

AN ORDINANCE 100070

APPROVING TERMS AND CONDITIONS AND AUTHORIZING EXECUTION OF AN INCENTIVE FUND GRANT AGREEMENT WITH MAXIM INTEGRATED PRODUCTS, INC. PROVIDING UP TO \$1,500,000 FROM THE ECONOMIC DEVELOPMENT INCENTIVE FUND FOR CUSTOMIZED JOB TRAINING; APPROVING EXCEPTIONS; APPROPRIATING FUNDS; AND PROVIDING FOR PAYMENT.

* * * * *

WHEREAS, Maxim Integrated Products, Inc. (hereinafter "Maxim") is a publicly-held company and a worldwide leader in design, development, and manufacturer of linear and mixed-signal integrated circuits; and

WHEREAS, the company was founded in 1983 and employs more than 7,500 people at its headquarters in Sunnyvale, California and at facilities worldwide; and

WHEREAS, Maxim manufactures approximately 5,000 types of analog and mixed-signal integrated circuits (ICs), more than any other company in the industry, introducing an average of 500 new products per year with revenues expected to reach \$3.8 billion by 2007; and

WHEREAS, thousands of electronics manufacturers use Maxim's products in computers and peripherals, industrial controls, telecommunications and networking equipment, military systems, medical devices, instrumentation and video displays; and

WHEREAS, in October 2003, Maxim informed City staff that it was considering the purchase and future use of the former Philips Semiconductor facility with plans to retrofit the existing 300,000 square-foot facility situated on the 178.5 acre site to manufacture 8-inch semiconductor wafers; and

WHEREAS, Maxim purchased the facility in November 2003 for \$40 million with plans to invest an additional \$50 million in facility improvements and equipment; and

WHEREAS, by December 31, 2007, Maxim will also create a total of 500 new full-time jobs and has to date hired 235 people, 80 percent of whom previously worked for Sony or Philips; and

WHEREAS, the Maxim jobs would entail working in production, equipment and process engineering, automation and management, among other areas; and

WHEREAS, the semi-conductor industry is presently in the midst of the longest economic downturn in its history, so Maxim is seeking a grant from the Economic Development Incentive

Fund (the "EDIF") in the amount of \$1.5 million to achieve every available cost-minimizing opportunity to aid the Westover Hills facility as a viable business unit; and

WHEREAS, the EDIF Guidelines (the "Guidelines") require that the 500 jobs mentioned above be created within one year and that the maximum incentive amount, based on investment, be limited to \$750,000 and would thus require an exception to the Guidelines; and

WHEREAS, the grant of funds in the amount of \$1.5 million from the EDIF fund would leverage an additional \$1.5 million in grant funds from the State Enterprise Fund to support the project; and

WHEREAS, the City's funding would help defray the costs of training the local workforce for Maxim's high-paying jobs; to be paid to Maxim on a reimbursement basis at a rate of \$3,000 per job created, up to 500 jobs, through December 31, 2008 as more particularly described in Attachment I; and

WHEREAS, granting these funds is in compliance with Chapter 380 of the Texas Local Government Code; and

WHEREAS, the project supports the City's *Strategic Plan for Enhanced Economic Development* by encouraging the attraction of new businesses to the community while promoting growth in the targeted industry of manufacturing and technology, as well as retaining and creating high-paying jobs for our community; and

WHEREAS, the City Council also finds that it is in the best interest of the City of San Antonio to approve an Incentive Fund Grant Agreement with Maxim in the amount of \$1.5 million to induce the desired and beneficial economic development in the area and to approve exceptions to the Guidelines; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council hereby approves the terms and conditions of an Incentive Fund Grant Agreement with Maxim Integrated Products, Inc. to provide up to \$1,500,000 from the Economic Development Incentive Fund for customized job training as described in the copy of the signed Agreement attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. The City Council also hereby approves the exceptions to the Economic Development Incentive Fund Guidelines for the job creation date and funding level.

