

**ORANGE COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date:

**Action Agenda
Item No. 4-hh**

SUBJECT: Contract to Prepare an Indirect Cost Plan

DEPARTMENT: Finance

PUBLIC HEARING: (Y/N)

No

ATTACHMENT(S):

Contract

INFORMATION CONTACT:

Gary Humphreys

245-2453

PURPOSE: To consider a contract with Maximus for preparation of a Cost Allocation Plan.

BACKGROUND: Federal regulations mandate a cost allocation plan prepared in accordance with Federal regulations as a requirement to claim reimbursement for administrative or indirect costs from a federal grant. The County contracts for the preparation of the cost allocation plan which is used primarily to claim reimbursement of indirect costs for Child Support and Social Services programs. Over \$2.3 million in indirect costs were identified related to these two programs in the last cost allocation plan. The plan is also used in conjunction with the preparation of the EMS Medicaid Cost Report and to claim reimbursement in other areas where a grant provides funding to pay indirect costs.

There are three firms which prepare cost allocation plans for most North Carolina governments. Staff requested proposals from all three firms for preparing the Indirect Cost Plan for use in Fiscal Year 2009-10 with an option to submit cost for the two subsequent years. The lowest price was submitted by THM at \$7,500. However the last time Orange County contracted for this service with THM the firm did not deliver the report in a timely manner and was not responsive to follow up communications regarding the report's completion. The report was finally delivered over six months after the date stated in the contract.

Maximus submitted the second lowest price of \$7,800. The fee quoted for the subsequent two years was also \$7,800. Maximus prepared the cost allocation Plan for a number of years prior to the County's contract with THM. Staff recommends awarding a contract to Maximus to prepare the indirect cost plan for the next three years subject to funding in the budget.

FINANCIAL IMPACT: The cost for preparation of the plan is \$7,800 per year. The use of the plan recovers nearly \$1 million in additional grant revenue for the County. Funds are budgeted in the Finance Department.

RECOMMENDATION(S): The Manager recommends the Board approve the 3 year contract with Maximus for a cost allocation plan and authorize the Chair to sign.

AGREEMENT TO PROVIDE PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT is entered into this ____ day of _____, 2009 by and between MAXIMUS Consulting Services, Inc., a wholly owned subsidiary of MAXIMUS, Inc. (hereinafter "Consultant"), and Orange County, North Carolina (hereinafter "Client"). The parties hereto, in consideration of mutual promises and covenants, agree as follows:

- (1) Scope of Services. Consultant shall perform in a professional manner the services as detailed in Exhibit A, incorporated herein by reference as if fully set forth as part of this Agreement.
- (2) Term. This Agreement shall be in full force and effect for the term as stated in Exhibit A.
- (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. Upon Consultant's material breach, Client may terminate this Agreement upon thirty (30) days prior written notice to Consultant wherein Client shall specify the nature of the default and the effective termination date. Upon such notice, Consultant shall be entitled to the opportunity to cure any such default prior to the effective date of termination.

Client may terminate this Agreement for any reason upon sixty (60) days prior written notice to Consultant.

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, and accepted by, Client under this Agreement, or any amendment thereto, as of the effective date of the Agreement. In no event shall the making of any payment to Consultant constitute or be construed as a waiver by Client or shall in no way impair or prejudice any right or remedy available to Client.

- (5) Services and Materials to be Furnished by Client. Consultant shall provide guidance to Client in determining the data required. Consultant shall assume without incurring liability therefore that all data so provided is correct and complete. Consultant shall make its best effort to complete the project on a timely basis. Consultant shall not be liable for work that cannot be completed as a result of inadequate data, or data that is provided 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 six (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 thirty (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. Any Client's employee, consultant, subcontractor or agent who may have access to such records shall execute a non-disclosure agreement prior to being granted such access.

(7) Copyright for Consultant's Proprietary Software. Client acknowledges that the service and/or deliverables 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 all ownership, including copyright, patents or other intellectual property rights to the software, lie with Consultant. Nothing herein shall be construed to entitle Client to any pre-existing Contractor materials.

(8) Insurance. Consultant shall maintain appropriate general liability insurance, workers' compensation insurance, automobile insurance, and professional liability insurance.

