

**CONTRACT  
BETWEEN  
THE COUNTY OF CUYAHOGA  
AND  
MAXIMUS CONSULTING SERVICES, INC.**

THIS CONTRACT ("Contract") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date"), by and between MAXIMUS Consulting Services, Inc. ("Consultant") with its principal office located at 7523 Fredle Drive, Concord Township, Ohio 44077, and the County of Cuyahoga ("County") on behalf of the County Fiscal Office. The County and Consultant shall individually be referred to as a "Party" and jointly be referred to as the "Parties".

WHEREAS the County is in need of consulting services to develop a central services cost allocation plan to support and administer federal programs;

WHEREAS County has determined that Consultant can provide such consulting services and desires to engage Consultant to perform such services;

WHEREAS Consultant is willing to provide such consulting services to the County upon all the terms and conditions set forth herein.

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties agree as follows:

- (1) Scope of Services. Consultant shall perform in a professional manner the consulting services ("Services") detailed in Exhibit A.
- (2) Term. This Contract 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 (36) month term, and this Contract has not been terminated pursuant to Section 4, the Parties may agree to extend the Contract for a specified period of time pursuant to an amendment signed by both Parties.
- (3) Compensation. County shall pay Consultant a fee not to exceed Thirty-four Thousand Dollars (\$34,000.00) for Services rendered as set forth in Exhibit B, incorporated herein by reference as if fully set forth as part of this Contract.
  - a. Appropriation:
    - i. Initial Appropriation. Beginning on the Effective Date through December, 2013 the County may appropriate in the estimated amount of Eleven Thousand Five Hundred Dollars (\$11,500.00) to the Contract (the "Initial Appropriation").
    - ii. Subsequent Appropriations. For the period beginning January, 2014, the County may appropriate Thirteen Thousand Five Hundred Dollars (\$13,500.00) to the Contract sufficient to fund the

Services by Consultant for the following calendar year; for the period beginning \_\_\_\_\_, 2015, the County may appropriate Nine Thousand Dollars (\$9,000.00) (each a "Subsequent Appropriation") to the Contract for the last year of the Contract Term. Each Subsequent Appropriation shall be as determined solely by the County and may be based on the Services provided to County, as set out in Exhibit A, under the Contract during the previous 12-month period.

- iii. Failure of Appropriation. Any provision of this Contract to the contrary notwithstanding, payment by the County hereunder shall be subject to annual appropriation of sufficient funds by Cuyahoga County Council, as set forth in this Section 3; the County may terminate this Contract on thirty (30) days written notice to Consultant, in the event of insufficient appropriation, at no additional charge or cost to the County.

(4) Termination.

- a) Termination for Cause. Upon material breach of the terms of this Contract, 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 Contract without cause upon 60 days prior written notice to the other. In the event the Contract is so terminated by County, County shall pay Consultant for all Services rendered up to the effective date of termination.
  - c) Rights Upon Termination. Upon termination for whatever reason and regardless of the nature of the default (if any), County agrees to pay Consultant in full for all goods and/or Services provided to County under this Contract, or any amendment thereto, as of the effective date of termination of the Contract.
- (5) Services and Materials to be Furnished by County. Consultant shall provide guidance to County in determining the data required. The County acknowledges and agrees that Consultant shall be entitled to rely upon the accuracy and completeness of the data provided by the County to perform the Services. County shall provide all such data in a timely manner sufficient to allow Consultant to provide the Services. Consultant shall have no liability to County whatsoever if County provides incomplete or inaccurate data or provides data in an untimely manner.

All reports and any other records developed by Consultant in the performance of this Contract shall remain the sole property of County. Consultant shall not copy or use such records except in connection with the Services to be performed under this Contract. In addition, Consultant shall not transfer any such records to any other party not involved with this Contract. All of the above shall be delivered to County upon completion of this Contract.

- (6) Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Contract for 6 years after the completion of the Services. During such period, County shall have the right to examine and audit the records and to make transcripts therefrom. County 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.
- (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 County. County agrees that it has no claims of ownership, including copyright, patents or other intellectual property rights to Consultant's software. Nothing in this Contract shall be construed to grant County any rights to Consultant's materials created prior to the execution of this Contract. All of the deliverables prepared by Consultant for County 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 as set forth in Exhibit C- Insurance Requirements.
- (9) Indemnification. To the extent allowed by law, Consultant shall defend, indemnify and hold harmless the County, and its officials, officers, employees, agents, representatives, departments, agencies, boards, commissions, and other authorities 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, Consultant, its employees or agents. County shall not be responsible for any damages, liabilities or costs resulting from the negligence or willful misconduct of Consultant, its employees, consultants, or agents or any third party.