SECTION 3. The Interim City Manager or his designee is authorized to execute the Agreement in Section 1 within 60 days from the effective date of this ordinance.

SECTION 4. Funds in the amount of \$1,500,000.00 are authorized to be encumbered in cost center 1604010001, General Ledger 5201040 entitled "Fees to Professional Contractors", Fund

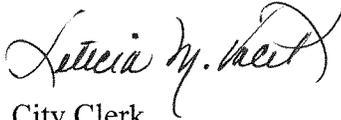
29059000 entitled "Economic Development Initiatives" payable to Maxim Integrated Products, Inc. when periodic purchase orders are issued.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the Interim City Manager or his designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance shall be effective on and after the tenth (10th) day after passage hereof.

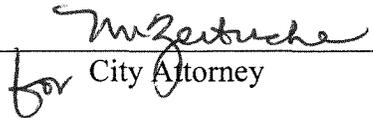
PASSED AND APPROVED this 9th day of December, 2004.

ATTEST:


City Clerk


M A Y O R
EDWARD D. GARZA

APPROVED AS TO FORM:


for City Attorney

Agenda Voting Results

Name: 6 C.

Date: 12/09/04

Time: 06:02:24 PM

Vote Type: Multiple selection

Description: An Ordinance approving terms and conditions and authorizing execution of an Incentive Fund Grant Agreement with Maxim Integrated Products, Inc. providing up to \$1,500,000 from the Economic Development Incentive Fund for customized job training; approving exceptions; appropriating funds; and providing for payment

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
JOEL WILLIAMS	DISTRICT 2		x		
RON H. SEGOVIA	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
ENRIQUE M. BARRERA	DISTRICT 6		x		
JULIAN CASTRO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8	Not present			
CARROLL SCHUBERT	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR ED GARZA	MAYOR	Not present			

ATTACHMENT I

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**AGREEMENT FOR DISTRIBUTION OF AN
ECONOMIC DEVELOPMENT INCENTIVE
FUND GRANT**

RECEIVED
SAN ANTONIO
CITY CLERK
2005 JAN 20 A 10:48

This contract (hereinafter referred to as "Contract") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, hereinafter referred to as "CITY", by and through its Interim City Manager or his designee, and Maxim Integrated Products, Inc., hereinafter referred to as "MAXIM" or "Contractor."

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the CITY is authorized to grant and loan municipal funds in furtherance of public purposes for economic development projects; and

WHEREAS, as set forth in Ordinance No. 99308, passed and approved on June 3, 2004, the CITY's Economic Development Program was modified to permit grants in accordance with the CITY's Economic Development Incentive Fund ("EDIF") Guidelines; and

WHEREAS, MAXIM submitted an application to the CITY for an EDIF Grant for the purpose of workforce training for an economic development project specified by MAXIM; and

WHEREAS, CITY has a grant amount of \$1,500,000.00 available in the EDIF to be used to carry out the project; and

WHEREAS, the City Council of CITY granted an exception to the EDIF Guidelines and authorized the City Manager or designee to negotiate an agreement with CONTRACTOR for the project as reflected in Ordinance No. 100070, passed and approved on December 9, 2004 and CITY wishes to engage CONTRACTOR to carry out such project; **NOW THEREFORE**:

The parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. CONTRACT PURPOSE

MAXIM shall conduct, in a satisfactory manner as determined by CITY, an economic development project to retrofit an existing facility located at 9651 Westover Hills Blvd. in San Antonio, Texas (hereinafter referred to as the "Facility") to permit the Facility to be used for manufacturing 8" semiconductor wafers (hereinafter referred to as the "Project"). The CITY will support the Project through a grant from the EDIF, as created by the City Council of the City of San Antonio and for which guidelines were adopted by Ordinance No. 99308, passed and approved on June 3, 2004, to provide funding for the purpose of workforce training as part of a larger incentive package intended, in part, to attract and retain high-impact companies or government agency projects that support the City's targeted industries and that are used to leverage private, state or federal funds intended to achieve the same goals.

