

MEMO

TO: Board of Education
CC: Central Office Administrators
FROM: Linda Holliday
DATE: November 4, 2015
RE: Agreement with Maxim Healthcare Services

Following are an item of consideration and Agreement with Maxim Healthcare Services. Maxim is an experienced provider of home health, medical staffing, and wellness services.

When a WGSD nurse needs time off due to illness or to attend professional development, we have a difficult time finding a suitable substitute nurse. Our current substitute nurse pool can't always support our needs. Schools have willingly shared a nurse as needed. While this is a viable short-term solution, our student's health needs are such that an ongoing solution is needed. After researching health services agencies, Maxim was the stand-out company. It has a 100% fill rate when given a reasonable amount of time to contact their nurse pool. Several local school districts use Maxim as their main health services provider. The same background checks and safety measures are in place through Maxim that we use when WGSD hires a nurse or substitute nurse. Rachal Jeep of Copeland Thompson Ferris PC reviewed the agreement and made suggestions for changes that Maxim happily agreed to make in order to meet our needs. To learn more about Maxim click in the link below.

<http://www.maximhealthcare.com/>

**WEBSTER GROVES SCHOOL DISTRICT
BOARD OF EDUCATION ITEM OF CONSIDERATION**

DATE: November 9, 2015

TOPIC/PROPOSAL:

Approval of agreement with Maxim Healthcare Services

BACKGROUND INFORMATION:

When a WGSD nurse needs time off due to illness or to attend professional development, we have a difficult time finding a suitable substitute nurse. Our current substitute nurse pool can't always support our needs. Schools have willingly shared a nurse as needed. While this is a viable short-term solution, our student's health needs are such that an ongoing solution is needed. After researching health services agencies, Maxim was the stand-out company. It has a 100% fill rate when given a reasonable amount of time to contact their nurse pool. Several local school districts use Maxim as their main health services provider. The same background checks and safety measures are in place through Maxim that we use when WGSD hires a nurse or substitute nurse. Rachal Jeep of Copeland Thompson Ferris PC reviewed the agreement and made suggestions for changes that Maxim happily agreed to make in order to meet our needs. To learn more about Maxim click in the link below.

<http://www.maximhealthcare.com/>

INSTRUCTIONAL IMPACT/RATIONALE:

The proposed agreement will enable WGSD to provide quality nursing services for camp and during times when our district employed nurses are not able to attend school for a variety of reasons.

CSIP/DISTRICT GOAL ADDRESSED: All

FISCAL NOTE: NA

ADMINISTRATIVE RECOMMENDATION:

- **Action Requested:** **X**
- **Information:**
- **Proposed Motion for Approval (if applicable):**

I move that the Board of Education approve the agreement between Maxim and the WGSD to provide substitute nursing services.

PREPARED BY: Sarah Booth Riss and Linda Holliday

Motion: _____ **Second:** _____

Board Vote: ___ (yes) ___ (no) ___ (abstain) ___ (Consent Agenda)



FACILITY STAFFING AGREEMENT

This Facility Staffing Agreement (hereinafter "Agreement") is entered into this 9th day of September, 2015, by and between **Webster Groves School District** located at 400 E Lockwood Ave. Webster Groves, MO 63119, referred to in this Agreement as "FACILITY," and **Maxim Healthcare Services, Inc. d/b/a Maxim Staffing Solutions**, a Maryland Corporation including its affiliates and subsidiaries, with an office located at 11330 Olive Blvd. Suite 109 St. Louis, MO 63141 referred to in this Agreement as "MAXIM."

RECITALS

WHEREAS, FACILITY operates a School District located in MO and wishes to engage MAXIM to provide personnel to supplement FACILITY's staff.

WHEREAS, MAXIM operates a supplemental staffing agency and employs licensed health care personnel to provide healthcare services to FACILITY.

THEREFORE, in consideration of the above premises 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, FACILITY and MAXIM hereby agree to the following terms and conditions.

ARTICLE 1. TERM OF AGREEMENT

Section 1.1 Term. This Agreement will be in effect for one (1) year and will continue indefinitely until terminated pursuant to Section 1.2 of this Agreement.

