



CITY of NOVI CITY COUNCIL

**Agenda Item J
January 25, 2016**

SUBJECT: Approval of Resolution authorizing amendment to Agreement Concerning Industrial Facilities Tax Abatement between the City and Magna Seating of America, Inc., approved on July 27, 2015.

SUBMITTING DEPARTMENT:

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The City Council approved the Magna Seating Industrial Facilities Exemption Certificate (IFEC) at its meeting of July 27, 2015, along with an "Agreement Concerning Industrial Facilities Tax Abatement." The Agreement was signed and submitted to the State Tax Commission in September, 2015.

The City was contacted by Magna with a request for an amendment to the Agreement. (See attached letter dated December 3, 2015.) The amendment to Paragraph 2 increases the period of time by which the company expects to locate approximately 469 full-time equivalent jobs in the District. It also removes the provision in Paragraph 5, which currently provides that the failure to occupy the facility with at least 469 full-time equivalent jobs for two consecutive years constitutes a basis for revocation of the Certificate and the abatement. According to Magna, that provision requires the company to account for the possible loss of the Certificate immediately, thereby significantly reducing the usefulness of the tax abatement to the company.

The attached Resolution approves the amendment to the Agreement and authorizes the Mayor and City Clerk to sign an amended Agreement.

RECOMMENDED ACTION: Approve Resolution authorizing amendment to Agreement Concerning Industrial Facilities Tax Abatement between the City and Magna Seating of America, Inc., approved on July 27, 2015.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Burke				
Council Member Casey				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

RESOLUTION

Minutes of a Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held in the City Hall of said City on _____, _____, at ___ o'clock P.M. Prevailing Eastern Time.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____ and supported by Councilmember _____.

WHEREAS, the City Council approved Magna Seating of America, Inc.'s Application for an Industrial Facilities Exemption Certificate (IFEC) by final action of City Council on July 27, 2015; and

WHEREAS, the Resolution required Magna to sign an Agreement Concerning Industrial Facilities Tax Abatement, which Agreement was signed by the parties in September, 2015; and

WHEREAS, Magna has requested certain amendments to the Agreement, including a change to the timeline by which the company expects to locate 469 full-time employees and contract personnel in the district, and the removal of the failure to maintain 469 such jobs for two consecutive years as a basis for revocation of the IFEC; and

WHEREAS, the proposed revised Agreement is attached hereto as Exhibit A.

NOW THEREFORE, IT IS THEREFORE RESOLVED that City Council approves the amendment to the Agreement Concerning Industrial Facilities Tax Abatement for Magna Seating and authorizes the Mayor and City Clerk to sign same and to take all necessary actions to submit the amended Agreement to all required state and local agencies.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

Maryanne Cornelius, City Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this _____ day of _____, 2016, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

Maryanne Cornelius, City Clerk
City of Novi

AMENDED

AGREEMENT CONCERNING

INDUSTRIAL FACILITIES TAX ABATEMENT

The City of Novi ("City"), located at 45175 W. Ten Mile Road, Novi, Michigan 48375, and Magna Seating of America, Inc. ("Company"), a Delaware corporation, located at 39600 Lewis Drive, Novi, Michigan 48337 (collectively, "the Parties"), agree as follows:

Recitals

1. After due notice and deliberation, and taking into consideration the statements received by the City Council at a hearing held on July 13, 2015, the City Council on such date adopted a Resolution an Industrial Development District (the "Eligible District") pursuant to Act 198 of the Public Acts of 1974, as amended (the "Act 198"), for the property described on the Legal Description attached as Exhibit A and made a part of this Agreement (the "Property"), located on Cabot Drive near the corner of Thirteen Mile Road and Haggerty Road, Novi, Michigan.

2. The Company thereafter submitted an application ("Application") for issuance of an Industrial Facilities Exemption Certificate ("IFEC") for the Property, as provided for in Act 198. The Application was formally received by the City on July 24, 2015. The Application is incorporated as part of this Agreement by reference.

3. The Company represented in its Application that it will be a tenant/lessee of, and will occupy, a building to be constructed on the Property containing approximately 180,000 square feet (the "Investment" or "facility") as a world class facility to house its headquarters, engineering, research and development, and sales operations. Magna Seating is a subsidiary of Magna International, Inc., which designs, develops, and manufactures automotive systems, assemblies, modules, and components. The Company further represented that the Investment and its occupation and use thereof qualifies as industrial property under Act 198.

4. The City and the Company desire to enter into this Agreement as required by MCL 207.572, and for the purpose of setting forth the terms and conditions under which an industrial facilities exemption certificate (IFEC) shall be approved and issued by the State Tax Commission for the Property proposed to be exempt from ad valorem real property taxes.

