

RESOLUTION NO. 02-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING A SOFTWARE LICENSING AGREEMENT WITH MAXIMUS, INC.

WHEREAS, the Governmental Accounting Standards Board has issued Prouncement #34; and

WHEREAS, implementation of Prouncement #34 is required if the City desires to remain in compliance with “Generally Accepted Accounting Practices” (GAAP); and

WHEREAS, Prouncement #34 requires significant changes in the preparation and format of the City’s comprehensive annual financial report as well as accounting practices; and

WHEREAS, these changes will require a significant investment staff time and effort; and

WHEREAS, the increased staff effort may be mitigated with specialized software assistance.

THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of El Paso de Robles does hereby approve a software licensing agreement with Maximus, Inc., attached herewith as Exhibit “A”, and authorizes the Director of Administrative Services to execute said agreement.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 19th day of March 2002 by the following vote:

AYES: Finigan, Heggarty, Nemeth, Picanco and Mecham
NOES: None
ABSTAIN: None
ABSENT: None

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

SOFTWARE LICENSE

NOW ON THIS _____ day of _____, 2002, come MAXIMUS, Inc., a Virginia corporation (hereinafter referred to as "Licensor") and the City of Pasco Robles, 1000 Spring Street, Paso Robles, CA 93446 (hereinafter referred to as "Licensee"), and enter into this Software License, to-wit:

WHEREAS, Licensor owns and is authorized to enter into Licenses for the use of MAXRPM™, consisting of computer software programs and basic and related materials pertinent to said programs in machine readable or printed form for use on IBM compatible hardware and any updated program or program portion furnished hereunder (collectively "System").

WHEREAS, Licensee desires to acquire the System, in accordance with the terms and provisions hereinafter set forth, for its own use;

NOW, THEREFORE, for and in consideration of the foregoing recitals, the agreements and undertakings hereinafter provided and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by Licensor and Licensee, Licensor hereby grants to Licensee a non-exclusive, non-transferable license to use the System on the following terms and conditions:

1. **CONTRACTING AUTHORITY.** Licensee hereby states that it is authorized to enter this Software License and agrees to be bound by the terms and conditions contained herein. Licensee further states that it is authorized to and expressly agrees that the System is "proprietary."

LICENSE AND MAINTENANCE FEE.

Licensee shall pay to Licensor the following license fee for the right to use the System in perpetuity upon the execution of this Agreement subject however, to the further terms and conditions of this Agreement. Licensor shall invoice Licensee as follows:

Due upon execution of Agreement	\$4,000
Due upon delivery and installation of the System	\$6,000

Licensee may receive Minor Enhancements to the System and is entitled to help desk support upon payment to Licensor of 10% of Software License \$1,000 on or prior to the first anniversary of the delivery and installation of the System. The first year's maintenance fee (one year from delivery and installation of the System) is included in the purchase price. Licensor may adjust the applicable fee in subsequent years.

3. **DELIVERY AND ACCEPTANCE.** Licensor shall make the System available for installation at the Licensee's offices at a date and time to be agreed upon between Licensor and Licensee but not later than six months after execution of this Agreement. Licensor shall install the system and provide reporting modules to prepare the basic financial statements presented in the comprehensive annual financial report, including but not necessarily limited to the Government-

Wide financial statements, the Governmental Funds financial statements, the Proprietary Funds financial statements and the Fiduciary Fund financial statements. Licensor will provide the Licensee installation, training and documentation related to MAXRPM™ and successfully load the Licensee's financial report data into MAXRPM™. INSTALLATION and TRAINING shall commence at a date and time to be agreed upon between Licensee and Licensor but not later than six months after execution of this Agreement.

4. TRAINING. Licensor will provide two (2) consecutive days (16 hours) of training, which is included in the above License fee. Provided further, reasonable travel expenses associated with training are in addition to the above fee. Payment for such expenses shall be within thirty (30) days of invoice date. Additional GASB training and professional assistance requested by Licensee for the twelve months following delivery and installation of the System shall be billed at a fee not to exceed \$150 per hour plus expenses. Subsequent to the twelve month period following System delivery and installation, then current professional fees and expenses incurred shall apply.