Consultant acknowledges that as an Ohio political subdivision, County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no provision of this Contract or any other contract or agreement between Consultant and County may be interpreted to obligate County to indemnify or defend Consultant or any other party.

- (10) Limitation of Liability. County agrees that Consultant's total liability to County for any and all damages whatsoever arising out of, or in any way related to, this Contract 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 value of Two Hundred Thousand Dollars (\$200,00.00).

In no event shall Consultant or County be liable to the other 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 three (3) years after the date on which Consultant completes performance of the services specified in this Contract.

- (11) Consultant Liability if Audited. The County represents that all financial and statistical information provided to Consultant by County, its employees and/or agents is accurate and complete to the best of County'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 County 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) Trade Secrets; Confidentiality.

a) Trade Secrets. Consultant shall take all steps necessary to protect the County's trade secrets. All data dictionaries, entity relationships, database configurations, encryption passwords, forms, automated reports, or other artifacts used to access the data shall belong to County and shall be treated as a trade secret of the County.

b) Confidential Information. Consultant shall treat as proprietary and confidential any and all information belonging to the County, which is disclosed to Consultant in the course of performance of Services under this Contract (the "Confidential Information"). Confidential Information shall include, but not limited to any device, data, database, files, data stores, process, method or technique originated by or peculiarly within the knowledge of the County and its representatives, employees, and those in privy with it, which is not available to the public and is subject to protection as property under recognized principles. All Confidential Information of the County supplied to Consultant by the County are and shall remain the sole property of County. Consultant shall not, without the County's written consent, copy or use such records except to carry out the Services, and will not transfer such records to any other party not involved in the performance of this Contract.

c) Consultant shall only use Confidential Information for the purposes of this Contract. Consultant agrees not to disclose or reveal to any outside party or use for its own benefit, either directly or indirectly, any information which it may acquire or develop or, has acquired or developed concerning the technical or business affairs or other private or confidential matters, information, or data of County without prior written permission of the County. Confidential Information shall not include information that is in the public domain. The County will abide by law in granting or denying any permission for disclosure.

If Consultant fails to meet its obligations to protect the Confidential Information, the County may seek equitable relief.

d) Survival of this Section. This entire Section shall survive the completion of the Services hereunder and the termination of this Contract unless the County releases Consultant of its obligations through a written signed communication from the County's Director of Law at an earlier date.

(13) Public Records. Consultant acknowledges and agrees that as a political subdivision, the County is subject to the requirements of the Ohio Public Records Law. When Consultant submits documents and/or information that properly and legally qualifies as a trade secret under Ohio law, Consultant must segregate all protected information and/or documents submitted to County and conspicuously mark each page as "CONFIDENTIAL - TRADE SECRET." Consultant may not take advantage of this process to mark information/documents that it wishes to keep confidential, but doesn't qualify legally as a trade secret under Ohio law. By taking advantage of this process, Consultant certifies that it only marked information/documents that legally qualify as a trade secret under Ohio law as "CONFIDENTIAL - TRADE SECRET."

(14) Notices. Any notices, bills, invoices, or reports required by this Contract shall be sufficient if sent by the Parties in the United States mail, postage paid, to the address noted on the following page.

To the County:  
**Mr. Matt Rubino, Director**  
**Office of Budget & Management**  
**County Fiscal Office**  
**Administration Building**  
**1219 Ontario Street**  
**Cleveland, Ohio 44113**  
**(216) 443-7448**  
**mrubino@cuyahogacounty.us**

To the Consultant:  
**Robert J. Fink, State Director Ohio/Indiana**  
**MAXIMUS Consulting Services, Inc.**  
**7523 Fredle Drive**  
**Concord Twp., Ohio 44077**  
**(800) 543-0288 – Toll Free**  
**robertfink@maximus.com**

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

(15) Amendments. The terms and scope of Services of this Contract may be amended or changed only by written agreement signed by both Parties.

