated documents subject to the Consultant's ability to make and retain copies of similar documents for information and reference. Any reuse by Consultant will require written authorization by the County. The County, in turn, agrees that any reuse by the County of any document prepared under this Agreement shall be at the County's own risk.

16. **Termination.** County or Consultant may terminate this Agreement, in whole or in part, by giving ten (10) days written notice, if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party. The parties further agree that upon termination the Consultant shall be paid for all its services and expenses incurred in the prosecution of this work up to the effective date of termination.

17. **Severability.** Should any clause or section of this Agreement be declared by court to be void or voidable, the remainder of this Agreement shall remain in full force and effect.

18. **Dispute resolution through mediation and arbitration.** Any dispute between the parties to this Agreement shall be resolved according to the following process:

(a) The parties first shall submit to mediation of the dispute to be conducted by a mutually acceptable mediator. If the parties cannot agree on a mediator, they shall request a mediator to be appointed by the U.S. Mediation and Arbitration service in Portland, Oregon. The mediator's charges and expenses shall be borne equally by the parties. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

(b) If the dispute is not resolved in mediation, the parties shall then submit the dispute to binding arbitration. Arbitration shall be conducted in accordance with the rules set forth in the Oregon International Commercial Arbitration and Conciliation Act, ORS 36.450 to 36.558, 2007 replacement part. The decision of the arbitrator shall be final and binding on the parties. The party that does not prevail, as determined by the arbitrator, shall pay the arbitrator's fees and expenses in arbitration. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

19. **Attorney fees and costs.** In the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

20. **Applicable laws.** This Agreement is executed in the State of Oregon and is subject to Oregon law and jurisdiction in Yamhill County. CONSULTANT HEREBY CONSENTS TO THE IN

PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THIS FORUM IS AN INCONVENIENT FORUM.

21. **Subcontractors bound.** Consultant covenants and agrees to bind any and all Subcontractor(s) for performance of work under this Agreement. Any reference to Consultant shall include any and all Subcontractor(s) ad infinitum.

22. **Written changes required.** The rights and duties under this Agreement shall not be modified, delegated, transferred, or assigned, except upon written signed consent of both parties.

23. **Successors bound.** This Agreement may be assigned only with the written, mutual consent of the parties. If assigned, this Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

THIS AGREEMENT AND THE AGREEMENT DOCUMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN NOTICE SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

YAMHILL COUNTY, OREGON

See next page
TOM O'CONNOR

Date: _____

Fed Tax I.D. No.: _____

[Signature]
MARY STARRETT, Chair

Date: *7/14/16*

[Signature]
TED SMETANA, Director
Department of Community Justice

Date: _____

APPROVED AS TO FORM:

By: *[Signature]*
CHRISTIAN BOENISCH
County Legal Counsel

Accepted by Yamhill County
Board of Commissioners on

7.14.16 by Board Order

16-296

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YAMHILL COUNTY, OREGON



TOM O'CONNOR

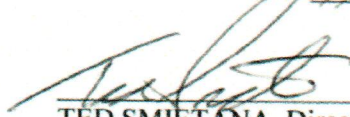
Date: 8/1/16

Fed Tax I.D. No.: 472295939



MARY STARRETT, Chair

Date: 7/14/16

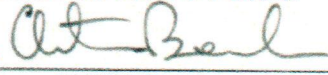


TED SMIETANA, Director

Department of Community Justice

Date: _____

APPROVED AS TO FORM:

By: 

CHRISTIAN BOENISCH
County Legal Counsel

Accepted by Yamhill County
Board of Commissioners on

7.14.16 by Board Order

16-296

Exhibit A - Scope of Work

Scope of Work: The Consultant, Tom O'Connor will provide the following services:

1. Facilitate meetings of the Yamhill County EBDM Policy Team, the Sentencing team and the Pre-Trial team and provide ongoing evidence-based technical support as these teams implement change strategies consistent with the EBDM Framework and Initiative principles.
2. Assist the EBDM project with data analysis, report and grant writing.
3. Coach the Policy Team Members in Structural Dynamics and Face-to Face communication strategies to improve the functioning of the team. This Coaching will include conducting a Behavioral Propensities Profile (BPP) assessment process for each of the policy team members.
4. Regularly update Ted Smietana, Yamhill County Community Corrections Chief on the progress made by Yamhill County EBDM project.
5. These services will be provided at the rate of no more than \$125 per hour, up to no more than eight hours per day, or \$1000 per day.
6. There will be no travel expenses related to this work, but travel time will be included as work time.
7. The Consultant shall submit monthly invoices detailing the kind and hours of services provided each month.
8. Provide evidence-based training and coaching, if requested, for the staff and colleagues who are working with each of the members of the EBDMI policy team.