5. TERM. This Agreement and the license herein granted may be terminated either (i) by Licensee at any time by giving written notice of termination to Licensor or (ii) by Licensor in the event:

(a) Licensee fails to observe, perform or comply with any term or condition hereof and such failure is not cured within thirty (30) days after written notice of such failure;

(b) Immediately and without notice if, Licensee files a petition in bankruptcy or insolvency, or after any adjudication that the Licensee is bankrupt or insolvent, or after the filing by the Licensee of any petition or answer seeking reorganization, readjustment or arrangement of the Licensee's financial affairs under any Federal or state law relating to bankruptcy or insolvency, or after the appointment of a receiver for any of the property of the Licensee, or after the making by the Licensee of any assignment for the benefit of creditors, or after the institution of any proceedings for the liquidation of the Licensee's assets or for the termination of its governmental charter; or

(c) Licensee discontinues use of the System.

Licensor shall give written notice of termination of Licensee's license to Licensee. Termination shall be effective upon the receipt by Licensee of the written notice of termination, except as specified in (b) above.

Upon termination, Licensee shall not be released from any of its obligations which accrued under this Agreement under paragraphs 6, 7, 8 and 12 and the limitation of liability provided for in paragraph 10 shall survive said termination. Neither party shall have the right to rescind any acts performed or payments made prior to the date of termination. In the event of termination, Licensee shall either return the System at its cost, or supply the Certification described at paragraph 8(b), as Licensor shall direct.

Any failure or delay in the exercise of Licensor's right of termination for any default shall not prejudice Licensor's right of termination for such default or any other default.

6. LIMITED LICENSE. The license hereby granted authorizes Licensee to use the System and to utilize the System in printed form and with computer hardware owned or leased by Licensee but only when such utilization is by Licensee's employees and is for and on behalf of the Finance Department for purposes of preparing basic financial statements. The license grants the right to make copies only for approved operations, back-up and security. The license does not grant Licensee the right to modify the System or to merge it into other software so as to form a modified work, without prior approval of Licensor. Licensee hereby agrees not to reproduce, publish, use, or otherwise distribute the software, modifications and associated documentation except as provided by this Agreement. Licensee hereby acknowledges and agrees that this license does not grant access to source code.

7. TRADE SECRET. Licensee acknowledges and agrees that the System and all copies thereof made under this Agreement are proprietary information and are trade secrets of Licensor. Licensee agrees that all ownership rights and copyrights thereto lie with Licensor. Licensor may place additional copyright, trademark and similar notices on all or any part of the System which Licensee agrees shall neither be removed nor covered.

8. PROTECTION OF SYSTEM.

(a) Without the prior written consent of Licensor, Licensee agrees not to provide or otherwise make the System available in any form to any person other than Licensee's employees who need to use or know about it. Licensee agrees that it will take appropriate action by instruction, agreement or otherwise with its employees including but not limited to, execution by appropriate employees of Attachment A attached hereto and incorporated herein by reference to satisfy its obligations under this License with respect to use, copying, modification, protection and security of the System. To the extent practicable, all elements of the licensed System provided hereunder shall be kept in locked storage when not in use.

(b) Within ten (10) days after termination under paragraph 5 by either Licensee or Licensor, Licensee shall deliver to Licensor a written Certification certifying that the original and any copies of all or any portion of the System affected by the termination have been destroyed, or, if Licensor requests either in Licensor's notice of termination or in writing upon receipt of Licensee's notice of termination, Licensee shall deliver such original and any copies of the System to Licensor within such ten (10) day period.

9. WARRANTIES.

LICENSOR GRANTS NO WARRANTIES, EITHER EXPRESS OR IMPLIED, IN RESPECT TO THE SYSTEM. ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OTHER THAN THE PURPOSE FOR WHICH THE SYSTEM WAS INTENDED ARE HEREBY EXPRESSLY EXCLUDED.

10. LIMITATION OF LIABILITY. Licensee agrees that Licensor's total aggregate limit of liability hereunder (whether contract, statutory, in tort or otherwise) for damages on any one or more or all claims (regardless of the number of different or other claims, claimants or occurrences) shall not exceed a total of one-half the fees paid under this Agreement. Licensee

further agrees that Licensor shall not be liable to Licensee for any indirect, incidental, special or consequential damages, any lost profits or any claim or demand against the Licensee by any other party, arising out of or in connection with the use or performance of the System. No action, regardless of form (whether statutory, contract, in tort or otherwise), arising out of the transaction under this Agreement, may be brought by either party more than one year after the cause of action has accrued.

