

TO: Board of Commissioners

FROM: Margaret McAvoy, County Administrator/Controller

DATE: July 24, 2015

RE: MAXIMUS Contract for Cost Allocation Plan

BACKGROUND

1. Isabella County has contracted with MAXIMUS for the preparation of the Cost Allocation Plan, for many years.
2. The service provided by MAXIMUS is the development of a central services cost allocation plan which identifies the various costs incurred by the County to support and administer Federal and State funded programs. Cost Allocation Plans are required to be prepared by an independent source. An example of the use of the Plan is the Child Support Program, Title IV-D, received by the Prosecuting Attorney Office.
3. The previous contract has expired. The Compensation agreed to in the previous contract was at a rate of \$13,000 the first year, \$13,500 the second year and \$14,000 the final year.
4. The negotiated and agreed to proposed contract is for the same services at a charge of \$10,000 each year for three years, with a two year extension option, at the cost of \$10,000 per year.
5. The current Cost Allocation Plan is due to the State of Michigan by August 31, 2015.

ALTERNATIVES

1. There is one other company in the State of Michigan who prepares Cost Allocation Plans. I believe Isabella County is best served by maintain the many year excellent and professional relationship with MAXIMUS. Also, the cost quoted is far lower than the most recent contract.

FINANCIAL IMPACT

1. MAXIMUS has proposed a 5 year contract at a reduced rate. This contract is a good financial choice.

OTHER CONSIDERATIONS

None

RECOMMENDATIONS

1. Move to approve the MAXIMUS Agreement to Provide Professional Consulting Services to Isabella County, effective August 4, 2015, for a three year period, at the rate of \$10,000 per year, and authorize the Board Chairman to sign the same.

ATTACHMENTS

Draft Agreement

**AGREEMENT TO PROVIDE
PROFESSIONAL CONSULTING SERVICES**

THIS AGREEMENT is entered into this _____ day of _____, 20____ (the "Effective Date"), by and between MAXIMUS Consulting Services, Inc. ("Consultant"), and Isabella County ("Client"). In consideration of mutual promises and covenants, the parties agree as follows:

- (1) Scope of Services. Consultant shall perform in a professional manner the Services detailed in Exhibit A.
- (2) Term. This Agreement shall commence on the Effective Date and shall remain in effect until (a) thirty-six (36) months thereafter, (b) completion of, and payment in full for, the Services specified in Exhibit A, or (c) termination in accordance with Section 4, whichever occurs first. Should the Services not be completed at the conclusion of the thirty-six month term, and this Agreement has not been terminated pursuant to Section 4, the parties may agree to extend the agreement for a specified period of time pursuant to an amendment signed by both parties.
- (3) Compensation. Client shall pay Consultant a fee for services rendered as set forth in Exhibit B, incorporated herein by reference as if fully set forth as part of this Agreement.
- (4) Termination.
 - a) Termination for Cause. Upon material breach of the terms of this Agreement, the non-breaching party shall provide written notice to the breaching party specifying the nature of the default. The breaching party shall have 30 days (or such longer period as the parties may mutually agree upon) from the date of receipt to cure any such default prior to the effective date of termination. Any notice of default shall be delivered by certified mail or overnight courier.
 - b) Termination for Convenience. Either party may terminate this Agreement without cause upon 60 days prior written notice to the other. In the event the Agreement is so terminated by Client, Client shall reimburse Consultant for all reasonable costs incurred by Consultant due to such early termination.
 - c) Rights Upon Termination. Upon termination for whatever reason and regardless of the nature of the default (if any), Client agrees to pay Consultant in full for all goods and/or services provided to Client under this Agreement, or any amendment thereto, as of the effective date of termination of the Agreement.
- (5) Services and Materials to be Furnished by Client. Consultant shall provide guidance to Client in determining the data required. The Client acknowledges and

agrees that Consultant shall be entitled to rely upon the accuracy and completeness of the data provided by the Client to perform the Services. Client shall provide all such data in a timely manner sufficient to allow Consultant to provide the Services. Consultant shall have no liability to Client whatsoever if Client provides incomplete or inaccurate data or provides data in an untimely manner.

- (6) Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for 6 years after the completion of the Services. During such period, Client shall have the right to examine and audit the records and to make transcripts therefrom. Client shall provide 30 days written notice of its intent to inspect or audit any such records and shall conduct such inspection or audit only during Consultant's normal business hours and no more than once every six months. Any employee, consultant, subcontractor or agent of Client granted access to such records shall execute a non-disclosure agreement prior to being granted such access.
- (7) Copyright for Consultant's Proprietary Software. To the extent that the Services provided by Consultant are generated by Consultant's proprietary software, nothing contained herein is intended nor shall it be construed to require Consultant to provide such software to Client. Client agrees that it has no claims of ownership, including copyright, patents or other intellectual property rights to Consultant's software. Nothing in this Agreement shall be construed to grant Client any rights to Consultant's materials created prior to the execution of this Agreement. All of the deliverables prepared by Consultant for Client included in the Services are specifically set out in Exhibit A.
- (8) Insurance. Consultant shall maintain appropriate general liability insurance, workers' compensation insurance, automobile insurance, and professional liability insurance.
- (9) Indemnification. To the extent allowed by law, each party (an "Indemnifying Party") shall defend, indemnify and hold harmless the other party (an "Indemnified Party") from and against any and all third-party claims and resulting proven direct damages, liabilities and costs (including reasonable attorney fees) to the extent proximately caused by the negligent actions or willful misconduct of the Indemnifying Party, its employees or agents. The Indemnifying Party shall not be responsible for any damages, liabilities or costs resulting from the negligence or willful misconduct of the Indemnified Party, its employees, consultants, or agents or any third party.
- (10) Limitation of Liability. Client agrees that Consultant's total liability to Client for any and all damages whatsoever arising out of, or in any way related to, this Agreement from any cause, including but not limited to negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed the lesser of (a) the amount actually paid to Consultant during the contract year in which the claim arose, or (b) \$150,000.