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SECTION 2. PROJECT REQUIREMENTS

- A. Both Contractor and CITY understand and agree that this Contract is to be executed pursuant to the approval of the City Council of San Antonio by Ordinance Number 100070 given on December 9, 2004.
- B. The total number of new, direct, permanent, full-time jobs to be created by MAXIM, as a result of the Project, shall be no less than 500, subject to the schedule listed in Attachment I.
- C. The total amount of funding granted toward the Project is \$3,000,000.00, which is to be funded as follows:

Funding Type	Specific Source Name	Amount of Funding
Texas Enterprise Fund Grant	Office of the Governor, Eco. Dev.	\$1,500,000.00
COSA EDIF Grant	COSA	\$1,500,000.00
Total Project Cost		\$3,000,000.00 Total

- D. If Contractor's proposal for funding from any of the other sources named in Section 2(C) is rejected, the commitment of funds under this Contract may be withdrawn. Contractor shall have thirty (30) days to renegotiate financial arrangements prior to withdrawal of the commitment of funds under this Contract.

SECTION 3. CONTRACT PERIOD

This Contract shall commence upon full execution of this Contract and shall terminate upon final acceptance of the last scheduled payment due under the payment schedule, as defined by Section 16 of this Contract and as more fully described in Attachment I, attached hereto and incorporated herein.

SECTION 4. CONTRACTOR PERFORMANCE

- A. Contractor shall conduct and complete the Project in a satisfactory manner as determined by CITY, subject to all provisions and dates listed in the Term Sheet in Attachment I.
- B. Contractor shall comply with all applicable laws and regulations, and shall perform all activities in accordance with the terms of the Special Conditions specified in Section 16 of this Contract, and with all other terms, provisions, and requirements set forth herein.

SECTION 5. DEPARTMENT OBLIGATIONS

- A. In consideration of full and satisfactory performance of activities required by Section 2 of this Contract, CITY will disburse EDIF grant funds to Contractor in the amounts and at the times specified by the Special Conditions detailed in Section 16 of this Contract, and subject to the limitations set forth in this Section 5 and in Sections 14 and 15 below. Notwithstanding any other provision of this Contract, the total of all grant payments and other obligations incurred by CITY under this Contract will not exceed the sum of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00).
- B. CITY will not be liable to Contractor or other entity for any costs incurred by Contractor.
- C. Contractor shall refund to CITY any sum of money paid to Contractor by CITY, which CITY or its Economic Development Department determines is an overpayment to Contractor, or in the event CITY or

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its Economic Development Department determines funds spent by Contractor were not an allowable cost of this Project. Allowable costs will be determined in accordance with this Contract and are defined as direct costs incurred in the training of Contractor's workforce, to include planning and design, labor, materials and equipment. No refund payment(s) may be made from local, state, or federal grant funds unless statute or regulation specifically permits repayment with grant funds. Such refund shall be made by Contractor to CITY within ninety (90) calendar days after such refund is requested in writing by CITY, or within thirty (30) calendar days of a notice from CITY indicating the request is the result of a final determination that the refund is owed.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. Contractor shall maintain fiscal records and supporting documentation for all expenditures of funds made under this Contract in a manner that conforms to this Contract. Such records shall include data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Contract. Contractor shall retain such records, and any supporting documentation, for the greater of: (1) four [4] years from the end of the contract period; or (2) the period required by other applicable laws and regulations.

B. Contractor shall give the CITY, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by Contractor pertaining to this Contract, including records concerning the past use of EDIFG funds. Such rights to access shall continue as long as the records are retained by Contractor. Failure to provide reasonable access to authorized CITY representatives shall give the CITY the right to suspend or terminate the Contract as provided for in Section 15 and 16, or any portion thereof, for reason of default. All records and other information shall be retained by Contractor for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Contractor agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.

