

**PROFESSIONAL SERVICES AGREEMENT
WITH MAXIM HEALTHCARE SERVICES
FOR TEMPORARY NURSING SERVICES FOR THE
SANTA FE COUNTY CORRECTIONS DEPARTMENT**

THIS AGREEMENT is made and entered into this 29 day of January, 2008 by and between **Santa Fe County**, hereinafter referred to as "the County", and **Maxim Healthcare Services**, a New Mexico corporation with its principal place of business located at 2155 Louisiana Blvd, NE, Suite 5100, Albuquerque, NM 87110, hereinafter referred to as "the Contractor".

WHEREAS, in accordance with NMSA 1978, Section 13-1-112, the County issued Request for Proposal (RFP) No. 28-0024-CORR/MS, attached hereto, for temporary Nursing Services for the Santa Fe County Corrections Department; and

WHEREAS, the Contractor submitted its proposal in response to RFP No. 28-0024-CORR/MS; and

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

The Contractor shall:

- A. At the County's request the Contractor shall assign qualified, licensed RNs and LPNs, including related staff, as needed for shift vacancies at the Adult Detention Facility (ADF). In the instance that the Contractor is unable to fill a scheduled shift, the Contractor is responsible for providing eight [8] hours advanced notification to the Medical Administrator (HSA), or designee thereof, informing the HSA that they are unable to fill the scheduled shift with staff personnel. Notice of inability to fill a shift must be provided within four hours of the request.
- B. Maintain individual employee files for all the Contractor personnel containing, at a minimum, the following:
 - a completed application, including employee's education, employment history, training, skills, specialties and preferences,
 - current Tuberculosis (TB) Test results (must be current within one year) and evidence of satisfactory clearance, in accordance with State regulations,
 - copy of current license, registration or certifications, as applicable, and
 - complete background check equivalent to the background checks conducted for employees of the ADF.
- C. The Contractor personnel assigned to the ADF shall report to an assigned RN Shift Supervisor before they begin their shift.

- D. The Contractor must provide notice within twenty-four (24) hours of receiving a two-week scheduling request of the vacancies the Contractor can and cannot fill.

- E. Training

The Contractor personnel must undergo site-specific training prior to placement. At a minimum, this will include a Security Orientation, Santa Fe County hazard communication procedures and specific exposure control plan as it pertains to OSHA requirements for blood borne pathogens. ADF will pay one half of the hourly rate for the Contractor personnel, assigned to a Santa Fe County correctional facility, to attend such training. The Contractor will pay its personnel the amount remaining.

- F. Credentials

The Contractors personnel shall have current New Mexico licensure and Cardio Pulmonary Resuscitation certification and all RN's shall have current Advanced Cardiac Life Support, Basic Life Support and Advanced Life Support certification. Proof of licensure and certification for each Contracted personnel assigned to the County shall be provided in advance of that individual receiving training and working at the ADF.

2. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in Section 1. "SCOPE OF WORK," of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with industry standards and the aforementioned statutes, for the amount set forth in Section 3. "COMPENSATION, INVOICING" of this Agreement, and for no other cost, amount, fee or expense.
- B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

3. COMPENSATION AND INVOICING

- A. In consideration of its obligations under this Agreement the Contractor shall be compensated in accordance with the rates attached hereto as Exhibit A and made a part hereof by reference.
- B. The Contractor shall submit a written request for payment to the County whenever payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.

The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty

(30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

- C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.
- D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate on January 29, 2012, unless earlier terminated pursuant to Section 5. "TERMINATION", of this Agreement.

5. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective seven (7) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within seven (7) days, the breaching party shall have a reasonable time to cure the breach, provided that, within seven (7) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Contractor and the County may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the County from the Contract is determined.

- B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.
- C. Temp-to Hire Policies. The event that the Contractor's temporary nurse is seeking full-time employment with the County and the County is interested in hiring that nurse the following steps shall occur.
 - 1) The County shall provide a written notification to the Contractor of its intent to hire the Contractor's employee; and

- 2) The County shall commit to utilizing the Contractor's employee on a full-time basis, thirty-six (36) hours per week, for the duration of eight (8) weeks. During the eight (8) week period the County shall pay the Contractor at the rates as specified above; and
- 3) After the eight (8) week period, the Contractor shall provide written notification to the County that the County may hire the nurse without any further obligation or fee to the Contractor.

6. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use the County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

7. PERSONNEL

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. INDEMNITY

- A. The Contractor shall defend, indemnify, and hold harmless the County and its Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

- B. The County shall be advised of any counsel retained by Contractor to defend any demand, suit, or cause of action in which the County is named. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If, in the County's judgment, a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel, whose fees shall be paid by the Contractor.
- C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

11. RECORDS AND INSPECTIONS

- A. To the extent their books and records relate to (i) their performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").
- B. To the extent their books and records relate to (i) their performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

12. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

13. PERMITS, FEES, AND LICENSES

The Contractor shall procure all permits, licenses and certificates, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

14. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement. The Contractor and its personnel shall comply with HIPAA privacy requirements.

15. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the County.

16. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHTS

- A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.
- B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright..

17. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

18. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

19. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. EQUAL OPPORTUNITY COMPLIANCE

- A. The Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

21. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

22. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligation hereunder, the Contractor shall comply with all applicable laws, ordinances, and obligations. The Contractor shall also comply with Joint Commission or Accreditation of the Health Care organization standards for use by supplemental nursing services at ADF.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. The Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the federal and state district courts of New Mexico, located in Santa Fe County.

23. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Section 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

24. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

28. INSURANCE

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.
- C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.
- D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.
- E. Malpractice/Errors and Omissions Insurance. The Contractor shall procure and maintain during the life of this Agreement medical malpractice insurance covering all personnel assigned to work at the ADF in the amounts not less than \$10,000,000 per occurrence, \$20,000,000 aggregate.

29. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

- A. It is a corporation duly organized and in good standing under the laws of the State of New Mexico.

- B. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- C. This Agreement and the Contractor's obligations hereunder do not conflict with the Contractor's articles of incorporation or by-laws or any corporate resolution adopted by the Contractor.

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. NOTICES

All notices required to be given to the County under this Agreement shall be mailed (pre-postage paid) to:


Santa Fe County
Adult Detention Facility
Attn: Stephanie Martinez
4312 NM Hwy 14
Santa Fe, NM 87508

All notices required to be given to the Contractor under this Agreement shall be mailed (pre-postage paid) to:


Maxim Healthcare Services
2155 Louisiana Blvd, NE, Suite 5100
Albuquerque, NM 87110

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SANTA FE COUNTY

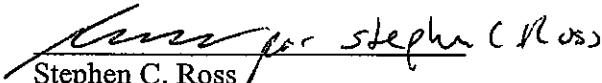

Jack Sullivan, Chairman
Santa Fe County Board of Commissioners

ATTEST


Valerie Espinoza, Clerk

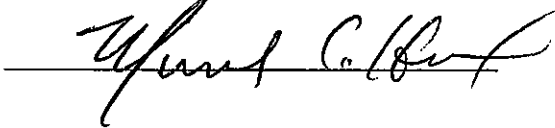


APPROVED AS TO FORM


Stephen C. Ross
Santa Fe County Attorney

1-14-08
Date

MAXIM HEALTHCARE SERVICES



Date

By: Michael C. Hemmer

Title: Regional Director

FEDERAL IDENTIFICATION NUMBER

62-1590951

"EXHIBIT A"

The rates below shall be in effect through the duration of the contract. Rates include costs for wages, other compensation, workers compensation, unemployment insurance costs, travel to and from the off-site workplace, travel to and from the on-site workplace, per diem, fringe benefits and any other overhead costs for contractor personnel. New Mexico gross receipts taxes are excluded from the rates, they shall be shown separately on the invoice. The Contractor shall submit to the County, on an annual basis, a new rate schedule reflecting a 3% increase per hourly rate for annual escalation costs. Upon review and approval by the County the new rate schedule shall be automatically incorporated into this agreement.

<u>Staff Position</u>	<u>Time Frame</u>	<u>Hourly Rate</u>
Registered Nurse	7am-7pm (Mon-Fri)	\$57.00
Registered Nurse	7pm-7am (Mon-Fri)	\$57.00
Registered Nurse	7am-7pm (Weekends)	\$59.00
Registered Nurse	7pm-7am (Weekends)	\$59.00
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Registered Nurse/Special Care	7am-7pm (Mon-Fri)	\$59.00
Registered Nurse/Special Care	7am-7pm (Weekends)	\$61.00
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Licensed Practical/Vocational Nurse	7am-7pm (Mon-Fri)	\$41.00
Licensed Practical/Vocational Nurse	7pm-7am (Mon-Fri)	\$41.00
Licensed Practical/Vocational Nurse	7am-7pm (Weekends)	\$43.00
Licensed Practical/Vocational Nurse	7pm-7am (Weekends)	\$43.00
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Medical Records Clerk	8am-5pm (Mon-Fri)	\$20.00
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Penalty

The Contractor shall be assessed a \$1,500 penalty fee for failure to provide a minimum of eight hours advance notice to ADF of the cancellation of any nursing assignment, shift, or coverage previously committed to ADF. The penalty shall be deducted from the next payment due the Contractor.

Overtime

Overtime is defined as those hours worked in excess of forty (40) hours in a one week pay period for ADF. Overtime must be approved in writing, in advance by an ADF supervisor. The overtime rate is one and one-half (1 ½) times the regular billing rate for each hour worked.

Holidays

Holiday rates are paid for the day, evening and night shifts on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas and for the evening and night shifts on Christmas Eve and New Year's Eve. The holiday billing rate is one and one-half (1 ½) times the regular billing rate for each hour worked.

Santa Fe County reserves the right to dismiss for cause and instruct temporary nursing personnel to leave the premises, in which case the temporary personnel will only be compensated for hours worked and shall not be reassigned to Santa Fe County.

Failure to provide a minimum of an eight (8) hour advance notice to ADF of the cancellation of any nursing assignment will be deducted from the next invoice.