

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

BOARD OF DIRECTORS REGULAR MEETING AGENDA
SEPTEMBER 11, 2009 (Second Friday of Each Month)
SCMTD ENCINAL CONFERENCE ROOM
370 ENCINAL STREET, SUITE 100
SANTA CRUZ, CALIFORNIA
9:00 a.m. – 11:00 a.m.

THE BOARD AGENDA PACKET CAN BE FOUND ONLINE AT WWW.SCMTD.COM OR AT METRO'S ADMINISTRATIVE OFFICES LOCATED AT 370 ENCINAL STREET, SUITE 100, SANTA CRUZ, CA

NOTE: THE BOARD CHAIR MAY TAKE ITEMS OUT OF ORDER

SECTION I: OPEN SESSION - 9:00 a.m.

1. ROLL CALL
2. ORAL AND WRITTEN COMMUNICATION TO THE BOARD OF DIRECTORS
 - a. None
3. LABOR ORGANIZATION COMMUNICATIONS
4. ADDITIONAL DOCUMENTATION TO SUPPORT EXISTING AGENDA ITEMS

CONSENT AGENDA

- 5-1. NONE

REGULAR AGENDA

6. CONSIDERATION OF AUTHORIZING THE GENERAL MANAGER TO EXECUTE A CONTRACT WITH MAXIM HEALTH SYSTEMS TO PROVIDE INFLUENZA VACCINATION SERVICES FOR METRO EMPLOYEES
Presented By: Ciro Aguirre, Operations Manager
7. ORAL ANNOUNCEMENT: THE NEXT REGULARLY SCHEDULED BOARD MEETING WILL BE HELD FRIDAY, SEPTEMBER 25, 2009 AT 9:00 A.M. – SANTA CRUZ CITY COUNCIL CHAMBERS, 809 CENTER ST, SANTA CRUZ
Presented By: Vice Chair Pirie
8. REVIEW OF ITEMS TO BE DISCUSSED IN CLOSED SESSION: District Counsel
9. ORAL AND WRITTEN COMMUNICATIONS REGARDING CLOSED SESSION

SECTION II: CLOSED SESSION

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
(Pursuant to Government Code Section 54957)
 - a. Title: General Manager

SECTION III: RECONVENE TO OPEN SESSION

10. REPORT OF CLOSED SESSION

ADJOURN

NOTICE TO PUBLIC

Members of the public may address the Board of Directors on a topic not on the agenda but within the jurisdiction of the Board of Directors or on the consent agenda by approaching the Board during consideration of Agenda Item #2 "Oral and Written Communications", under Section I. Presentations will be limited in time in accordance with District Resolution 69-2-1.

When addressing the Board, the individual may, but is not required to, provide his/her name and address in an audible tone for the record.

Members of the public may address the Board of Directors on a topic on the agenda by approaching the Board immediately after presentation of the staff report but before the Board of Directors' deliberation on the topic to be addressed. Presentations will be limited in time in accordance with District Resolution 69-2-1.

The Santa Cruz Metropolitan Transit District does not discriminate on the basis of disability. The Encinal Conference Room is located in an accessible facility. Any person who requires an accommodation or an auxiliary aid or service to participate in the meeting, please contact Cindi Thomas at 831-426-6080 as soon as possible in advance of the Board of Directors meeting. Hearing impaired individuals should call 711 for assistance in contacting METRO regarding special requirements to participate in the Board meeting.

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: September 11, 2009
TO: Board of Directors
FROM: Ciro Aguirre, Manager of Operations
SUBJECT: CONSIDERATION OF AGREEMENT WITH MAXIM HEALTH SYSTEMS FOR PROVIDING INFLUENZA VACCINE SERVICES TO ALL METRO EMPLOYEES.

I. RECOMMENDED ACTION

That the Board of Directors authorize the General Manager to enter into an agreement with MAXIM Health Systems to provide influenza vaccination services for all METRO employees.

II. SUMMARY OF ISSUES

- METRO for a number of years, on a yearly basis, has contracted with the Visiting Nurse Association (VNA) to have on-site influenza vaccination services performed for all interested employees.
- The Visiting Nurse Association has informed METRO that they have terminated the influenza vaccination program for this year.
- METRO Staff have identified MAXIM Health Systems as an alternate provider of influenza vaccination services.
- Due to an indemnification clause found in the MAXIM Master Service Agreement, METRO staff requires Board authorization to enter into an agreement for services with MAXIM.

