

12-8-98  
changed abatement  
see attached

**ORDINANCE NO. 213**

**AN ORDINANCE ESTABLISHING A REINVESTMENT ZONE FOR TAX ABATEMENT; DESIGNATING A CERTAIN AREA AS A REINVESTMENT ZONE FOR PURPOSES OF PROPERTY TAX ABATEMENT WITHIN THE CITY OF MAGNOLIA, TEXAS; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Council of the City of Magnolia, Texas (the "City") desires to promote the development of a certain contiguous geographic area within its jurisdiction in compliance with the Resolution Adopting Tax Abatement Guidelines and Criteria; and

WHEREAS, the hearing before the City Council was set for 5:00 p.m. on the 25th day of April, 1995, such date being at least seven days after the date of publication of the notice of such public hearing; and

WHEREAS, the City has called a public hearing and published notice of such public hearing as required by Section 312.201, Tax Code, Vernon's Texas Civil Statutes and has given written notice to all taxing units overlapping the territory inside the proposed reinvestment zone; and

WHEREAS, upon such hearing being convened there was presented proper proof and evidence that notice of such hearing had been published and had been mailed as described above; and

WHEREAS, the City at such hearing invited all interested persons to appear and contend for or against the creation of the reinvestment zone, the boundaries of the proposed area, whether all or any part of the territory which is described by a plat attached hereto and marked Exhibit "A", should be included in such proposed reinvestment zone; and

WHEREAS, all owners of property located within the proposed reinvestment zone and all other taxing units and other interested persons were given an opportunity at such public hearing to protest the establishment of the reinvestment zone; and

WHEREAS, evidence was offered at said public hearing, both oral and documentary, relating to property redevelopment and tax abatement for the area described in Exhibit "A" attached hereto; now therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
MAGNOLIA, TEXAS:**

Section 1. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct.

Section 2. The City, after conducting such public hearing and having heard such evidence and testimony has made the following findings and determinations based on the evidence and testimony presented to it:

a. The public hearing on the establishment of a reinvestment zone has been properly called, held and conducted and that notice of such hearing has been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone;

b. The City has jurisdiction to hold and conduct this public hearing on the establishment of a reinvestment zone pursuant to Section 312.201, Tax Code, Vernon's Civil Statutes;

c. The establishment of the proposed reinvestment zone within the boundaries described in Exhibit "A" attached hereto will result in benefits to the City, its residents and property owner and to the owners of the land within the designated reinvestment zone;

d. The land located within the reinvestment zone meets the criteria set forth in Section 312.201, Tax Code, Vernon's Civil Statutes for the following reasons:

(1) The designation as a reinvestment zone would be reasonably likely to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and would contribute to the economic development of the City.

(2) Without development, the area to be designated a reinvestment zone would substantially arrest and impair the sound growth of the City because of the initial location of dilapidated buildings and outbuildings; the defective, inadequate and lack of sidewalks and streets; and the deterioration of the proposed site as a whole.

Section 3. The City hereby creates and establishes the reinvestment zone described by the attached plat and marked Exhibit "A" and declares that the said reinvestment zone is eligible for tax abatement.

Section 4. If any section, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not effect any of the remaining provisions of the Ordinance.

Section 5. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place, and subject of the meeting of the City Council at which this ordinance was adopted was posted at a place convenient and readily accessible at all times to the general public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter hereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.


Section 6. The contents of the notice of public hearing, which hearing was held before the City Council on the 25th day of April, 1995, and the publication of said notice is hereby ratified, approved, and confirmed.

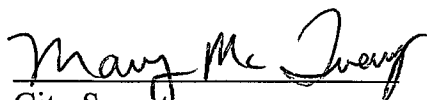
PASSED AND ADOPTED ON ITS FIRST READING THIS 9TH DAY OF MAY, 1995.