Therefore, in consideration of the foregoing, the Parties now enter into this Agreement.

Terms and Conditions

1. Subject to and in accordance with the Recitals set forth above, on July 27, 2015, the City Council adopted a Resolution approving the Company's Application for an abatement of real property taxes related to the Investment pursuant to Act 198 in the Eligible District (the "Resolution") for a period of twelve (12) years, subject to the provisions of this Agreement. A copy of the Resolution is attached as Exhibit B and is incorporated into this Agreement.

2. In consideration of the twelve (12) year abatement of real property taxes for the 2017 through 2028 tax years (imposed based upon taxable values as of December 31, 2016 through December 30, 2028 ("Abatement Period")), the Company represents and warrants that it will lease and occupy the facility and locate its corporate headquarters and its ~~related-current full time equivalent~~ employees and contract ~~personnel, consisting of approximately 469 full-time equivalent employees and contract personnel ("jobs"), to~~ personnel to the Eligible District upon completion of the facility, currently expected in December, 2016. By December 1, 2018, the Company expects to locate approximately 469 full time equivalent employees and contract personnel ("jobs") in the Eligible District. The Company agrees that the facility shall be leased and occupied by the Company for the full term of this Agreement. The Company has represented that it will invest approximately \$30,500,000 in the building and related improvements. The Company further represents that, of the approximately 469 ~~full-time existing employees~~ jobs to be ~~relocated to~~ located at the facility, approximately 164 ~~are~~ will be new to the City of Novi.

3. Within 90 days of the date of the completion of the facility, the Company will report:

a. The final cost of the facility to the City Assessor and the State Tax Commission, together with a detailed listing of all new personal property acquired for the facility (including a description, type, identification, year of acquisition, and cost of purchase and installation);

b. The number of jobs created by the completion of the facility, not including jobs transferred from other locations.

4. No later than the 10th day of March of each year, beginning in the year 2017 through and including the year 2028, the Company shall submit a report ("Annual Report") to the City Clerk stating the average number of jobs in the Eligible District for the preceding year, computed as the average number of actual jobs existing on a quarterly basis for the calendar year preceding the Annual Report. During the term of this Agreement, and through the 2029 tax year, the City may, upon reasonable advance notice, during reasonable times and subject to reasonable restrictions (including confidentiality restrictions), review and audit the information presented by the Company to determine compliance with this Agreement.

5. The Company agrees, as a condition of receiving the IFEC, to operate the facility for the full Abatement Period, plus two (2) years. Any other provision of this Agreement notwithstanding, if during the Abatement Period, or within the two (2) years immediately following the Abatement Period, the Company abandons or closes the facility, or relocates a significant portion of the facility's operations outside the Eligible District, ~~or otherwise fails to occupy the facility as contemplated in this Agreement with at least 469 jobs for two (2) consecutive years~~, the City may immediately revoke the IFEC, and the Company shall pay to the City the entire amount of the additional taxes, for the entire period that the IFEC was in effect, that the taxing jurisdictions would have received if the IFEC had not been issued. In addition, the Company will be liable for repayment of future tax savings (if any) if there are any remaining years in the term of the IFEC under the provisions of Section 21(2) of Public Act 198 of 1974.

6. If any of the foregoing amounts are not paid within sixty (60) days of receipt of a billing sent for the same to the Company, the City may institute a civil action against the Company, and the City shall be entitled to recover the amounts stated in the billing described above. In addition, the Company shall pay all court costs and attorneys' fees incurred by the City in connection with such civil action if the City prevails in collecting at least fifty (50%) percent of the funds sought to be recovered in the action.

7. The City shall not initiate any court action seeking a remedy under Sections 5 and 6 until after both of the following have occurred:

- a. The City has given written notice to the Company declaring a default and specifying the manner in which the Company is in default. The notice shall include an offer to schedule a meeting of the representatives of the City and Company on a date of said notice to discuss the claimed default and how it may be cured; and
- b. Thirty (30) days after the written notice described in Subsection a, above, is received by the Company, if the Company has met with the City and is diligently pursuing a cure, the City shall grant the Company an additional period of thirty (30) days to cure the default, and the City may grant further extensions of this time period in its sole discretion.

8. Any modifications or amendments to this Agreement must be made in writing and approved by the City Council and the Company.

9. The covenants and provisions set forth herein shall bind the successors and assigns of the parties. This Agreement is assignable and transferable by either party, provided that such assignment and transfer by the Company shall be subject to the approval of the City in accordance with Section 21(1) of Act 198.

10. The Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the state of Michigan.

11. The Agreement constitutes the entire understanding of the Parties regarding the abatement of real property taxes in the Eligible District and supersedes any other prior writings, agreements, contracts, or understandings between the City and the Company regarding the abatement of real property taxes in the Eligible District.