Section 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. Such 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

Section 2.1 Services. MAXIM will, upon request by FACILITY, provide one or more licensed health care providers (i.e. LPNs, LVNs, RNs, CNAs) as specified by FACILITY (collectively, "Personnel") for supplemental staffing services, subject to availability of qualified Personnel. Subject to the terms of Section 6.8 of this Agreement, MAXIM may provide Personnel at the rates listed on Attachment A.

Section 2.2 Personnel. MAXIM will supply FACILITY with Personnel who meet the following criteria and will provide evidence of the following to FACILITY upon written request:

- 1) Possess current state license/registration and/or certification.
- 2) Possess CPR certification, as requested in writing by FACILITY to comply with applicable law.
- 3) Completed pre-employment physical as requested in writing by FACILITY to comply with applicable law.

- 4) Possess proof of pre-employment screening to include a TB skin test or chest X-ray, professional references, criminal background check(s) (and drug screenings as requested in writing).
- 5) Possess a preferred one (1) year of relevant professional experience and a preferred one (1) year of specialty experience.
- 6) Possess current skills competency to include, (i) written exam; (ii) skills checklist; and (iii) verified work history.
- 7) Completed MAXIM standard OSHA and HIPAA training.

Section 2.3 Insurance. MAXIM will maintain (at its sole expense), or require the individuals it provides under this Agreement to maintain, valid policies 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 which may give rise to liability for services provided under this Agreement. MAXIM will provide a certificate of insurance evidencing such coverage upon request by FACILITY.

Section 2.4 Use of Independent Contractors and Subcontractors. Personnel provided to FACILITY are employees of MAXIM and are subject to MAXIM'S standard screening process, as well as additional qualifications as required in this Agreement. If MAXIM deems it necessary to obtain the services of a subcontractor to fulfill its requirements under this Agreement, MAXIM will notify FACILITY in writing of its intent to use subcontractors and will obtain written approval from FACILITY. MAXIM will ensure that any subcontractor will comply with all applicable terms of this Agreement. MAXIM will provide written notification to FACILITY if it becomes necessary for MAXIM to utilize independent contractors to fulfill its staffing obligations to FACILITY. Any Personnel provided to FACILITY by an independent contractor will be subject to the same qualifications as MAXIM employees.

Section 2.5 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.

Section 2.6 Record Access. In instances where FACILITY 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 the date on which such services were furnished under this Agreement.

ARTICLE 3. RESPONSIBILITIES OF FACILITY

Section 3.1 Orientation. FACILITY will promptly provide MAXIM Personnel with an adequate and timely orientation to FACILITY. FACILITY shall review instructions regarding confidentiality (including patient and employee), and orient MAXIM Personnel to the specific Exposure Control Plan of the FACILITY as it pertains to OSHA requirements for bloodborne pathogens, as well as any of the FACILITY'S specific policies and procedures provided to MAXIM for such purpose.

Section 3.2 Requests for Personnel. FACILITY will use its best efforts to request Personnel at least twenty-four (24) hours prior to reporting time in order to assure prompt

arrival of assigned Personnel. All information regarding reporting time and assignment will be provided by FACILITY at the time of the initial call.

Section 3.3 Intentionally Deleted.

Section 3.4 Staff Order Cancellation. If FACILITY changes or cancels an order less than 2 hours prior to the start of a shift, MAXIM will bill FACILITY for 2 hours at the established fee for each scheduled Personnel. MAXIM will be responsible for contacting MAXIM Personnel prior to reporting time.

Section 3.5 Responsibility for Patient Care. FACILITY retains full authority and responsibility for professional and medical management of care for each of its patients and for ensuring that services provided by MAXIM Personnel under this agreement are furnished in a safe and effective manner and in accordance with applicable standards.

Section 3.6 Placement Fee. For a period of twelve (12) months following that date on which MAXIM Personnel last worked a shift at FACILITY, FACILITY agrees that it will take no steps to recruit, hire or employ as its own employees or as a contractor those Personnel provided by MAXIM during the term of this Agreement. FACILITY understands and agrees that MAXIM is not an employment agency and that Personnel are assigned to the FACILITY to render temporary service(s) and are not assigned to become employed by the FACILITY. The FACILITY further acknowledges and agrees that there is a substantial investment in business related costs incurred by MAXIM in recruiting, training and employing Personnel, to include advertisement, recruitment, interviewing, evaluation, reference checks, training, and supervising Personnel. In the event that FACILITY, or any affiliate, subsidiary, department, or division of FACILITY hires, employs or solicits MAXIM Personnel, FACILITY will be in breach of this Agreement. FACILITY agrees to give MAXIM either (a) one hundred and eighty (180) days prior written notice of its intent to hire, or employ, continuing to staff Personnel through MAXIM for a minimum of thirty-six (36) hours per week through the one hundred and eighty (180) days notice period; OR (b) to pay MAXIM a placement fee equal to the greater of: five thousand dollars (\$5,000) or the sum of twenty-five percent (25%) of such Personnel's annualized salary (calculated as Weekday Hourly Pay Rate x 2080 Hours x 25%).

This Section 3.6 notwithstanding, CLIENT may hire any Personnel provided by MAXIM once Personnel have completed a minimum number of hours of work for CLIENT through MAXIM, according to the following schedule:

Aggregate Hours Worked By Personnel For Client in a Twelve (12) month period	Conversion Fee
Prior to completing 140 hours	25% of annualized starting salary
After Completions of 140 – 280 hours	20% of annualized starting salary
After Completions of 280 – 420 hours	18% of annualized starting salary
After Completions of 420 – 520 hours	12% of annualized starting salary
After Completions of 520 hours	5% of annualized starting salary

Section 3.7 Non-Performance. If FACILITY concludes, in its sole discretion, that any Personnel provided by MAXIM have engaged in misconduct, or have been negligent, FACILITY may require the Personnel to leave the premises and will notify MAXIM immediately in writing, providing in reasonable detail the reason(s) for such dismissal. FACILITY'S obligation to compensate MAXIM for such Personnel's services will be limited to the number of hours actually worked. MAXIM will not reassign the individual to FACILITY without prior approval of the FACILITY.

- Section 3.8 Right to Dismiss.** FACILITY may request the dismissal of any MAXIM Personnel for any reason. FACILITY agrees to notify MAXIM of any such action immediately in writing, providing in reasonable detail the reason(s) for such dismissal. FACILITY shall be obligated to compensate MAXIM for all Personnel hours worked prior to dismissal.
- Section 3.9 Float Policy.** Subject to prior written notification, FACILITY may reassign Personnel to a different FACILITY department, unit, facility, or to a different staff classification (hereinafter "Float"), if Personnel satisfy the requisite specialty qualifications. If FACILITY Floats Personnel, the Personnel must perform the duties of the revised assignment as if the revised assignment were the original assignment. FACILITY will provide the Personnel with additional orientation regarding the Float as necessary. If Personnel Floats to a staff classification that has a lower reimbursement rate, then the reimbursement rate that was applicable to the original Personnel assignment remains the applicable reimbursement rate despite the Float. If Personnel Floats to a staff classification that has a higher reimbursement rate, then the reimbursement rate that is applicable to the newly assigned staff classification is the applicable reimbursement rate for as long as the Personnel continues to work in that staff classification.
- Section 3.10 Insurance.** FACILITY will maintain at its sole expense valid policies of general and professional liability insurance with minimum limits of \$1,000,000 per occurrence and \$3,000,000 annual aggregate covering the acts or omissions of its employees, contractors and agents which may give rise to liability in connection with the Services under this Agreement. FACILITY will give MAXIM prompt written notice of any material change in FACILITY coverage.
- Section 3.11 Incident Reports.** FACILITY shall report to MAXIM any unexpected incident known to involve any Personnel (such as Personnel errors, unanticipated deaths or other unanticipated patient-related events or injuries known to be attributable to Personnel, and any safety hazards known to be related to the services provided by Personnel) if the incident may have an adverse impact on the FACILITY and/or MAXIM in order to comply with MAXIM'S incident tracking program. Complaints and grievances regarding MAXIM Personnel may be reported to the local MAXIM representative at any time.

ARTICLE 4. MUTUAL RESPONSIBILITIES

- Section 4.1 Non-discrimination.** Neither MAXIM nor FACILITY 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 law.