SYSTEM AND ENHANCEMENTS. Licensor shall not be obligated to provide any major enhancements or minor enhancements. "Major enhancements" means enhancements by Licensor that result in substantial performance, structural or functional improvements or additions, including substantial redesigning or replacement of parts of the product. "Minor enhancements" means updates and modifications, which do not result in a substantial redesign or replacement. Licensor shall correct any problems with the System software that exist on initial installation of the System. This agreement does not cover problems outside the System. Effective on the first anniversary of the delivery and installation of the System, upon annual payment to Licensor of the applicable maintenance fee, Licensor will provide Minor Enhancements and help desk support as available.

12. RISK. Licensee shall assume the risk and hold Licensor (and its successors, assigns and agents) free and harmless from and against any claims and liability arising by virtue of the acts or omissions of Licensee with regard to its use, operation or control of the System.

13. CLOSING. If any licensed program or optional material is lost or damaged during shipment, Licensor will replace licensed program or optional material and program storage media at no additional charge to customer. If any licensed program or optional material is lost or damaged while in possession of the client, Licensee shall pay for the replacement materials at an amount equal to Licensor's cost.

14. AMENDMENTS.

(a) Agreement. Any modification or amendment of this License must be in writing and signed by the parties.

(b) License. Licensor reserves the right to modify or amend the System during the installation period, without charge to Licensee, provided the System, as amended or modified, will provide report formats and data processing in substantially the same form and manner as the original System. Licensee shall have no right to modify or amend the System, or to merge it into another work, without the consent of the Licensor.

15. NOTICE. Any notice or consent required to be given in accordance with this License shall be in writing and shall be either (i) actually delivered to the party thereto entitled or (ii) mailed, with first class postage prepaid, to the address of the party entitled thereto hereinafter set forth, by certified mail, return receipt requested:

LICENSOR:

MAXIMUS, Inc.
60 Revere Drive, Suite 200
Northbrook, IL 60062

LICENSEE:

CITY OF PASO ROBLES
Administrative Services Department
1000 Spring Street

A notice shall be deemed to be received (i) on the date of its actual receipt by the party thereto and (ii) on the date as reflected on the United States Postal Service return receipt form and if said return receipt form is not signed by the party to whom notice is to be given, upon the date of the first attempted delivery as reflected thereon.

16. ASSIGNMENT. Licensee may not assign its rights or delegate its duties under this License without the prior written consent of Licensor, binding Licensor to the assignment.

17. COMPLETE AGREEMENT. This Agreement represents the entire and integrated agreement between the parties and supersede all prior negotiations, proposals, communications, understandings, representations or agreements, either written or oral, express or implied. All amendments or modifications of this Agreement shall be binding upon the parties despite any lack of consideration so long as the same shall be in writing and executed by the parties hereto.

18. SEVERABILITY. If any of the provisions of this Agreement are invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted.

19. GOVERNING LAW. The laws of the state of California shall govern this Agreement.

20. CAPTIONS. Captions used herein are inserted for reference purposes only and shall not affect the interpretation or construction of this Agreement.

21. FURTHER ASSURANCES. Each party hereto shall execute and deliver all such further instruments and documents as may reasonably be requested by the other party from time to time in order to fully carry out the intent and accomplish the purposes of this Agreement and the transaction referred to herein. Licensee grants Licensor the right to audit Licensee's use of the System, at reasonable times, in order to insure Licensee's compliance with the terms and conditions herein above described.

OFFER MADE BY:

OFFER ACCEPTED BY:

Richard L. Pearl
Vice President
DMG-MAXIMUS

Michael J. Compton
Director of Administrative Services
City of Paso Robles

Date: _____

Date: _____

ATTACHMENT A

I, Michael J. Compton, an employee or agent of the City of Paso Robles, CA, acknowledge that in my official capacity I may be exposed to trade secrets or confidential information of MAXIMUS, Inc.,

I understand that the Administrative Services Department has an obligation to retain this information in confidence and not to disclose same or use it to compete with MAXIMUS, Inc.

I agree that I will not disclose, use, market or assist in marketing, directly or indirectly, any of MAXIMUS, Inc., software, confidential information and/or trade secrets.

By:

Michael J. Compton,
Director of Administrative Services
City of Paso Robles

Date:
