

TO: James L. App, City Manager
FROM: Mike Compton, Director of Administrative Services
SUBJECT: State Mandated Cost Claims
DATE: April 20, 2004

Needs: For the City Council to consider approving an agreement with Maximus, Inc. for cost claim services.

Facts:

1. Senate Bill 90, adopted many years ago, provided that public agencies may be reimbursed for costs associated with compliance with legislation enacted by the State legislature when said legislation forced a mandate on public agencies to undertake some activity where costs are incurred.
2. The City Council has approved annual contracts with Maximus, Inc. (formerly DMG Maximus) since 1987 to provide SB 90 state mandated cost claiming services on the City's behalf.
3. The contract proposed by Maximus, Inc. is for one year. This contract does not include any fee increases over the current contract with Maximus which expires June 30, 2004. The contract includes preparation of actual claims for the City for fiscal year 2003-2004 and estimated claims for fiscal year 2004-2005 for a fixed fee of \$4,000. The preparation and submittal of new or first-time claims is proposed for a fixed fee in the amount of \$2,650.
4. A summation of expenditures made and revenues received (cost reimbursed) is provided for your information and review (attached).
5. Back in 1991, when the State was strapped for funds, the Legislature enacted Government Code Section 17581(a), which gave it the authority to suspend a mandate that has been determined to be reimbursable under the provisions of Article 13B, section 6 of the California Constitution. The legislature has temporarily "deferred" the 2002-03 estimated payments and the 2001-02 actual payments to the City and it is unclear at this time as to what the legislature will do regarding future mandated costs claims. For the current fiscal year, the legislature is funding SB 90 claims at the rate of \$1.00 as a "placeholder" for future reimbursements.

Analysis
and

Conclusion: As the attached summation illustrates, the costs reimbursed by the State have considerably exceeded the fees paid to Maximus, Inc. for preparation of annual claims.

Many of the mandates are complicated and considerable staff time would be required to prepare the claims internally. Time is simply not available. Since the fee paid for the preparation of the annual claim is fully reimbursable, it seems reasonable to continue contracting for these services.

Fiscal

Impact: The filing of annual claims for reimbursement of mandated costs is estimated to generate over \$40,000 in General Fund revenues to the City. The cost for Maximus to prepare and file the claims is a claimable expense and sufficient appropriations exist in the Administrative Services budget to cover the cost.

Options:

- a. Adopt Resolution No. 04-xx approving the one year Contract with Maximus, Inc. for SB 90 mandated cost claiming services and authorizing the Director of Administrative Services to execute a professional consulting services agreement with Maximus Inc.; or
- b. Amend, modify, or reject the above option.

**SB 90 STATE MANDATED COST CLAIMS
SCHEDULE OF FEES PAID AND REVENUES RECEIVED**

	<u>Total Maximus Payments</u>	<u>Total Claim Revenues</u>	<u>Net General Fund Revenue</u>
Fiscal Year 2003-04	\$4,000	\$26,640*	\$22,640
Fiscal Year 2002-03	3,800	78,005	74,205
Fiscal Year 2001-02	3,600	49,324	45,724
Fiscal Year 2000-01	5,700	101,757	85,382
Fiscal Year 1999-00	6,500	73,422	66,922
Fiscal Year 1998-99	3,100	24,302	21,202
Fiscal Year 1997-98	5,377	28,865	23,488
Fiscal Year 1996-97	6,021	36,633	30,612
Fiscal Year 1995-96	2,200	15,394	13,194
Fiscal Year 1994-95	3,692	18,608	14,916
Fiscal Year 1993-94	2,659	20,807	18,148
Fiscal Year 1992-93	2,857	11,085	8,228
Fiscal Year 1991-92	2,908	17,882	14,974

* Revenues 7/1/03 through 03/31/04

RESOLUTION NO. 04-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING A PROFESSIONAL CONSULTING SERVICES AGREEMENT
WITH MAXIMUS, INC. TO PROVIDE STATE MANDATED COST CLAIMING SERVICES

WHEREAS, the filing of State mandated cost claims is of financial benefit to the City of Paso Robles; and

WHEREAS, Maximus, Inc. has adequately provided this service for over ten years; and

WHEREAS, Maximus, Inc. has the advantage of this prior experience to prepare and file State mandated cost claims on the City's behalf; and

WHEREAS, the fee for providing this service to the City of Paso Robles is recoverable as a State mandated cost.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that the contract attached herewith as Exhibit "A" is hereby approved and the Director of Administrative Services is authorized to execute said contract.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 20th day of April 2004 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