SECTION 7. MONITORING

A. CITY reserves the right to perform periodic on-site monitoring of Contractor's compliance with the terms and conditions of this Contract and of the adequacy and timeliness of Contractor's performance. After each monitoring visit, CITY will provide Contractor with a written report of the monitor's findings. If the monitoring report notes deficiencies in Contractor's performances under the terms of this Contract, the monitoring report shall include requirements for the timely correction of such deficiencies by Contractor. Failure by Contractor to take action specified in the monitoring report may be cause for suspension or termination of this Contract, in accordance with Sections 14 and 15 herein.

B. During the course of the Project, Contractor shall provide, on a semi-annual basis in accordance with its Tax Phase-In Agreement with CITY, information evidencing the number of jobs generated during the Term of this Contract.

SECTION 8. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the parties hereto that CITY is contracting with Contractor as an Independent Contractor, and that Contractor, its employees and subcontractors are not employees of the CITY.

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SECTION 9. CONFLICT OF INTEREST

A. Contractor shall ensure that no employee, officer, or agent of Contractor shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. Contractor shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

B. Except for eligible administrative or personnel costs, no employee, agent, consultant, officer, or elected or appointed official, of either Contractor or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in or benefit from the Project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. This prohibition shall remain in effect for the duration of the prohibited relationship plus one calendar year thereafter.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. Contractor shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Contract.

B. None of the performances rendered by Contractor under this Contract shall involve, and no portion of the funds received by Contractor under this Contract shall be used in support of, any sectarian or religious activity, nor shall any Facility used in the performance of this Contract be used for sectarian instruction or as a place of religious worship.

C. Contractor shall include the substance of this Section 10 in all subgrant agreements.

SECTION 11. LEGAL AUTHORITY

A. Contractor assures and guarantees that Contractor possesses the legal authority to enter into this Contract, to receive funds authorized by this Contract, and to perform the services Contractor has obligated itself to perform hereunder.

B. The person or persons signing and executing this Contract on behalf of Contractor, or representing themselves as signing and executing this Contract on behalf of Contractor, do hereby guarantee that he, she or they have been duly authorized by Contractor to execute this Contract on behalf of Contractor and to validly and legally bind Contractor to all terms, performances and provisions herein set forth.

C. CITY will have the right to suspend or terminate this Contract in accordance with Section 14 and 15 herein if there is a dispute as to the legal authority, of either Contractor or the person signing this Contract, to enter into this Contract, any amendments hereto or failure to render performances hereunder. Contractor is liable to CITY for any money it has received from CITY for performance of the provisions of this Contract if CITY suspends or terminates this Contract for reasons enumerated in this Section 11.



SECTION 12. LITIGATION AND CLAIMS

A. Contractor shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Contractor arising out the performance of any subcontract hereunder. Except as otherwise directed by CITY, Contractor shall furnish immediately to CITY copies of all pertinent papers received by Contractor with respect to such action or claim. Contractor shall notify the CITY immediately of any legal action filed against the Contractor or any subcontractor, or of any proceeding filed under the federal bankruptcy code. Contractor shall submit a copy of such notice to CITY within 30 calendar days after receipt. No funds provided under this Contract may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations.

B. CITY and Contractor acknowledge that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Contract shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Contract shall be in Bexar County, Texas.

SECTION 13. CHANGES AND AMENDMENTS

A. Except as specifically provided in Section 13(C) of this Contract, any alterations, additions, or deletions to the terms of this Contract shall be by amendment hereto in writing and executed by both parties to this Contract upon CITY approval and authorization of Contractor.

B. It is understood and agreed by the parties hereto that performances under this Contract shall be rendered in accordance with the laws and rules governing the Economic Development Program, and the terms and conditions of this Contract. CITY may, during the contract period, issue policy directives that serve to establish, interpret, or clarify performance requirements under this Contract. Such policy directives will be promulgated by CITY, shall have the effect of qualifying the terms of this Contract and shall be binding upon Contractor, as if written herein, provided however that said policy directives and any amendments shall not alter the terms of this Contract so as to release CITY from any obligation specified in Section 5 of this Contract to reimburse costs incurred by Contractor prior to the effective date of said amendments or policy directives.

C. Any alterations, additions, or deletions to the terms of this Contract required by changes in state law or regulations are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 14. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event Contractor fails to comply with the terms of any contract with the CITY, CITY shall provide Contractor with written notification as to the nature of the non-compliance. CITY shall grant Contractor a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such contract. Should Contractor fail to cure any default within this period of time, the CITY may, upon written Notice of Suspension to Contractor, suspend this Contract in whole or in part and withhold further payments to Contractor, and prohibit Contractor from incurring additional obligations of funds under this Contract. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective

date of such suspension; and, (3) in the case of partial suspension, the portion of the Contract to be suspended.

B. In the case of default for causes beyond Contractor's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that Contractor shall: (1) immediately upon receipt of Notice of Suspension advise CITY of Contractor's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 14 may be lifted only at the sole discretion of the CITY upon a showing of compliance with or written waiver by CITY of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, CITY shall not be liable to Contractor or to Contractor's creditors for costs incurred during any term of suspension of this Contract.

SECTION 15. TERMINATION

A. CITY shall have the right to terminate this Contract for non-compliance, in whole or in part, at any time before the date of completion specified in Section 4 of this Contract whenever CITY determines that Contractor has failed to comply with any term of any contract with the CITY. CITY will provide Contractor with written notification as to the nature of the non-compliance, and grant Contractor a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such contract. Should Contractor fail to cure any default within this period of time, the CITY may, upon issuance to Contractor of a written Notice of Termination, terminate this Contract in whole or in part and withhold further payments to Contractor, and prohibit Contractor from incurring additional obligations of funds under this Contract. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Contract to be terminated.

B. In the case of default for causes beyond Contractor's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that Contractor shall: (1) immediately upon receipt of Notice of Termination advise CITY of Contractor's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Except as provided in Section 15(A), awards may be terminated in whole or in part only as follows:

1. By the CITY (with the consent of the Contractor) in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or
2. By the Contractor upon written notification to the CITY, setting forth the reasons of such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the CITY determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the CITY may terminate the award in its entirety under Section 15(A).

D. Upon receipt of Notice of Termination for non-compliance under Section 15(A), Contractor shall, to the extent possible under its other contractual obligations, cancel, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Contract or the part of this Contract to be terminated and shall cease to incur costs thereunder. Any other work or materials under or part of this Contract shall be terminated and CITY will not be liable to Contractor or to Contractor's creditors for any costs incurred subsequent to receipt of a Notice to Terminate.

E. Notwithstanding any exercise by CITY of its right of suspension under Section 14 of this Contract, or of early termination pursuant to this Section 16, Contractor shall not be relieved of any liability to CITY for damages due to CITY by virtue of any breach by Contractor of any contract with CITY. CITY may withhold payments to Contractor until such time as the exact amount of damages due to CITY from Contractor is agreed upon or is otherwise determined.

SECTION 16. SPECIAL CONDITIONS AND TERMS

A. Following the effective date of this Agreement, CITY will release the disbursement of grant contract funds on a performance basis at the rate of three thousand dollars (\$3,000.00) per employment position hired (subject to the Job Target and Reporting Requirements schedule in Attachment I) until December 31, 2008, which shall not exceed the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) under this Contract (hereinafter "Contract Funds"), upon submission by Contractor of the following information within (six) 6 months of the execution of this Contract:

1. Documentation indicating that MAXIM has executed a Grant Agreement with the Office of the Governor, Texas Economic Development and Tourism, for funding in the amount of one million, five hundred thousand dollars (\$1,500,000.00).
2. The first semi-annual report (due in July 2005) certifying that MAXIM has met its first Job Target Requirement of two hundred thirty five (235) new Employment Positions by December 31, 2004. The next disbursement, if applicable, will occur following receipt of MAXIM's second semi-annual certification report (due in January 2006) confirming that MAXIM has met the second Job Target Requirement of a cumulative total of two hundred fifty (250) new Employment Positions by December 31, 2005. Thereafter, disbursements will occur on an annualized basis subject to the Job Target and Reporting Requirements (calculated by the averaging of the next two semi-annual certification reports following a specified target date) listed on the Term Sheet schedule in Attachment I.