(9) Indemnification. Consultant shall defend, indemnify and hold harmless Client from and against damages, liability and costs (including reasonable attorney fees) directly caused by the negligent actions or willful misconduct of Consultant, its employees or agents. Consultant shall not be responsible for any damages or liability resulting from the negligence or willful misconduct of Client, 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 contract liability or Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed a factor of two times the value of the contract.

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. Consultant will assume all financial and statistical information provided to Consultant by Client employees or representatives is accurate and complete. Any subsequent disallowance of funds paid to Client under the claim(s) for whatever reason is the sole responsibility of Client. Consultant shall, upon notice of audit, make work papers and other records available to the State auditors.

(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:

Orange County Finance Department
 208 South Cameron Street
 Post Office Box 8181
 Hillsborough, NC 27278
 Phone – (919) 245-2450
 Fax – (919) 644-3324

Nelson Clugston
 MAXIMUS Consulting Services, Inc.
 1100 Logger Court, Suite D-100
 Raleigh, NC 27609
 (804) 323-3535
 (804) 323-3536
 nelsonclugston@maximus.com

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

(13) Changes. The terms of this Agreement may be changed via a mutually executed written instrument.

(14) Miscellaneous.

a. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

b. 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

c. Should any part, term, portion, section or provision of this Agreement be decided finally to be in conflict with law or otherwise be unenforceable or ineffectual, the remaining parts, terms, portions, sections or provisions shall be deemed severable and shall remain in full force and effect.

d. 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.

e. 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.

f. 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.

g. 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.

h. If this Agreement requires performance and appropriations for payment for services in future fiscal years, the validity of this contract is based upon the availability of public funding under the statutes delegating the County its powers. In the event that the County's enabling legislation is changed so as to prohibit the activities contemplated by this contract or should public funds become unavailable and not appropriated for the continuation of this contract, the parties' obligations hereunder will automatically expire without penalty ten (10) days after written notice to the Provider of such occurrence. It is understood that the County will not exercise this provision for its convenience, but only as an emergency fiscal measure.

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

By: _____
(Client Official)

Title: _____

ATTEST:

Date: _____

MAXIMUS Consulting Services, Inc.

By: _____

Date: _____

Approved as to form and legal sufficiency.

County Attorney

Approved as to technical content.

Department Director

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director

EXHIBIT A**Term and Scope of Services**

This Agreement shall become effective on this ____ day of _____, 2009 and shall continue in full force and effect until the ____ day of _____, 2013.

Consultant represents that it has, or will secure at its own expense, all personnel required in the performance of services under this Agreement. Consultant reserves the right to subcontract for services hereunder. Consultant agrees to notify Client in writing of any such subcontracts. 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 commence, carry on, and complete the services with all practicable dispatch, in a sound, economical, and efficient manner, in accordance with the provisions herein and all applicable laws. Consultant shall schedule work in so as to allow completion of the cost allocation plan by September 30th for each year contracted. The Fiscal Year (08) plan should be completed by September 30, 2009.

Scope 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 cost incurred by the State to support and administer Federal programs. This plan will contain a determination of the allowable cost of providing each supporting services such as purchasing, legal counsel, disbursement processing, etc.
- b) Prepare indirect cost proposals for federal grants as necessary.
- c) Negotiation, of the completed cost allocation plan, with the representatives of the State or federal government, whichever is applicable.

Consultant shall defend Client under audit for a period of three (3) years without cost to the Client.

EXHIBIT B
Compensation

For services provided as set forth in Exhibit A, Client agrees to pay Consultant compensation in the amount of Seven Thousand Eight Hundred Dollars (\$7,800) per fiscal year for the Cost Allocation Plan.

Payment of the standard fee shall be made upon completion of the plan. Invoices shall provide detail sufficient to Client's requirements.

Consultant will render to Client one or more invoices for the fees specified herein, with payment due by sixty (60) days after the due date. Invoices sixty (60) days after the due dates specified herein will bear interest at the rate of 1% per month.

Fee for Cost Plan

Fiscal Year [2008] \$7,800

Additional years:

Fiscal Year [2009] \$7,800

Fiscal Year [2010] \$7,800