III. DISCUSSION

Providing employees with easy access to flu vaccinations at the workplace was established as a preventative health measure in order to mitigate contagion to the influenza virus. METRO's employees come into daily contact with each other and the public. According to the Center for Disease Control and Prevention, the influenza vaccinations are the most powerful public health tool for control of influenza. The usual seasonal influenza viruses and the H1N1 influenza are expected to cause illness this fall and winter.

METRO staff has identified MAXIM Health Systems as an alternate provider of influenza vaccination services that will provide the service in a similar manner as the VNA. MAXIM has forwarded to METRO staff the attached Agreement (Attachment A) and the Ryder (Attachment

B) for review. METRO staff has proposed certain modifications to the agreement, which are under review by MAXIM. Additionally, METRO staff have forwarded to MAXIM the Federal Transit Administrative Contract Clauses (Attachment C) which are necessary as part of any contract. As part of the agreement with MAXIM, METRO will be providing a location for the medical personnel to use for the dissemination of the vaccinations including providing tables and chairs.

A review of the MAXIM Health Systems Service Agreement, METRO staff has identified an indemnity clause under ARTICLE 6. GENERAL TERMS – Section 6.3 Indemnification. This clause will require METRO to indemnify and hold MAXIM harmless for any negligent performance that METRO employees engage in during the performance of the agreement as a result of which a claim or lawsuit is filed against MAXIM. It is METRO staff's practice to obtain METRO Board of Directors' approval for contracts that include an indemnification provision.

It is staff's recommendation that the Board grant authorization to enter into this agreement.

IV. FINANCIAL CONSIDERATIONS

Number of METRO Employees –	330
Cost per employee -	\$ 25
Potential Total Cost -	\$ 8,250

V. ATTACHMENTS

Attachment A:	MAXIM Master Services Agreement
Attachment B:	Rider to Master Services Agreement
Attachment C:	Rider-2 FTA Third Party Contract Terms and Conditions



MASTER SERVICES AGREEMENT

This Master Services Agreement (this "Agreement") is entered into this 28th day of August, 2009 ("Effective Date"), by and between **Santa Cruz Metro Transit District**, with offices located at 370 Encinal St, Santa Cruz, CA, 95060 ("CLIENT"), and **Maxim Health Systems, LLC**, with offices located at 7221 Lee DeForest Drive, Columbia, MD 21046 ("MAXIM").

In consideration of the promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, and intending to be legally bound, CLIENT and MAXIM hereby agree to the following terms and conditions of this Agreement and the attached Rider(s):

ARTICLE 1. TERM OF AGREEMENT

- 1.1 Term.** This Agreement will be in effect as of the Effective Date and will continue indefinitely until terminated.
- 1.2 Termination.** Either party may terminate this Agreement at any time, with or without cause, by providing at least thirty (30) days advance written notice of the termination date to the other party. Either party may terminate this Agreement immediately in the event of a material breach of this Agreement by the other party by providing written notice to other party; however, the notice must describe in reasonable detail the nature of the alleged breach and provide for a cure period of at least five (5) days. Any termination will have no effect upon the rights and obligations resulting from any transactions occurring prior to the effective date of the termination.