(16) Good Standing. Consultant has been duly organized and is a validly existing corporation and in good standing under the laws of the State of Ohio, and has the full legal authority to enter into this Contract and perform its obligations hereunder, and has all requisite power, corporate or otherwise, to conduct its business, as

presently conducted and will remain so qualified and in good standing during the term of this Contract

(17) Miscellaneous.

- a) There are no third-party beneficiaries to this Contract and nothing in this Contract shall be construed to provide any rights or benefits to any third-party.
- b) The Parties intend that Consultant, in performing the Services specified in this Contract 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 County for any purpose.
- c) In the event that any provision of this Contract is held to be invalid, illegal or unenforceable for any reason, this Contract 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 Contract will be interpreted to reflect the original intent of the Parties insofar as possible.
- d) The titles of the sections, subsections, and paragraphs set forth in this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.
- e) This Contract 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 Contract 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 Contract certifies that (i) he or she is authorized to sign this Contract on behalf of his or her respective organization, (ii) such organization has obtained all necessary approvals to enter into this Contract, including but not limited to the approval of its governing board, and (iii) when executed, this Contract is a valid and enforceable obligation of such organization.
- h) Waiver by either party of a breach of any provision of this Contract 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.
- i) Consultant represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24. If this representation and warranty is deemed to be false, this Contract is void ab initio, and Consultant must immediately repay to County any funds paid under

this Contract and must make County whole for any damages sustained by the County.

- j) All County contracts, including this Contract, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.
- k) This Contract will be governed by the laws of the state of Ohio, without reference to the principles of conflicts of law. Any suit arising from or relating to this Contract shall be instituted in a state or federal court in Cuyahoga County, Ohio, and the Parties hereby agree to submit to the venue and personal jurisdiction of any such court. The Contract is subject to the review of the County's Law Department as to legal form and correctness.
- l) Neither Party shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other Party, and any attempt of assignment or transfer without such consent shall be void.
- m) This Contract has been properly authorized by County and Consultant. The individuals signing on behalf of the Parties to this Contract are authorized to execute this Contract on behalf of the County and Consultant. Consultant recognizes and agrees that no public official or employee of the County may be deemed to have apparent authority to bind County to any contractual obligations.

**(18) ELECTRONIC SIGNATURE.**

**BY ENTERING INTO THIS CONTRACT CONSULTANT AGREES ON BEHALF OF ITS, OWNERS, MEMBERS, SHAREHOLDERS, OFFICERS, REPRESENTATIVES, AGENTS AND/OR EMPLOYEES, SUBCONTRACTORS, SUB-GRANTEES, OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURE MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. CONSULTANT ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITIES AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF THE COUNTY.**

**[SIGNATURE PAGE TO FOLLOW]**

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

**Cuyahoga County:**

Edward FitzGerald, County Executive

By: \_\_\_\_\_

Edward FitzGerald, Cuyahoga County Executive

2013-12-10 14:45:39

**MAXIMUS Consulting Services, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Paula Arnold

Contracts Manager

Title: \_\_\_\_\_

The legal form and correctness  
of this Contract is hereby approved:  
Law Department  
County of Cuyahoga, Ohio  
Majeed G. Makhoul, Director of Law

By: \_\_\_\_\_

MICHAEL KING ASSISTANT LAW DIRECTOR

Name: \_\_\_\_\_

2013-12-16 08:38:51

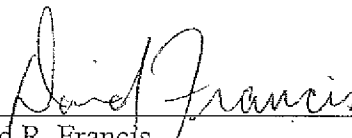
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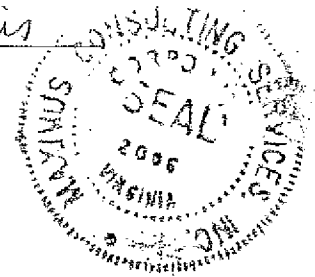


## CERTIFICATE OF CORPORATE SECRETARY

The undersigned Secretary of **MAXIMUS Consulting Services, Inc.** (the "Corporation") hereby certifies that Paula Arnold, Manager – Contracts Administration, has been authorized by the Board of Directors of the Corporation to sign customer proposals and contracts for services on behalf of the Corporation in accordance with internal procedures adopted by the Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Corporation, this 19<sup>th</sup> day of June 2012.