Councilwoman Ogden  
Councilman Sutherland  
Councilman Smith  
Councilwoman Cloyd  
Councilman Chumley

AYE  
AYE  
AYE  
AYE  
AYE

ATTEST:

  
John Bramlett, Mayor

  
City Secretary

## **TAX ABATEMENT AGREEMENT**

This Tax Abatement Agreement is by and between the City of Magnolia, Texas, a political subdivision of the State of Texas (hereinafter referred to as the "City") and Environmental Technologies, Inc., (hereinafter referred to as the "Owner"), the owner of taxable real property which is located in the Reinvestment zone described below, and is as follows:

### **I. Authorization**

This Agreement is authorized by the Resolution of the City Council of the City adopted March 14, 1995, which established the City's Tax Abatement Guidelines and Criteria for properties in designated reinvestment zones.

### **II. Property**

The street address of the taxable real property which is the subject of this Agreement (hereinafter referred to as the "Property") is: 200 Brantley Lane, and the legal description or plat thereof is reflected on Exhibit "A" attached hereto. The Montgomery County Appraisal District tax account number of the property is R46116 for the 1994 tax year.

### **III. Owner's Representations**

a. The Owner represents that it is the owner in fee simple of the Property and that the Property is located within the boundaries of the Reinvestment Zone. The Owner represents that the intended use of the Property is to provide consulting services for environmental reclamation projects.

b. The Owner represents that no interest in the Property is held or leased by a member of the City Council of the City.

#### **IV. Terms of the Agreement**

a. The Owner shall make the following improvements to the Property (hereinafter referred to collectively as the "Improvements"): construction of a new 7,800 square foot steel frame office building of an approximate value of \$180,000 and betterments to that building in the approximate amount of \$40,000.

b. The Improvements must be substantially completed within two years of the effective date of this Agreement.

c. The Owner shall use the Property for the proposed use specified in III(a) during the tax abatement period specified in this Agreement. However, the City may approve a change of the proposed use, in writing, if the City determines that the change is consistent with the City's Tax Abatement Guidelines and Criteria.

d. The Owner shall maintain the Improvements in good repair and condition during the tax abatement period.

e. The Owner shall allow the City's employees, agents and representatives access to the Property at any reasonable time for the purpose of inspecting the Improvements to insure that the Improvements are completed and maintained in accordance with the terms of this Agreement. For the purposes of this agreement

the Montgomery County Appraisal District is deemed to be a representative of the City.

## **V. Tax Abatement**

a. If the Owner completes the Improvements in accordance with the terms of this Agreement, the Owner shall be entitled to a tax abatement on the additional value of the certified appraised value of the Property as of the date of this Agreement, resulting from the Improvement to the Property constructed after January 1 of the year in which tax abatement is granted by the official action of the City Council of the City, according to the following schedule, which is set forth in the City's Tax Abatement Guidelines and Criteria:

Year 1	=	100 % (including construction)
Year 2	=	80 %
Year 3	=	60 %
Year 4	=	40 %
Year 5	=	20 %

Additionally, one hundred percent (100%) of the value of eligible improvements shall be abated for no more than two years during the period of construction of such Improvements. Upon completion of the Improvements, as determined solely by the City Council, the five year abatement period shall begin as set forth above. If the period of construction exceeds two years, the Improvements shall be considered completed for purposes of beginning the five year abatement period. In no event shall the combined construction period and five year period of abatement exceed seven years of tax abatement.

b. The abatement herein granted shall extend only to the additional improved value of land, buildings, structures, fixed machinery and equipment and site improvements, which additional value results from the Improvements. The Property's value shall be that as determined on the rolls of the Montgomery County Tax Appraisal District. The abatement herein granted shall be effective with the January 1 valuation date immediately following the date of completion of the Improvements, and shall continue for the abatement period set forth above.