ARTICLE 2. RESPONSIBILITIES OF MAXIM

- 2.1 Services.** Upon CLIENT'S request, MAXIM shall provide immunizations, vaccinations and/or screenings (collectively, "Service(s)") to CLIENT'S recipient(s) at the location and times specified on attached Rider(s) and/or Attachment(s) (collectively, "RECIPIENT(S)"), subject to the availability of vaccine/supplies and/or qualified medical professionals (individually and collectively, "Personnel").
- 2.2 Personnel.** All Personnel provided by MAXIM shall be employees or contractors of MAXIM, and not of CLIENT.
- 2.3 Health and Safety Guidelines.** MAXIM will follow applicable guidelines issued by the State Department of Health Services pertaining to Services and disposal of waste. Upon receipt of written request, MAXIM will forward a copy of its Infection Control Guidelines to CLIENT. Prior to providing Services, MAXIM shall obtain a physician's order authorizing the provision of Service(s), as required under applicable state laws.
- 2.4 Supplies.** MAXIM will supply all necessary vaccine, medical supplies, and forms to be used in administering and/or providing Services to RECIPIENTS.
- 2.5 Insurance.** MAXIM will maintain (at its sole expense), or require the individuals it provides under this Agreement to maintain, a valid policy of insurance evidencing general and professional liability coverage of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, covering the sole negligent acts or omissions of Personnel occurring in connection with the provision of Services under this Agreement. MAXIM or its contractor will provide a certificate of insurance evidencing such coverage upon request by CLIENT. MAXIM and any contractor further agree to maintain any statutorily required worker's compensation insurance for all of its Personnel providing Services to CLIENT under this Agreement.

2.6 Employment and Taxes. MAXIM will follow its standard employment policies and procedures to verify that all Personnel meet applicable licensing requirements. MAXIM, or its subcontractor if applicable, will maintain direct responsibility as employer for the payment of wages and other compensation, and for any applicable mandatory withholdings and contributions such as federal, state, and local income taxes, social security taxes, worker's compensation, and unemployment insurance.

2.7 Record Access. In instances where CLIENT is Medicare and/or Medicaid certified, MAXIM agrees that, in accordance with Section 952 of the Omnibus Budget Reconciliation Act of 1980, its contracts, books, documents and records will be made available to the Comptroller General of the United States, the United States Department of Health and Human Services and their duly authorized representatives ("USDHHS") until the expiration of four (4) years after Services are furnished under this Agreement.

2.8 Work Environment. MAXIM will not be responsible for the supply or proper maintenance of any property supplied by CLIENT, including but not limited to tables, chairs and physical space provided to MAXIM and RECIPIENTS. MAXIM will assume no responsibility or liability for crowd control and security at CLINICS.

ARTICLE 3. RESPONSIBILITIES OF CLIENT

3.1 Incorporation of Rider(s). CLIENT agrees that any Rider(s) and/or Attachment(s) attached hereto are incorporated herein by reference and form a part of this Agreement. If there is any conflict between this Agreement and any Rider(s) and/or Attachment(s), the terms of the Rider(s) and/or Attachment(s) will govern.

3.2 Insurance. CLIENT will maintain at its sole expense a valid policy of professional or general liability insurance with minimum limits of \$1,000,000 per occurrence and \$3,000,000 annual aggregate covering the negligent or willful acts or omissions of its employees, contractors and agents. CLIENT will provide a certificate of insurance evidencing such coverage to MAXIM upon request, and give MAXIM prompt written notice of cancellation or any material change in CLIENT coverage.

3.3 Work Environment. CLIENT will provide a workspace for MAXIM to conduct the CLINIC in a highly visible setting that will enable MAXIM to safely provide Services to RECIPIENTS seeking such service. CLIENT will provide furniture at its sole risk to include, but not limited to, tables and chairs, and allow MAXIM Personnel reasonable access to telephones for business use.

ARTICLE 4. MUTUAL RESPONSIBILITIES

4.1 Non-discrimination. Neither MAXIM nor CLIENT will discriminate on the basis of age, race, color, national origin, religion, sex, disability, being a qualified disabled veteran, being a qualified veteran of the Vietnam era, or any other category protected by applicable law.

ARTICLE 5. COMPENSATION

5.1 Billing. MAXIM will submit invoices to CLIENT for Services rendered (as applicable to any provisions set forth in applicable Rider(s)) and CLIENT shall pay such invoices when due. Invoices shall be submitted to the following address:

**Santa Cruz Metro Transit District
370 Encinal St
Santa Cruz, CA, 95060
ATTN: Senaida Rodriguea**

5.2 Payment. All amounts payable to MAXIM are due and payable within thirty (30) days from date of such invoice. CLIENT will send all payments to the following address, unless a different address is set forth in an attached Rider:

Maxim Health Systems, LLC

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12915 Collections Center Drive
Chicago, Illinois 60693

- 5.3 Late Payment.** Payments not received within thirty (30) days from the applicable invoice date will accumulate interest, until paid, at the rate of one and one-half percent (1.5%) per month on the unpaid balance, equal to an annual percentage rate of eighteen percent (18%), or the maximum rate permitted by applicable law, whichever is less.
- 5.4 Rate Changes.** MAXIM will give CLIENT at least thirty (30) days advance notice of any change in rates, which will be mutually agreed upon in writing by both parties.