B. In addition to the limitations on liability otherwise specified in this Contract, it is expressly understood and agreed by the parties hereto that if Contractor fails to submit to CITY in a timely and satisfactory manner any information or report required under any contract between Contractor and the CITY, CITY may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by Contractor hereunder. If CITY withholds such payments, it will notify Contractor in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by CITY until such time as the delinquent obligations for which funds are withheld are fulfilled by Contractor.

C. In the event that Contractor fails to hire the minimum employment positions in accordance with the dates specified in the Term Sheet in Attachment I, and has not utilized the full available grant award amount of one million five hundred thousand dollars (\$1,500,000.00) by December 31, 2008, Contractor shall forfeit the remaining balance of the available grant award, subject to CITY's reservation of rights articulated in Section 19 of this Contract.

SECTION 17. SUBCONTRACTS

A. Contractor shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Contract as if such performance were rendered by Contractor. Contractor shall bear full responsibility for performance by all subcontractors.

B. Contractor, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, CITY is in no way liable to Contractor's subcontractor(s).

C. Contractor assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Contract.

D. As subcontracts and supplier contracts become necessary to carry out the requirements of this Contract, Contractor covenants to comply with the CITY's SBEDA Program, currently identified under Ordinance No. 96754, and as amended.

SECTION. 18. DEBARMENT

By signing this Contract, Contractor certifies that it will not award any funds provided under this Contract to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs.

SECTION 19. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Contract shall not preclude the exercise of any other right or remedy under any contract between Contractor and the CITY or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 20. NON-ASSIGNMENT

This Contract is not assignable. Notwithstanding any attempt to assign the Contract, Contractor shall remain fully liable on this Contract and shall not be released from performing any of the terms, covenants and conditions herein. Contractor shall be held responsible for all funds received under this Contract.

SECTION 21. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the parties to this Contract relating to the subject matter of this Contract that were made prior to the execution of this Contract have been reduced to writing and are contained in this Contract.

SECTION 22. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

CITY may grant relief from performance of the Contract if the Contractor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the Contractor. The burden of proof for the need for such relief

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shall rest upon the Contractor. To obtain release based upon *force majeure*, the Contractor must file a written request with the CITY.

SECTION 23. SURVIVAL OF CERTAIN CONTRACT PROVISIONS

The following provisions of the Contract, concerning Contractor's obligations, shall survive the termination of the Contract after completion of the Project:

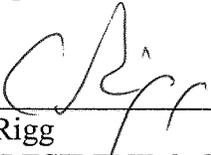
- A. Section 2B (Job Creation)
- B. Section 6 (Records Retention and Accessibility of Records)
- C. Section 16D (Reports Concerning the Project After Completion).

WITNESS OUR HANDS, EFFECTIVE as of Dec. 22, 2004:

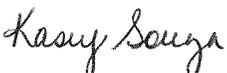
Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 100670, dated December 9, 2004, and Maxim Integrated Products, Inc. pursuant to the authority of its Vice President and General Counsel.

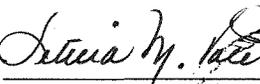
MAXIM INTEGRATED PRODUCTS, INC.
A Delaware Corporation

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

BY: 
Chuck Rigg
VICE PRESIDENT & GENERAL
COUNSEL


for J. Rolando Bono
INTERIM CITY MANAGER

ATTEST:

Name: KASEY Souza
Title: Executive Assistant

ATTEST:

Leticia Vadek
CITY CLERK



APPROVED AS TO FORM:

Andrew Martin
CITY ATTORNEY *LOH*

ATTACHMENT I

**ATTACHMENT I
TERM SHEET:**

ECONOMIC DEVELOPMENT INCENTIVE FUND (EDIF) AGREEMENT

Between The

**CITY OF SAN ANTONIO
AND MAXIM INTEGRATED PRODUCTS, INC.**

City of San Antonio Requirements	The City of San Antonio will pay up to \$1,500,000 from the Economic Development Incentive Fund ("EDIF") to Maxim by providing performance-based payment of \$3,000 for each net New Employment Position (defined and subject to the schedule below), up to 500 Positions, for a total reimbursement of up to \$1,500,000 through December 31, 2008.
Maxim Integrated Products Investment Requirements	Maxim shall invest a total of at least \$50 Million toward personal property improvements and the renovation of a facility for the design, development, and manufacture of linear and mixed-signal integrated circuits.
Maxim Integrated Products Job Target Requirements	<p>Maxim shall meet the "Job Target" of creating Five Hundred (500) new Employment Positions according to the following schedule of a total of:</p> <ul style="list-style-type: none"> (i) 235 by December 31, 2004 (ii) 250 by December 31, 2005 (iii) 350 by December 31, 2006 (iv) 500 by December 31, 2007; and maintaining these total job numbers through December 31, 2021. <p>"Employment Positions" shall be defined as jobs meeting the following criteria:</p> <ul style="list-style-type: none"> (i) New Non-Temporary, Full-Time (equivalent to two thousand eighty (2,080) straight-time paid hours in a fiscal year) Employment Positions in San Antonio with Maxim Integrated Products, Inc. at the San Antonio facility. (ii) All Employment Positions at the San Antonio location shall be paid a cash wage of at least \$9.06 per hour. (iii) Within one year of project location opening, 70% of all new and existing positions at the project location shall earn a cash wage exceeding \$11.00 per hour.
Maxim Integrated Products Reporting Requirements	<p>As required by Maxim's Tax Phase-In Agreement, Maxim shall report semi-annually on its job creation progress. The first semi-annual report is due in June 2005 and must verify that Maxim has met the Job Target of 235 total Employment Positions in San Antonio by December 31, 2004. The second semi-annual report must verify that Maxim has met the Job Target of 250 total Employment Positions in San Antonio by December 31, 2005. The fourth semi-annual report, due in January 2007, must verify that Maxim has met the Job Target of 350 total Employment Positions in San Antonio by December 31, 2006. The sixth semi-annual report, and each semi-annual report thereafter, must verify that Maxim has met the Job Target of 500 total Employment Positions in San Antonio during the preceding year.</p> <p>There will be 32 semi-annual reports, covering the years 2005-2021.</p>
Failure to Meet Job Target Requirements	<p>Failure to Meet 2005 "Floor" Job Target. If Maxim's second semi-annual report demonstrates that it has failed to create at least 250 Employment Positions as of December 31, 2005, the City may terminate the Agreement and require Maxim to repay the portion of the \$1,500,000 grant paid to Maxim, plus interest in the amount of 6% per year.</p> <p>Failure to Meet Job Target. If a Maxim semi-annual report demonstrates that it has not met the Job Target of new Employment Positions at its new facility for the preceding year, the City of San Antonio may require Maxim to refund \$3,000 for every Employment</p>



	<p>Position at the new facility by which it is short that year. This recapture amount represents an appropriate proportional payback of the City's investment from the EDIF for each job Maxim has failed to create, plus interest. For example, if Maxim creates no new jobs in San Antonio, it will be forced to repay a total of \$1,500,000 (net present value) over the term of the Agreement.</p> <p>If Maxim is in default in meeting any of the terms of the Tax Phase-In Agreement, the San Antonio EDIF agreement will also be subject to termination.</p> <p>Conditions Precedent. If Maxim fails to execute an agreement with the State of Texas for a grant from the Texas Enterprise Fund (TEF) for \$1,500,000, the San Antonio EDIF agreement will be subject to termination and recapture.</p>
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