ARTICLE 5. COMPENSATION

- Section 5.1 Invoicing.** MAXIM will supply Personnel under this Agreement at the rates listed in the Attachment(s). MAXIM will submit invoices to FACILITY every week for Personnel provided to FACILITY during the preceding week. Invoices shall be submitted to the following address:

**Webster Groves School District
400 E Lockwood Ave.
Webster Groves, MO 63119
ATTN: Linda Holliday**

- Section 5.2 Payment.** All amounts due to MAXIM are due and payable within thirty (30) days from date of invoice. FACILITY will send all payments to the address set forth on the invoice.

Section 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, equating to an annual percentage rate of eighteen percent (18%), or the maximum rate permitted by applicable law, whichever is less.

Section 5.4 Annual Rate Increases. FACILITY agrees to and accepts annual rate increases at the percentage listed on Attachment A of this Agreement.

ARTICLE 6. GENERAL TERMS

Section 6.1 Independent Contractors. MAXIM and FACILITY are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither MAXIM nor FACILITY nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement.

Section 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. No such consent will be required for assignment to an entity owned by or under common control with assignor or in connection with any acquisition of all of the assets or capital stock of a party; provided however, the assigning party will provide notice of such transaction to the other party and remain fully responsible for compliance with all of the terms of this Agreement.

Section 6.3 Indemnification. MAXIM agrees to indemnify and hold harmless FACILITY, and its directors, officers, 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 under this Agreement only. FACILITY agrees to indemnify and hold harmless MAXIM, 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 FACILITY, its directors, officers, employees, contractors or agents under this Agreement.

Section 6.4 Attorneys' Fees. In the event either party is required to obtain legal assistance (including in-house counsel) to enforce its rights under this Agreement, or to collect any monies due to such party for services provided, the prevailing party shall be entitled to receive from the other party, in addition to all other sums due, reasonable attorney's fees, court costs and expenses, if any, incurred enforcing its rights and/or collecting its monies.

Section 6.5 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, 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.

Webster Groves School District
400 E Lockwood Ave.
Webster Groves, MO 63119
ATTN: Linda Holliday

Maxim Healthcare Services, Inc.
7227 Lee DeForest Drive
Columbia, MD 21046
ATTN: Contracts Department

COPY TO:

Maxim Staffing Solutions
11330 Olive Blvd. Suite 109
St. Louis, MO 63141
ATTN: **Nick Garver**

- Section 6.6 Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
- Section 6.7 Entire Contract; Counterparts.** This Agreement constitutes the entire contract between FACILITY 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 except as provided in Section 6.9.
- Section 6.8 Availability of Personnel.** The parties agree that MAXIM'S duty to supply Personnel on request of FACILITY is subject to the availability of qualified MAXIM Personnel. The failure of MAXIM to provide Personnel or the failure of FACILITY to request Personnel shall result in no penalty to FACILITY or any party claiming by or through it and shall not constitute a breach of this Agreement.
- Section 6.9 Compliance with Laws.** MAXIM agrees that all services provided pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, MAXIM reserves the right to notify FACILITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
- Section 6.10 Severability.** In the event that one or more provision(s) 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.
- Section 6.11 Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, 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 Missouri and the parties hereby irrevocably submit to the personal jurisdiction of said courts and waive all defenses thereto.
- Section 6.12 Limitation on Liability.** Neither MAXIM nor FACILITY will be responsible for special, indirect, incidental, 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.
- Section 6.13 Incorporation of Recitals.** The recitals set forth at the top of this Agreement are incorporated by reference as if fully set forth herein.

ARTICLE 7. CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION

Section 7.1 Confidentiality.

A. MAXIM/FACILITY Information. The parties recognize and acknowledge that, by virtue of entering into this Agreement and providing services hereunder, the parties will have access to certain information of the other party that is confidential and constitutes valuable, special, and unique property of the party. Each of the parties agrees that neither it nor his/her staff shall, at any time either during or subsequent to the term of this Agreement, disclose to others, use, copy, or permit to be copied, except pursuant to his duties for or on behalf of the other party, any secret or confidential information of the party, including, without limitation, information with respect to the party's patients, costs, prices, and treatment methods at any time used, developed or made by the party during the term of this Agreement and that is not available to the public, without the other party's prior written consent.