ARTICLE 6. GENERAL TERMS

- 6.1 Independent Contractors.** The parties enter into this Agreement as independent contractors, and nothing contained in this Agreement will be construed to create a partnership, joint venture, agency, or employment relationship between the parties.
- 6.2 Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, and such consent will not be unreasonably withheld, delayed or conditioned. No such consent will be required for assignment to an entity owned by or under common control with assignor, but the assignor shall provide assignee with prompt written notice of the assignment. In any event, the assigning party will remain fully liable to the other party under this Agreement.
- 6.3 Indemnification.** MAXIM agrees to indemnify and hold harmless CLIENT, its directors, officers, employees, and agents from and against any and all claims, actions, or liabilities which may be asserted against them by third parties in connection with the sole negligent performance of MAXIM, its directors, officers, employees or agents in providing Services under this Agreement. CLIENT agrees to indemnify and hold harmless MAXIM, and its directors, officers, shareholders, employees and agents, from and against any and all claims, actions, or liabilities which may be asserted against them by third parties in connection with the negligent performance of CLIENT, its directors, officers, employees, contractors or agents under this Agreement.
- 6.4 Notices.** Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested and postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party in the manner specified herein.

Santa Cruz Metro Transit District
370 Encinal St
Santa Cruz, CA, 95060
Attn: Senaida Rodriguea

Maxim Health Systems, LLC
7227 Lee DeForest Drive
Columbia, MD 21046
ATTN: Contracts Department

COPY TO:
Maxim Health Systems, LLC
1900 Powell St, #440
Emeryville, CA 94608
ATTN: **Holden Quayle**

- 6.5 Headings.** The headings of the sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
- 6.6 Entire Contract; Counterparts.** This Agreement constitutes the entire contract between CLIENT and MAXIM regarding the Services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document. No amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of both parties. The parties acknowledge

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and agree that the execution and delivery of this Agreement by facsimile transmission shall be valid and binding.

- 6.7 Availability of Vaccine and/or Supplies.** As applicable, the parties agree that MAXIM'S obligation under this Agreement to provide Services is expressly conditioned upon the availability of adequate vaccine and/or supplies. Should adequate vaccine and/or supplies become unavailable, MAXIM will not be required to provide Services pursuant under this Agreement and shall have no liability whatsoever to CLIENT or any third party as a result of its failure or inability to do so.
- 6.8 Force Majeure.** Neither MAXIM nor CLIENT shall be liable for any failure or inability to perform their respective obligations under this Agreement for a period of up to forty-five (45) days due to any cause beyond the reasonable control of the non-performing party, including but not limited to acts of God, regulations of laws of any government, acts of war or terrorism, acts of civil or military authority, fires, floods, accidents, epidemics, quarantine restrictions, unusually severe weather, explosions, earthquakes, strikes, labor disputes, loss or interruption of electrical power or other public utility, freight embargoes or delays in transportation, or any similar or dissimilar cause beyond its reasonable control. If a party's non-performance under this section extends for forty-five (45) days or longer, the party affected by such non-performance may immediately terminate this Agreement by providing written notice thereof to the other party.
- 6.9 Compliance with Laws.** MAXIM agrees that all Services provided pursuant to this Agreement shall be performed in compliance with applicable federal, state, or local rules and regulations.
- 6.10 Severability.** In the event that one or more provision of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.
- 6.11 Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Maryland, without regard to its principles of conflict of laws. Any dispute or claim from this Agreement shall be resolved exclusively in the federal and state courts of the State of Maryland and the parties hereby irrevocably submit to the personal jurisdiction of said courts and waive all defenses thereto.
- 6.12 Confidentiality.** The parties agree to keep the terms and conditions of this Agreement, and any information exchanged or obtained hereunder strictly confidential, and not to disclose such information and materials to any third party, except pursuant to a court order or applicable law, rule or regulation, and provided that the other party has been given prompt written notice of the impending disclosure and has been provided a reasonable opportunity to seek an appropriate protective order.
- 6.13 Limitation of Liability.** Neither MAXIM nor CLIENT will be responsible for special, indirect, incidental, punitive, consequential, or other similar damages, including but not limited to lost profits, that the other party may incur or experience in connection with this Agreement or the Services provided, however caused, even if such party has been advised of the possibility of such damages.
- 6.14 Amendment.** No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought.
- 6.15 Attorneys Fees.** In the event either party is required to obtain legal assistance to enforce its rights under this Agreement, or to collect any monies due, hereunder, the prevailing party shall be entitled to recover from the other party, in addition to all other sums due, reasonable attorney's fees (including a reasonable hourly rate for the time expended by in-house counsel), court costs and expenses, if any, incurred enforcing its rights and/or collecting its monies.