**AGREEMENT TO PROVIDE
PROFESSIONAL CONSULTING SERVICES
TO THE CITY OF PASO ROBLES**

THIS AGREEMENT, entered into this _____ day of _____, 2004, by and between MAXIMUS, Incorporated (hereinafter "Consultant") and the City of Paso Robles (hereinafter "City"),

WHEREAS, Article XIII B of the California State Constitution provides that local agencies may recover costs associated with carrying out programs mandated by the State of California; and

WHEREAS, City desires to obtain maximum reimbursement for costs incurred in carrying out State mandated programs, and has determined that engaging Consultant to assist in the mandated cost claim preparation process is the most economical and cost effective means for preparing City's state mandated cost claims; and

WHEREAS, Consultant is staffed with personnel knowledgeable and experienced in determining the costs of governmental programs and in the submission of cost claims to the State of California; and

WHEREAS, City desires to engage Consultant to assist in developing, submitting, and negotiating cost claims pertaining to state mandated programs.

NOW, THEREFORE, the parties hereto mutually agree as follows:

- (1) Employment of Consultant. City agrees to engage Consultant and Consultant hereby agrees to perform the following services.
- (2) Scope of Services. Consultant shall do, perform, and carry out in a good and professional manner the following services subject to the provisions of Section (8) below.
 - A. Prepare and submit cost claims pursuant to the Controller's 2004 annual claiming instructions that require claims to be submitted to the State by January 15, 2005.
 - B. Prepare and submit other new or first-time cost claims pursuant to the Controller's claiming instructions which are issued in accordance with parameters and guidelines received from the Commission on State Mandates and mailed to local agencies during the 2004-2005 fiscal year. For the purposes of this Agreement, claims covered under this section shall include all claiming instructions issued with due dates other than January 15, 2005.
 - C. Monitor the general payment status of all claims submitted on behalf of City pursuant to this Agreement.

- D. Assist City with any claims filed by Consultant that are audited by the State Controller's office. Test claims and incorrect reduction claims are not covered under this Agreement.

Cost claims submitted by Consultant may consist of both direct and indirect costs. Consultant may either utilize the ten percent (10%) indirect cost rate allowed by the State Controller or calculate a higher rate if City records support such a calculation. Consultant is not required to prepare a central service cost allocation plan or departmental indirect cost rate proposals for City.

- (3) Provision of Services. Consultant shall commence, carry on, and complete the services with all practicable dispatch, in a sound, economical, and efficient manner, in accordance with the provisions herein and all applicable laws. In providing services, Consultant shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by City.
- (4) Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified to perform the services described herein.
- (5) Term of Agreement. This Agreement shall become effective on July 1, 2004, and shall continue in full force and effect until both parties have completed performance as provided herein.
- (6) Time of Performance. The services to be performed hereunder by Consultant shall be undertaken and completed in such sequence as to assure their expeditious completion in order to best carry out the purposes of this Agreement. All claim filing services required hereunder shall be completed by the required date for each specific claim. Provided however, Consultant shall not be liable for delays in performance that are caused in whole or in part by City, third parties over which Consultant does not have the legal right to control or forces de majeure. The period of Consultant's performance shall be extended by the period of delay contemplated herein.
- (7) Costs and Method of Compensation. For the above services provided pursuant to Section (2) A, (2) C and D, City agrees to pay Consultant compensation in a fixed fee in the amount of four thousand dollars (\$4,000). The fee shall be paid in four equal installments: Twenty-five percent (25%) or \$1,000.00 of the fixed fee shall be due and payable on September 1, 2004, December 1, 2004, March 1, 2004, and June 1, 2004.

For the above services provided pursuant to Section (2) B, City agrees to pay Consultant compensation in a fixed fee in the amount of two thousand six hundred fifty dollars (\$ 2,650). Consultant shall invoice City upon submission of claims to State Controller's Office. City shall pay invoices within thirty (30) days of receipt.

- (8) Waiver of Submission of Claim(s) Pursuant to Section (2) A & B. Notwithstanding any other provisions of this Agreement, the submission of claims pursuant to Section (2) A and B may be waived as set forth below. Upon waiver exercised by either party, City shall pay Consultant for all work performed up to and until the effective date of waiver in an amount not to exceed the maximum dollar amount indicated in Section (7). Payment for such services shall be at Consultant's current hourly rate. Any monies already paid by City shall be credited against total hourly rate due.