## **VI. Reporting Requirements**

The Owner shall provide semi-annual written reports to the City during the term of this Agreement, due on January 1 and July 1 of each year. The reports shall be submitted to the City Secretary, City of Magnolia, and shall contain the following information:

- a. the status of completion of the Improvements;
- b. the minimum and maximum number of employees in new permanent jobs during each of the six months preceding the report;
- c. the increase in valuation of the Property during the previous year;
- d. the status of the use of the Property during the six months preceding the report;
- e. any changes in the identity of the principals of the Owner, or in the financial status of the Owner and its principals, or any other changes of

information regarding the Owner contained in the Tax Abatement Agreement or the Tax Application completed by the Owner; and

f. any other information as requested in writing by the City Council.

The Owner shall further provide to the City, upon written request, any supporting documentation and information deemed necessary by the City to insure the Owner's compliance with this Tax Abatement Agreement, including, but not limited to, payroll records, updated financial statements, and loan or financing records and documentation.

## **VII. Event of Default**

The City may declare a default upon the occurrence of any one or more of the following circumstances during the five year abatement period:

a. if the new permanent jobs created by the Improvements upon opening for business should fall below 10 employees for a period in excess of thirty days, or the new permanent jobs created by the Improvements falls below 10 employees more than five times during the term of the tax abatement period; or

b. construction of Improvements does not proceed as planned, endangering the agreed substantial increase in the City's tax revenue, in the opinion of City Council; or

c. the Owner fails, refuses or neglects to comply with any of the terms of this Agreement; or



c. any representation or warranty made by the Owner in this Agreement is or becomes false or misleading in any material respect.

If the City declares the Owner in default of this Agreement, this Agreement shall terminate unless cured in accordance with the following paragraph of this Section VII, and the City shall be entitled to recapture any property tax which has been abated as a result of this Agreement.

The City shall notify the Owner of the default by giving written notice to the Owner, which shall specify the basis for the declaration of default. The Owner shall have thirty days from the date of the notice to cure the default. If the Owner proceeds diligently, but fails to cure the default within the thirty day period, the City may, at the option of the City Council, extend the time for a second thirty day period.

### **VIII. Notices**

All notices shall be in writing, and delivered by certified mail, return receipt requested, or by hand delivery with written receipt, to the following address:

Environmental Technologies, Inc.  
1010 S. Magnolia Blvd.  
Magnolia, Texas 77355  
ATTN: Leon V. Fair or Marceile C. Parker

City of Magnolia  
P.O. Box 396  
Magnolia, Texas 77355  
ATTN: City Secretary or Mayor

All notices shall be deemed given upon deposit in the United States mail or upon receipt of hand-delivery. Either party may designate a different address by giving the other party ten days written notice.

#### **IX. Condition**

This agreement is conditioned entirely upon the approval of City Council by the affirmative vote of a majority of the members at a regular or special scheduled meeting.

#### **X. Texas Law**

This Agreement will be governed and construed according to the laws of the State of Texas.

#### **XI. Assignment**

Under no circumstances shall this Agreement or the tax abatement granted herein be assignable by Owner without the prior written consent of City. However, consent will not be unreasonably withheld.

#### **XII. Indemnification**

Owner agrees to defend and indemnify City from and against all claims, demands, actions, damages, losses and expenses, including court costs and attorney's fees, and all loss, damage or injury, or death resulting therefrom, to

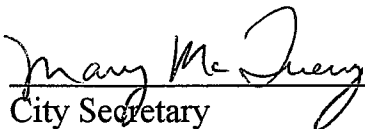
Owner's property or personnel, third persons or the property or personnel of agents, employees or contractors of Owner arising out of or in connection with and during the operations under this Agreement. Any loss, damage, injury or death to personnel or property under this Agreement shall be reported to the City of Magnolia, Texas within ten days of the incident. Such written report shall be a full and complete account of the incident.

APPROVED AND EXECUTED this 9th day of May, 1995.

Councilwoman Ogden	<u>AYE</u>
Councilman Sutherland	<u>AYE</u>
Councilman Smith	<u>AYE</u>
Councilwoman Cloyd	<u>AYE</u>
Councilman Chumley	<u>AYE</u>

ATTEST:

  
John Bramlett, Mayor

  
City Secretary

ATTEST:

ENVIRONMENTAL TECHNOLOGIES, INC.

BY: \_\_\_\_\_

BY:  \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: LEON V. FAIR

TITLE: \_\_\_\_\_

TITLE: V.P. & principal

MINUTES OF REGULAR MEETING HELD DECEMBER 8, 1998

MEETING WAS CALLED TO ORDER BY MAYOR BRAMLETT. PRESENT WAS ALDERMAN SMITH, MATTERN, ALDERWOMAN OGDEN, CLAPP AND CLOYD.

INVOCATION BY MAYOR BRAMLETT  
PLEDGE OF ALLEGIANCE BY ALL

MAYOR BRAMLETT ASK FOR A MOTION TO APPROVE THE MINUTES OF THE REGULAR MEETING HELD 11/10/98. MOTION TO APPROVE WAS MADE BY ALDERMAN SMITH. SECOND BY ALDERWOMAN CLAPP. MOTION CARRIED

MOTION WAS MADE BY ALDERWOMAN OGDEN TO APPROVE THE MINUTES OF THE SPECIAL MEETINGS HELD 11/19/98 AND 12/03/98. SECOND BY ALDERWOMAN CLOYD. MOTION CARRIED

AT THIS TIME MAYOR BRAMLETT PRESENTED ROBERT EASLEY, BUCK GOUDEAU, AND JIM WILLIAMS CONSTRUCTION WITH A PLAQUE FOR EACH DONATING A FLAG TO BE FLOWN AT THE GAZEBO AREA.

OPERATING EXPENSES: MOTION TO APPROVE OPERATING EXPENSES WAS MADE ALDERMAN SMITH. SECOND BY ALDERMAN CLAPP. MOTION CARRIED

PUBLIC COMMENT: TAMMIE BURKE THANKED COUNCIL FOR PUTTING UP THE NO PARKING SIGNS ON FM 1488 BY WILLIE WILLIAMS ELEM. SCHOOL.

TAXES COLLECTED: CURRENT TAXES COLLECTED \$10,412.52 OR 6.79%

POLICE DEPT. REPORT FOR NOV. 1998  
MAGNOLIA CALLS 118, ARREST 18, REPORTS 80, CITATIONS 308, WARNINGS 142, ACCIDENTS 6, HOUSE WATCHES 3, ASSIST 14.  
ARREST MADE: 13 FELONY ARRESTS, 6 ARREST MADE BY SGT. KERR

AUDIT REPORT YEAR ENDING 9/30/98: AUDIT REPORT WAS PRESENTED TO COUNCIL BY BOB VANWASSEHNOVA. MOTION TO APPROVE AUDIT WAS MADE BY ALDERWOMAN CLAPP. SECOND BY ALDERWOMAN CLOYD. MOTION CARRIED

TAX ABATEMENT: WE CURRENTLY HAVE THE TAXABLE VALUE OF NEW ELIGIBLE IMPROVEMENTS MUST BE IN EXCESS OF \$200,000.00 AND MUST CREATE OR RETAIN A MINIMUM OF TEN PERMANENT JOBS IN ORDER TO BE ELIGIBLE FOR CONSIDERATION FOR ABATEMENT.

YEAR 1 100% INCLUDING CONSTRUCTION, YEAR 2 80%, YEAR 3 60%, YEAR 4 40%, YEAR 5 20%.

SUGGESTION IS THAT WE RAISE THE AMOUNT TO \$500,000.00 AND MUST CREATE OR RETAIN A MINIMUM OF TEN PERMANENT JOBS, AND

YEAR 1 85%, YEAR 2 75%, YEAR 3, 65%, YEAR 4 50%, YEAR 5 25%.

MOTION TO APPROVE TAX ABATEMENT NEW GUIDELINES WAS MADE BY ALDERWOMAN CLOYD, SECOND BY ALDERMAN SMITH. MOTION CARRIED.