B. Terms of this Agreement. Except for disclosure to his/her legal counsel, accountant or financial or other advisors/consultants neither party nor its respective staff shall disclose the terms of this Agreement to any person who is not a party or signatory to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement. Unauthorized disclosure of the terms of this Agreement shall be a material breach of this Agreement and shall provide the party with the option of pursuing remedies for breach or immediate termination of this Agreement in accordance with the provisions stated herein.

C. Patient/Customer Information: Neither party nor its employees shall disclose any financial or medical information regarding patients/customers treated hereunder to any third-party, except where permitted or required by law or where such disclosure is expressly approved by FACILITY, MAXIM and patient/customer in writing. Further, each party and its employees shall comply with the other party's rules, regulations and policies regarding the confidentiality of such information as well as all federal and state laws and regulations including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH").

D. The obligations set forth in this Section shall survive the termination of this Agreement.

Section 7.2 HIPAA/HITECH Obligations. Each party and its respective staff shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of the other party, regarding the confidentiality of patient information, to include, without limitation, HIPAA and HITECH. In addition, if necessary, the parties agree to resist any effort to obtain access to such records or information in judicial proceedings, except such access as is expressly permitted by federal/state regulations.

To the extent that FACILITY may be a "Covered Entity" as defined by HIPAA, and would therefore be subject to applicable requirements, including, but not limited to, requirements to enter into certain contracts with their "business associates," by HIPAA, the parties acknowledge that a business associate agreement is not needed due to the nature of services provided by MAXIM. Specifically, the parties acknowledge that under HIPAA, Personnel provided hereunder are considered part of FACILITY's workforce and to that end, all Protected Health Information ("PHI") is created, viewed, used, maintained and otherwise stored and safeguarded in FACILITY's work environment. The parties further acknowledge that PHI is not exchanged between the parties in order for MAXIM to provide Personnel as part of FACILITY's temporary workforce.

Notwithstanding the foregoing, MAXIM and all staff provided to FACILITY hereunder shall comply with confidentiality, medical records and/or other applicable laws and regulations with regard to any and all information directly or

indirectly accessed or used by MAXIM and their personnel, including without limitation HIPAA and HITECH.

FACILITY and MAXIM have acknowledged their understanding of and agreement to the mutual promises written above by executing and delivering this Agreement as of the date set forth above.

WEBSTER GROVES SCHOOL
DISTRICT:

MAXIM HEALTHCARE SERVICES, INC., D/B/A
MAXIM STAFFING SOLUTIONS:

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date

**ATTACHMENT A
MAXIM STAFFING SOLUTIONS
FACILITY STAFFING RATES FOR
Webster Groves School District**

Charges will be based on the following hourly rate schedule effective **9/9/15**:

Service	Weekday Rate	Weekend Rate
RN	\$37	\$37
LPN	\$34	\$34

Rate Increase. An annual rate increase of 2% will be added to each services type listed above on 9/30 every year beginning in 2016. FACILITY and MAXIM agree to a cap of \$40 per hour and will renegotiate rate increases at time of contract execution or by a duly executed Amendment to the Agreement.

Weekend. Weekend rates will apply to shifts beginning at 11:00 p.m. on Friday and ending at 7:00 a.m. on Monday.

Orientation. Rates listed above will be charged for all time spent in required FACILITY orientation.

Overtime. Overtime rates are charged for all hours worked in excess of forty (40) per week or according to applicable state law. Overtime must have FACILITY supervisory approval. The overtime rate is one and one-half (1.5) times the regular billing rate for such hours.

Holidays. Holiday rates will apply to shifts beginning at 11:00 p.m. the night before the holiday through 11:00 p.m. the night of the holiday. Time and one-half will be charged for the following holidays:

- | | |
|----------------------------|---------------------------|
| New Year's Eve (from 3 PM) | Thanksgiving Day |
| New Year's Day | Labor Day |
| Memorial Day | Christmas Eve (from 3 PM) |
| Independence Day | Christmas Day |
| Easter | Presidents Day |
| Martin Luther King Day | Pioneer Day (Utah Only) |

WEBSTER GROVES SCHOOL
DISTRICT

MAXIM HEALTHCARE SERVICES, INC.
D/B/A MAXIM STAFFING SOLUTIONS:

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date