  
\_\_\_\_\_  
David R. Francis  
Secretary



**Exhibit A**  
**Scope of Services**  
**Cuyahoga County, Ohio**

**Description of Services:**

1. Development of a central services cost allocation plan which identifies the various costs incurred by the County to support and administer federal programs. Based on financial and statistical data provided by the County, this plan will contain a determination of the allowable costs of providing each supporting service, such as purchasing, legal counsel, disbursement processing, etc. The cost plans will be based upon the County's year-end financial data for the year 2011, 2012 and 2013 and will be the basis for the recoveries to be claimed for calendar year 2013, 2014 and 2015.
2. Assist County in updating cost plan narratives and changes associated with the charter governance structure effective in 2011.
3. Assist County in reviewing and updating cost plan allocation statistics.
4. Assist in the determination additional administrative cost centers identified by the County to be included in the cost plans.
5. Assist County in reviewing proposed cost plan design by County CIO for an IT schedule to be included in cost plans.
6. Assist County in addressing "shared services charges" within the cost plans.
7. Provide final reports and schedules to County as a PDF file.

Consultant represents that it has, or will secure at its own expense, all personnel required in the performance of Services under this Contract. 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.

**Exhibit B**  
**Compensation**  
**Cuyahoga County, Ohio**

For Services provided as set forth in Exhibit A, County agrees to pay Consultant compensation in the amount of not to exceed Thirty-four Thousand Dollars (\$34,000.00) ("Fee").

The County agrees to pay the Consultant the sum of \$11,500.00 for all Services required herein to prepare the 2011 based plan. Further, the County agrees to pay the Consultant the sum of \$13,500.00 for all Services required herein to prepare the 2012 based plan. Further, the County agrees to pay the Consultant the sum of \$9,000.00 for all Services required to prepare the 2013 based plan. Consultant agrees to complete the project and all Services provided herein for said Fee.

Payment of the Fee, which shall include reimbursement for expenses reasonably incurred and approved by the County, shall be made in three (3) installments due upon delivery and acceptance of each final report for years 2011, 2012 and 2013 as described above and in Exhibit A. Invoices shall provide detail sufficient to County's requirements.

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

## **Exhibit C**

### **Insurance Requirements**

Consultant shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to Consultant's products, services, work and/or operations performed in connection with this Contract.

#### **1. Mandatory Insurance Requirements**

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

- (a) **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

If Consultant has employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;  
\$1,000,000 each employee for bodily injury by disease;  
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the standard ISO (Insurance Services Office) form or its equivalent.

- (b) **Commercial General Liability Insurance** with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;  
\$1,000,000 personal & advertising injury;  
\$2,000,000 general aggregate;  
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- (c) **Business Automobile Liability Insurance** covering all of Consultant's owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

2. **Additional Insurance Coverage**

Each of the following items may be required "in addition to" the mandatory County insurance requirements set forth above. Although these coverages may not be listed as mandatory County insurance requirements, it is at the County's discretion to mandate these coverages where deemed necessary based on the nature of the contracted services/products.

(a) **Umbrella/Excess Liability Insurance** with limits of liability not less than:

\$5,000,000 each occurrence  
\$5,000,000 general aggregate  
\$5,000,000 products/completed operations aggregate

Such insurance shall be written on an occurrence basis and shall sit in excess of the liability limits and terms set forth in the preceding items (a)-(c).

(b) **All Risk Equipment Insurance** covering all risk of physical damage to equipment provided for use by Consultant.

(c) **Professional Liability Insurance/Errors & Omissions Liability Insurance** providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$5,000,000 per claim;  
\$5,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.

**Insurance Coverage Terms and Conditions**

1. The insurance policies of the Consultant required for this Contract, with the exception of the All Risk Equipment Insurance, Workers' Compensation, and Professional Liability/Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

- (i) Thirty (30) days prior notice of cancellation or material change;
- (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.

2. The insurance required for this contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A- (that's A, minus sign) VII or above.

3. These insurance provisions shall not affect or limit the liability of the Consultant stated elsewhere in this Contract or as provided by law.
4. The Consultant shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.
5. The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.
6. If the Bid/Proposal/RFQ specifies the need for higher limits of liability for any applicable insurance provision, the Bid/Proposal/RFQ specifications shall govern.
7. The Consultant shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.