EXECUTIVE SESSION:

OPEN SESSION: MOTION WAS MADE BY ALDERWOMAN CLAPP AND SECOND BY ALDERWOMAN CLOYD THAT JAMES GOUDEAU OVERSEE ALL DEPARTMENTS, INCLUDING THE POLICE DEPT. UNTIL FURTHER NOTICE. MOTION CARRIED

ADJOURNMENT: MOTION TO ADJOURN WAS MADE BY ALDERMAN SMITH, SECOND BY ALDERWOMAN CLAPP. MOTION CARRIED.

I HEREBY CERTIFY THAT THIS IS A TRUE A CORRECT COPY OF THE MINUTES OF THE MEETING HELD DECEMBER 8, 1998.

  
CITY SECRETARY

①

*New Chapter  
#4*

**RESOLUTION**

A RESOLUTION ESTABLISHING THE GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT IN A REINVESTMENT ZONE CREATED IN THE CITY OF MAGNOLIA.

**SECTION I  
PREAMBLE**

WHEREAS, the creation and retention of job opportunities that bring new wealth is the highest civic priority; and

WHEREAS, new jobs and investment will benefit the area's economy, provide needed opportunities, strengthen the real estate market and generate tax revenue to support local services; and

WHEREAS, the communities within the City of Magnolia must compete with other localities across the Nation currently offering tax inducements to attract new plants and modernization projects;

WHEREAS, any tax incentives offered in the City of Magnolia would reduce needed tax revenue unless strictly limited in application to those new and existing industries that bring new wealth to the community; and

WHEREAS, the abatement of property taxes, when offered to attract primary jobs in industries which bring in money from outside a community, instead of merely recirculating dollars within a community, has been shown to be an effective method of enhancing and diversifying an area's economy; and

WHEREAS, effective September 1, 1987, Texas law requires any eligible taxing jurisdiction to establish GUIDELINES AND CRITERIA as to eligibility for tax abatement agreements prior to the granting of any future tax abatement, said guidelines and criteria to be unchanged for a two year period unless amended by a three quarters vote of council;

THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MAGNOLIA DOES HEREBY ADOPT THESE GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT IN A REINVESTMENT ZONE.

## SECTION II DEFINITIONS

- (1) **Abatement** means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated for economic development purposes.
- (2) **Eligible Jurisdiction** means the City of Magnolia or other taxing district eligible to abate its taxes according to Texas law that levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone.
- (3) **Agreement** means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of tax abatement.
- (4) **Base Year Value** means the taxable value of eligible property January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the agreement.
- (5) **Economic Life** means the number of years a property improvement is expected to be in service in a facility.
- (6) **Deferred Maintenance** means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (7) **Expansion** means the addition of buildings, structures, fixed machinery or equipment for purposes of increasing production capacity.
- (8) **Facility** means property improvements completed or in the process of construction which together comprise an integral whole.
- (9) **Manufacturing Facility** means buildings and structures, including fixed machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- (10) **Modernization** means the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from

the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, or repairing.

(11) **New Facility** means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.

(12) **Regional Distribution Center Facility** means buildings and structures, including fixed machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility operator where a majority of the goods or services are distributed to points at least 10 miles from any part of the City of Magnolia.

(13) **Research Facility** means buildings and structures, including fixed machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

(14) **Office Building** means a new office building to be occupied 100% by one owner or tenant, providing further that said office building and owner or tenant meet the other criteria set forth herein.

### **SECTION III ABATEMENT AUTHORIZED**

(1) **Eligible Facility.** A facility may be eligible for abatement if it is a Manufacturing Facility, Research Facility, Regional Distribution Center Facility, or any other real property not excluded under Section III(5). That shall include an office building as defined in Section II(14).

(2) **Creation of New Value.** Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between the City and the property owner and lessee (if required) subject to such limitation as City Council may require.

(3) **New and Existing Facilities.** Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.

(4) **Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements plus that office



space and related fixed improvements necessary to the operation and administration of the facility.