A. At City Option. At the sole discretion of City, City may instruct Consultant to not file a specific claim or claims pursuant to a specific State claiming instruction. Such instruction must be in writing and provided to Consultant at least thirty (30) days prior to the due date of the claim. The effective date of City's waiver shall be the date Consultant receives City's written instruction.

B. At Consultant Option. At the sole discretion of Consultant, Consultant may notify City of its intention to not pursue a specific claim and the reasons therefore. Such notification must be in writing and provided to City not less than thirty (30) days prior to the due date of the claim. The effective date of Consultant's waiver shall be the date Consultant mails its notification to City. Should Consultant not so notify City, City may expect Consultant to pursue the claim if it is above the minimum limit set by the State.

- (9) Services and Materials to be Furnished by City. Consultant shall provide guidance to City in determining the data required for claims submission. Consultant shall assume all data so provided is correct. Consultant shall make its best effort to file claims timely. Consultant shall not be liable for claims that cannot be filed as a result of inadequate data, or data that is provided in an untimely manner.

For purposes of this Agreement, data that is requested by Consultant must be provided within three (3) weeks of the request, or three (3) weeks prior to the filing deadline, whichever comes first, to be deemed to have been received in a timely manner.

- (10) Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement. City shall have free access at all proper times to such records, and the right to examine and audit the same and to make transcripts therefrom.
- (11) Third Party Obligations. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.
- (12) Copyright for Consultant's Proprietary Software. City acknowledges that the deliverables provided by Consultant to City are generated by Consultant's proprietary software. Nothing contained herein is intended nor shall it be construed to require Consultant to provide such software to City. City agrees that all ownership rights thereto lie with Consultant. City may use the deliverables for and on behalf of its operation.

- (13) When Rights and Remedies not Waived. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City while any such breach or default shall exist in no way impair or prejudice any right or remedy available to City in respect to such breach or default.
- (14) Consultant Liability if Audited. Consultant will assume all financial and statistical information provided to Consultant by City employees or representatives is accurate and complete. If audited, Consultant shall make workpapers and other records available to the State auditors. Any subsequent disallowance of funds paid to City under the claim(s) for whatever reason is the sole responsibility of City. However, if requested by City, Consultant shall provide assistance to City in defending claims at the desk audit level if an audit results in a disallowance of at least ten percent (10%). Reductions of less than ten percent (10%) shall not be contested by Consultant. Nothing in this section or any part of this Agreement shall be construed to include Incorrect Reduction Claims preparation.
- (15) Independent Contractor. The parties intend that Consultant, in performing the services specified in this Agreement shall act as an independent contractor and shall have full control of the work and the manner in which it is performed. Consultant and Consultant's employees are not to be considered agents or employees of City for any purpose.
- (16) Insurance. Consultant shall maintain appropriate general liability insurance, workers' compensation insurance, automobile insurance, and professional liability insurance.
- (17) Limitation of Liability. In no event shall Consultant be liable for indirect, special, consequential or punitive damages. Consultant's liability to the City, for any reason whatsoever and whether foreseeable or not, shall not exceed the total amount to be paid to Consultant under this Agreement.
- (18) Changes. Either party may, from time to time, require changes in the scope of services to be performed hereunder. Such changes, which are mutually agreed upon by and between the parties, shall be incorporated in written and mutually executed amendment to this Agreement.

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- (19) Notices. Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid, to the address noted below:

Contact Name: Jennifer Sorenson Title: Finance Manager
 Address: 1000 Spring Street, Paso Robles, CA 93446
 Phone #: (805) 237-3898 x651 Fax #: (805) 237-6565
 Email Address: jsorenson@prcity.com

MAXIMUS, Incorporated
 4320 Auburn Blvd., Suite 2000
 Sacramento, CA 95841
 (916) 485-8102 Fax: (916) 485-0111

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

- (20) Severability. Should any part, term, portion, section or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the remaining parts, terms, portions, sections or provisions shall be deemed severable and shall remain in full force and effect.
- (21) Matters to be Disregarded. The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.
- (22) Completeness of Agreement. This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.
- (23) Agreement Receipt. This Agreement must be signed and returned to Consultant by August 5, 2004. If executed Agreement is not received by that date, Consultant cannot warrant that claims will be submitted on a timely basis.

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

By: _____

(City Official)

Title: Dir of Administrative Services

ATTEST:

Date: _____

MAXIMUS, Incorporated

By: 

Allan Burdick, Vice President

Date: March 25, 2004