



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: City of San Jose v. Maxim
Integrated Products, Inc., a
Delaware corporation
Settlement Agreement

DATE: March 18, 2009

RECOMMENDATION

Approve settlement and authorize the City Attorney to execute a Settlement Agreement and Mutual Release relating to the City of San Jose's claim against Maxim Integrated Products, Inc. ("Maxim"), for sanitary sewer and San Jose/Santa Clara Water Pollution Control Plant connection fees upon payment by Maxim of \$532,000 and upon Maxim's agreement to accept connection approval for, and an Industrial Wastewater Discharge Permit limit of, 200,000 gallons per day, as considered by the City Council during the Closed Session held on February 3, 2009.

OUTCOME

Approval of a Settlement Agreement and Mutual Release to resolve a lawsuit filed by the City of San Jose against Maxim Integrated Products, Inc., a Delaware corporation, for payment of sanitary sewer and San Jose/Santa Clara Water Pollution Control Plant connection fees, interest, and penalties for increases in peak flow sewer discharge of industrial wastewater above 150,000 gallons per day pursuant to Part 3 of Chapter 15.16 of Title 15 of the San Jose Municipal Code.

BACKGROUND

Maxim Integrated Products, Inc., is a semiconductor manufacturer located in the City of San Jose. In 2003 Maxim was billed \$392,801 for additional sanitary sewer and Water Pollution Control Plant ("WPCP") connection fees due to an increase in Maxim's peak daily flow of industrial wastewater from 150,000 gallons per day ("gpd") to 240,000 gpd. After Maxim was billed for the 240,000 gpd peak flow, its peak flows continued to increase to over 300,000 gpd. During that time period Maxim was working with the WPCP staff to reduce water usage and as a result Maxim qualified for a rebate of \$94,690 from the WPCP Water Efficient Technology ("WET") rebate program. This rebate was applied to Maxim's outstanding connection fee bill. Despite the water

conservation measures taken by Maxim, its peak flows did not begin to drop until approximately one year ago when Maxim engaged in a concentrated effort to reduce peak flows. As a result of that effort and other measures taken by Maxim, peak flows are currently under 200,000 gpd.

After three years of unsuccessful negotiations, on January 14, 2009, the City filed a lawsuit to collect fees, interest, and penalties for the invoice in the principal sum of \$392,801, plus \$82,409 in penalties, plus interest from August 2, 2003 at the monthly rate of 1% (interest amounted to \$311,323.56 when the complaint was filed), minus \$94,690 in WET rebate; staff also commenced to prepare an invoice to Maxim for additional peak flows over 240,000 gpd.

ANALYSIS

The settlement amount of \$532,000 represents full payment for a peak flow of 240,000 gpd plus most of interest at the monthly rate of 1%. In return for waiving the right to collect penalties in the sum of \$82,409, some of the interest, and for past increases in Maxim's peak flow sewer discharge, the City will receive the settlement amount and Maxim's agreement to accept connection approval for and an Industrial Wastewater Discharge Permit limit of 200,000 gpd. In the event Maxim's peak flows increased over 200,000 gpd after February 1, 2009, this settlement does not affect any claims the City might have against Maxim arising out of such an increase.

PUBLIC OUTREACH/INTEREST

This memorandum and the settlement agreement have been posted on the City's website for the April 7, 2009 agenda.

COORDINATION

The Director of Public Works and the City Manager were advised of the proposed settlement.

CEQA

Not a Project.

RICHARD DOYLE
City Attorney

By 
Margo Laskowska
Deputy City Attorney

For questions please contact RICHARD DOYLE, City Attorney, at (408) 535-1900.