(5) Ineligible Property. The following types of property shall be fully taxable and ineligible for abatement:

Land, inventories, supplies tools, furnishings and other forms of movable personal property, vehicles, vessels, aircraft, housing, hotel accommodations, deferred maintenance investments, property to be rented or leased except as provided in Section III, on-site directly related improvements for the generation or transmission of electrical energy installed and/or used by the Abatee but not wholly consumed by a new facility or expansion property which has an economic life of less than 15 years, property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas.

Population driven retail enterprises that reasonably can be expected to locate or stay in a community without Tax Abatement generally should be ineligible for consideration. This includes the following in most cases; retail business, hotel and motels, conference centers, restaurants, hospitals, banks and financial institutions.

(6) Owned/Leased Facilities. If a leased facility granted abatement, the agreement shall be executed with the property owner (lessor) and the lessee.

(7) Value and Term of Abatement. Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the agreement. Projects which meet the minimum employment and value guidelines set forth in Section III (8) are eligible for abatement of new value on a sliding scale.

(8) Minimum Guidelines. The taxable value of new eligible improvements must be in excess of five hundred thousand dollars (\$500,000.00) and must create or retain a minimum of ten (10) permanent jobs in order to be eligible for consideration for abatement.

(9) Years and Percentage Abated:

Years 1	=	85%	(including construction)
Year 2	=	75%	
Year 3	=	65%	
Year 4	=	50%	
Year 5	=	25%	

Special Note/Special Circumstances: Nothing contained in the City of Magnolia Tax Abatement Guidelines and Criteria should be construed to limit or restrict City Council in the exercise of its discretion in setting term limits or percentages of reduction in any particular Abatement Application. The Abatement may be extended through the initial agreement and a subsequent agreement may be required if necessary to comply with state law regarding the term of the reinvestment zone. If the period of construction exceeds two years the facility shall be considered completed for purposes of abatement and in no case shall the period of abatement inclusive of construction and completion exceed five years.

(10) **Reporting Requirements.** Semi-annual Status Reports (January 1 and July 1) along with the timely filing of renditions of value, and annual application for abatement with the Montgomery Central Appraisal District are mandatory conditions of the abatement.

(11) **Economic Qualification.** In order to be eligible to receive Tax Abatement the planned improvement:

(a) Must be reasonably expected to increase taxable an valorem tax value of at least \$500,000 based upon the Montgomery Central Appraisal District's appraisal of the Eligible Property.

(b) Must be expected to prevent the loss of payroll or retain, increase or create payroll on a permanent basis in the City.

(c) Must not be expected to solely or primarily have the effect of transferring employment from one part of the City to another.

(d) Must be necessary because capacity cannot be provided efficiently utilizing existing improved property.

(12) **Standards for Tax Abatement** The following factors, among others, shall be considered in determining whether to grant Tax Abatement.

(a) The value of land and existing improvements, if any.

(b) The type and value of the proposed improvements.

(c) The expected economic life of the proposed improvements.

- (d) The number of existing permanent jobs to be retained by the proposed improvements.
- (e) The number of new permanent jobs to be created by the proposed improvements.
- (f) The amount of local payroll to be created or enhanced.
- (g) Whether the new jobs to be created will be filled by persons residing or projected to reside within the City.
- (h) The amount of local sales taxes to be generated directly.
- (i) The amount of property tax base valuation will be increased during the term of Abatement and after Abatement, which shall include a definitive commitment that such valuation shall not, in any case, be less than \$500,000.
- (j) The costs to be incurred by the City to provide facilities or services directly resulting from the new improvements.
- (k) The amount of ad valorem taxes to be paid the City during the Abatement period considering (1) the existing values, (2) the percentage of new value abated, (3) the Abatement period, and (4) the Abatement period.
- (l) The population growth of the City that might occur as a direct result of new improvements.
- (m) The types and values of public improvements, if any, to be made by applicant seeking Abatement.
- (n) Whether the proposed improvements complete with existing business to the detriment of the local economy.
- (o) The impact on the business opportunities of existing businesses.
- (p) The attraction of other new businesses to the area.
- (q) The overall compatibility with the comprehensive, Long Range Plan for the area.