ARTICLE 7. CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION

7.1 HIPAA Compliance. In instances where one party receives Protected Health Information ("PHI") in connection with Services provided under this Agreement, the receiving party agrees that it shall:

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- a) comply with the applicable provisions of the Administrative Simplification Section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d through d-8 and as amended ("HIPAA"), and the requirements of any regulations promulgated there under;
- b) not use or further disclose any PHI concerning a RECIPIENT, other than as permitted by this Agreement, the requirements of HIPAA and/or applicable federal regulations. The receiving party shall implement appropriate safeguards to prevent the use or disclosure of a RECIPIENT'S PHI other than as provided for by this Agreement;
- c) promptly report to the other party any violations, use and/or disclosure of a RECIPIENT'S PHI not provided for by this Agreement as soon as practicable, upon becoming aware of the improper violation(s), use and/or disclosure; and
- d) comply with the privacy, security and electronic transaction requirements defined in the HIPAA regulations.

7.2 Breach of Confidentiality. In the event that either party is in material breach of any provision(s) of this Article, it shall immediately advise the other party and take commercially reasonable steps to remedy such breach, including, but not limited to protecting against the consequences of any disclosure or use of PHI in violation of this Agreement. Both parties acknowledge that use or disclosure of the PHI, in any manner inconsistent with this Agreement, may result in irreparable and continuing damage. As applicable by law, legal remedies, such as equitable relief may be necessary to protect against any such breach or threatened breach, including, without limitation, injunctive relief.

CLIENT and MAXIM have acknowledged their understanding of and agree to the mutual promises written above by executing this Agreement as of the Effective Date.

Santa Cruz Metro Transit District:

MAXIM HEALTH SYSTEMS, LLC:

Signature

Signature

Printed Name & Title

Jamie Giannaccini, Controller
Printed Name & Title

Date

Date

6.95

Rider
to
MASTER SERVICES AGREEMENT
between
MAXIM HEALTH SYSTEMS, LLC
and **Santa Cruz Metro Transit District**
FOR CORPORATE IMMUNIZATION

THIS RIDER (this "Rider") TO THE MASTER SERVICES AGREEMENT (the "Agreement") is entered into as of the 28th day of August, 2009 (the "Effective Date"), by and between MAXIM and CLIENT referenced therein.

WHEREAS, CLIENT requests Services for its employees, employees' family members, and/or retirees (whether one or more, hereinafter collectively referred to as "RECIPIENTS") at CLIENT'S locations; and

WHEREAS, MAXIM will provide Services at specified dates and locations and between each specific start time and end time (each referred to as "CLINIC" and collectively as "CLINICS"); and

WHEREAS, MAXIM employs Personnel and is willing to provide such Personnel to provide these Services at CLIENT'S CLINIC(S) according to the terms and conditions set forth herein.

1.1 Personnel. MAXIM will supply CLIENT with Personnel who meet the following criteria:

- (a) Possess current state license/registration and/or certification.
- (b) Possess CPR certification.
- (c) Possess proof of pre-employment screening to include as required by state law, a physical and TB skin test, professional references, criminal background check(s).