In no event shall Consultant be liable for indirect, special, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought even if Consultant has been advised of the likelihood of such damages, and notwithstanding any failure of essential purpose of any limited remedy.

Any claim by Client against Consultant relating to this Agreement must be made in writing and presented to Consultant within one (1) year after the date on which Consultant completes performance of the services specified in this Agreement.

- (11) Consultant Liability if Audited. The Client represents that all financial and statistical information provided to Consultant by Client, its employees and/or agents is accurate and complete to the best of Client's knowledge. Consultant shall, upon notice of audit, make work papers and other records available to the auditors. Consultant's sole responsibility under an audit shall be to provide reasonable assistance to the Client through the audit and to make those changes to the work product as required as a result of the audit. Consultant shall not be liable for any audit disallowances or any missed or lost revenue associated with, or related to, the Services, regardless of cause.
- (12) Notices. Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid, to the address noted below:

Margaret McAvoy
County Administrator
Isabella County Building
200 Main Street, Mt. Pleasant, MI 48858
(989) 772-0911
mmcavoy@isabellacounty.org

Janet Luplow, CGFM
Director
MAXIMUS Consulting Services, Inc.
935 N. Washington Avenue, Lansing, MI 48906
(989) 295-7921
janetluplow@maximus.com

Such notice shall be deemed delivered 5 days after deposit in the U.S. mailbox.

(13) Changes. The terms and scope of Services of this Agreement may be changed only by written agreement signed by both parties.

(14) Miscellaneous.

- a. If Consultant is requested or authorized by Client, or is required by government regulation, a regulatory agency, subpoena, or other legal process, to produce Consultant deliverables, documents, records, working papers, or personnel for testimony or interviews with respect to this Agreement or any services provided hereunder, Client will reimburse Consultant without limitation for all Consultant time and expenses, including, but not limited to, attorneys' fees, court costs and travel expenses, incurred in responding to such requests whether incurred by Consultant employees, consultants, contractors or agents. The foregoing does not diminish or negate Consultant's obligation to negotiate and defend all cost allocation plans and State mandated cost claims as specifically provided for under the Description of Services contained in Exhibit A.
- b. There are no third-party beneficiaries to this Agreement and nothing in this Agreement shall be construed to provide any rights or benefits to any third-party.
- c. The parties intend that Consultant, in performing the Services specified in this Agreement shall act as an independent contractor and shall have full control of the work and the manner in which it is performed. Consultant and Consultant's employees are not to be considered agents or employees of Client for any purpose.
- d. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, this Agreement will continue in full force and effect without said provision, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and this Agreement will be interpreted to reflect the original intent of the parties insofar as possible.
- e. The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.
- f. This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.
- g. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, acts of God,

war, governmental action, labor conditions, material shortages or any other cause which is beyond the reasonable control of such party.

- h. Each individual signing this Agreement certifies that (i) he or she is authorized to sign this Agreement on behalf of his or her respective organization, (ii) such organization has obtained all necessary approvals to enter into this Agreement, including but not limited to the approval of its governing board, and (iii) when executed, this Agreement is a valid and enforceable obligation of such organization.
- i. Waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder will not operate or be construed as a waiver of any subsequent breach of that provision or as a waiver of that right.

IN WITNESS WHEREOF, the Client and the Consultant have executed this Agreement as of the date first written below.

By: _____
(Client Official)

Name: George Green

Title: Board of Commissioners Chairperson

Date: _____

MAXIMUS Consulting Services, Inc.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Scope of Services

Description of Services

The Consultant shall do, perform, and carry out in a good and professional manner the following services:

- A) Development of a central services cost allocation plan, which identifies the various costs incurred by the Client to support and administer Federal and State programs. The plan will contain a determination of the allowable costs of providing each supporting service, such as purchasing, legal counsel, disbursement processing, etc. The plan will be based upon the Client's year-end financial data for 2014, 2015, and 2016.

Negotiation of the completed cost allocation plan with the representatives of DHS and/or the State when required.

Consultant represents that it has, or will secure at its own expense, all personnel required in the performance of Services under this Agreement. All of the Services required hereunder will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified to perform the services described herein.

Consultant shall provide the Services stated in this Exhibit A in a professional and workmanlike manner consistent with the typical standards of the industry. Consultant specifically disclaims all other warranties, express or implied, including but not limited to the warranties of merchantability and fitness for a particular purpose.

Consultant reserves the right to subcontract for Services hereunder. Consultant agrees to notify Client in writing of any such subcontracts.

EXHIBIT B
Compensation

For Services provided as set forth in Exhibit A, Client agrees to pay Consultant compensation in the amount of Thirty Thousand Dollars (\$30,000). This fee will be paid at the rate of \$10,000 for the 2014 Cost Plan, \$10,000 for the 2015 Cost Plan, and \$10,000 for the 2016 Cost Plan, respectively.

Optional Two-Year Extension – the client may extend this contract for the preparation of Fiscal Years 2017 and 2018 cost allocation plans. This fee will be paid at the rate of Ten Thousand Dollars (\$10,000) for the preparation of the 2017 cost plan, and Ten Thousand Dollars (\$10,000) for the preparation of the 2018 cost plan.

Consultant will render to Client one or more invoices for the fees specified herein, with payment due thirty (30) days after the invoice date.