12. The Parties acknowledge that each of them has consulted with attorneys and counselors regarding this Agreement and that the City and the Company have equally participated in the drafting of this Agreement. The Company acknowledges that the terms, conditions, requirements, and obligations of the IFEC and this Agreement are lawful and are reasonable in consideration for the benefits the Company has determined that it will achieve by issuance of the IFEC, and the Company agrees that it shall not be permitted to claim that the City is not authorized by law and/or equity to enforce any provision of this Agreement.

13. The Parties each represent that the undersigned individuals are authorized to execute this Agreement on behalf of the City and the Company.

14. In the event that any portion or provision of this Agreement is deemed to be unlawful or unenforceable, the unlawful or unenforceable provision shall be stricken and the remaining portions and provisions shall be fully enforced.

15. This Agreement shall become effective upon issuance by the Michigan State Tax Commission of an IFEC to the Company with respect to the facility and shall be null and void and of no force and effect whatsoever if no IFEC is issued by the Michigan State Tax Commission. A duly executed copy of this Agreement shall be filed with the Michigan Department of Treasury.

16. The Company agrees to pay its abated real property taxes timely and without penalty. If the Company files a petition with the Michigan Tax Tribunal to challenge the assessment of the Property during the Abatement Period that does not result in a reduction in the assessment by at least 25%, the Company shall reimburse the City's reasonable costs of defending such action. The Company agrees to pay all amounts due hereunder and under Act 198 and/or the IFEC in a timely manner and shall not allow any such amounts to become delinquent. Failure to pay amounts due hereunder and under Act 198 and/or the IFEC within thirty (30) days after the Company's receipt of a written notice of non-payment which refers to this Section 16 of this Agreement shall constitute a default and shall be grounds of revocation of the IFEC.

17. The Company further agrees to abide by all other City ordinances, including its building and zoning ordinances, during the operation of the facility.

The Parties have executed this Agreement as of the date of the last signature below (the "Effective Date").

Magna Seating of America, Inc.

City of Novi

By:
Its:

By: Robert J. Gatt
Its: Mayor

_____, 2015

_____, 2015

and

By: Maryanne Cornelius
Its: Clerk

_____, 2015

Exhibit A
Legal Description

See attached.

Exhibit B
City Council Resolution

See attached.



Magna International Inc.
Office of Government Affairs
750 Tower Drive
Troy, Michigan 48098
Tel: (248) 631-5330
Fax: (248) 631-1150
www.magna.com

December 3, 2015

Thomas R. Schultz
Johnson, Rosati, Schultz & Joppich, P.C.
27555 Executive Drive, Suite 250
Farmington Hills, Michigan 48331-3550

RE: Magna Seating Novi Abatement Agreement

Dear Mr. Schultz,

Magna Seating of America Inc. proposes that the terms of its tax abatement agreement with the City of Novi be revised to reflect (1) the timeline contemplated in the Michigan Business Development Program performance-based grant agreement between Magna Seating and the Michigan Economic Development Corporation and (2) potential business conditions and economic factors that could adversely affect hiring and headcount projections over the next 14 years. A copy of the redlined agreement, which contains all of the revisions suggested by Magna Seating, is attached. In support of the revisions, please consider the following:

- Magna Seating has committed to invest more than \$48 million in real and personal property in Novi by 2018. Magna Seating has signed an 18 year lease, further solidifying its commitment to the community.
- Magna Seating will meet its capital investment commitments and maintain operations at the facility for the duration of the tax abatement, but business conditions will ultimately dictate the headcount at the facility.
- The overall strength of the economy significantly influences personnel decisions and Magna Seating cannot reasonably project its headcount needs for the next 14 years.
- Magna Seating's headquarters has been located in Novi since 2002.
- In 2014, Magna Seating Novi spent approximately \$11.6 million on goods and services from Michigan based vendors and suppliers and paid its employees more than \$51.3 million in wages.
- Magna Seating has sponsored the Novi High School Frog Force First Robotics team for 15 years, established summer internship and co-op programs, and provided support to several other events and programs in the community.



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- In 2014, Magna International decided to locate its U.S. Corporate Headquarters in Troy, Michigan. The plan was to locate all U.S. Magna group offices in one location. However, the management team at Magna Seating was successful in its efforts to keep Magna Seating in Novi.

We look forward to the response from the City of Novi. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Frank W. Ervin III', is written over a light blue horizontal line.

Frank W. Ervin III
Director, Government Affairs

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Magna Seating of America, Inc.

City of Novi

By:
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By: Robert J. Gatt
Its: Mayor

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and

By: Maryanne Cornelius
Its: Clerk

_____, 2015

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City Council Resolution

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