1.2 Compensation. MAXIM will provide immunizations to RECIPIENTS in accordance with the following rate schedule:

Services	RECIPIENT Rate	CLIENT Rate	MAXIM TOTAL
Influenza		\$25	\$25

1.3 Minimum Shot Requirement. There is a minimum requirement of at least Forty (40) individual immunizations per CLINIC. If less than Forty (40) immunizations are administered to RECIPIENTS, CLIENT is responsible to MAXIM for the balance and will be billed for such amount at the above established rates, subject to Article 5 of the Agreement.

1.4 Coupons. CLIENT may use MAXIM'S website www.maximflucoupons.com for coupon distribution to RECIPIENTS. MAXIM will invoice CLIENT at a rate of \$25 per coupon redeemed at CLINICS. CLIENT understands and agrees that it is solely responsible for misappropriated or unauthorized copying, printing or any other unauthorized reproduction and distribution of electronic coupons. CLIENT may also order pre-printed coupons from MAXIM.

1.5 CLINIC Dates. CLINICS will be held on the following day(s) and at the following time(s):

<u>Dates</u>	<u>Times</u>

Include additional dates and times on an attachment if necessary.

1.6 Method of Payment. CLIENT is solely responsible for payment to MAXIM. Rates will be charged in accordance with Section 1.2 of this Rider.

1.7 Promotional Materials. MAXIM shall provide promotional materials for CLINICS upon CLIENT request.

1.8 Promotions. CLIENT shall promote CLINICS to RECIPIENTS. Promotions will include, but are not limited to, displaying promotional materials in highly visible settings at least two (2) weeks prior to the date of the CLINIC.

1.9h Consent Forms. Each RECIPIENT will be required to read and sign a consent form prior to receiving Services. MAXIM will provide consent forms to RECIPIENTS at the time Services are rendered.

The terms and conditions of this Rider are incorporated into the Master Services Agreement between CLIENT and MAXIM.

CLIENT and MAXIM acknowledge their understanding of and agreement to the mutual promises written above by executing this Rider as of the Effective Date set forth above.

SANTA CRUZ METRO TRANSIT DISTRICT:

MAXIM HEALTH SYSTEMS, LLC:

Signature

Signature

Printed Name & Title

Jamie Giannaccini, Controller

Printed Name & Title

Date

Date

6.62

Rider-2
FEDERAL TRANSIT ADMINISTRATION
THIRD PARTY CONTRACT TERMS AND CONDITIONS

- A. Energy Conservation** - MAXIM (hereinafter referred to as Contractor or MAXIM) agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- B. Access to Records** - The following access to records requirements apply to this Contract:
1. MAXIM agrees to provide Santa Cruz Metropolitan Transit District (METRO), the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. MAXIM also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
 2. MAXIM agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 3. MAXIM agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case MAXIM agrees to maintain same until METRO, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
 4. FTA does not require the inclusion of these requirements in subcontracts.
- C. Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between METRO and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
- D. No Obligation by the Federal Government.**
- METRO and MAXIM acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- E. Program Fraud and False or Fraudulent Statements or Related Acts.**

MAXIM acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying

contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, MAXIM further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on MAXIM to the extent the Federal Government deems appropriate.

MAXIM also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

MAXIM agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

- F. Termination for Convenience.** METRO may terminate this contract, in whole or in part, at any time by written notice to MAXIM when it is in METRO's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to METRO to be paid the Contractor. If the Contractor has any property in its possession belonging to METRO, the Contractor will account for the same, and dispose of it in the manner METRO directs.
- G. Termination for Default.** If MAXIM does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the MAXIM fails to perform in the manner called for in the contract, or if MAXIM fails to comply with any other provisions of the contract, METRO may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which MAXIM is in default. MAXIM will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by METRO that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, METRO, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- H. Opportunity to Cure.** METRO in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty (30) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to METRO 's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from METRO setting forth the nature of said breach or default, METRO shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude METRO from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- I. Waiver of Remedies for any Breach** In the event that METRO elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by METRO shall not limit METRO 's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

J. Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

K. Disadvantaged Business Enterprises

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 1.32%. A separate contract goal **has not** been established for this procurement.

The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as **METRO** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from METRO. In addition, the contractor may not hold retainage from its subcontractors.

The contractor must promptly notify **METRO**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of METRO.

- L. Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.