(r) Whether the project is environmentally compatible with the community, and has no negative impact on quality of life perceptions.

(s) The company profile, when established, including business references, principal bank, audited financial statement and Business Plan.

Each application shall be reviewed on its merit utilizing the factors provided above. After such review, Abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

**(13) Denial of Abatement.** No Abatement Agreement shall be authorized if it is determined that:

(a) There would be a substantial adverse affect on the tax vase or providing of government services.

(b) The applicant has insufficient financial capacity, which reasonably could be expected to jeopardize the success of the undertaking.

(c) The planned or potential use of the property would constitute a hazard to public safety, health or morals.

(d) Granting an Abatement might lead to violation of other codes or laws.

(e) For any other reason deemed appropriate by the City.

**(14) Taxability.** From the execution of the abatement to the end of the agreement period taxes shall be payable as follows:

(a) The value of ineligible property as provided in Section III(5) shall be fully taxable;

(b) The base year value of existing eligible property as determined each year shall be fully taxable.

(c) The additional value of new eligible property shall be fully taxable at the end of the abatement period.

## SECTION IV APPLICATION

(1) **Submission.** Any present or potential owner of taxable property in the City may request a tax abatement by filing a written request with the Mayor and City Council.

(2) **Review.** All abatement application(s) will be individually reviewed by the City Council, approved or disapproved based on the merits of the application and the guidelines and criteria set forth herein. In addition, in its discretion, the City Council may appoint a Tax Abatement Review Board to review and make suggested recommendations to the City Council regarding each application. If appointed, that Board shall include: the Mayor, a Councilman and the City Attorney. It shall have no less than seven and no more than nine members.

(3) **Included Items.** The application shall consist of a completed application form which shall provide detailed information on the items described in Section III hereof; a map and property description; a time schedule for undertaking and completing planned improvements. In the case of modernization, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.

(4) **Notice to be Given.** Prior to the adoption of an order designating a reinvestment zone, the City shall give notice as provided by the Tax Code, i.e., (a) written notice to the presiding officer of the governing body of each taxing unit in which the property to be subject to the agreement is located not later than the seventh day before the public hearing, and (b) publication in a newspaper of general circulation within such taxing jurisdiction not later than the seventh day before the public hearing. Before acting upon the application, the City shall through public hearing afford the applicant and the designated representative of any governing body referenced hereinabove opportunity to show cause why the Abatement should or should not be granted.

(5) **60 Day Time Period.** Not more than 60 days after receipt of the completed application, except in unusual circumstances, the City shall by resolution either approve or disapprove the application for Tax Abatement. The City shall notify the applicant of approval or disapproval. Failure to act by resolution within 60 days shall not be construed as approval of abatement, either expressed or implied.

(6) **Timeliness of Actions.** The City shall not enter into an abatement agreement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility. Property eligible for abatement includes only the new improvements that occur after the completion of an abatement agreement with the City.

(7) **Confidentiality Required.** Information that is provided to the City in connection with an application or request for Tax Abatement and that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which Tax Abatement is sought is confidential and not subject to public disclosure until the Tax Abatement agreement is executed. That information in the custody of a taxing unit after the agreement is executed is not confidential.

## **SECTION V AGREEMENT**

(1) **Notice to Jurisdictions.** Not later than the seventh day before the date on which the City enters into the Abatement Agreement, the City shall deliver to the presiding officer of the governing body of each other taxing unit which the property is located a written notice that the City intends to enter into the agreement. The notice shall include a copy of the prepared agreement.

(2). **Agreement Contents.** After approval, the City shall formally pass a resolution and execute an Agreement with the owner of the facility and lessee as required, which shall include:

- (a) Estimated value to be abated and the base year value;
- (b) Percent of value to be abated each year as provided in Section III(9);
- (c) The commencement date and the termination date of abatement;
- (d) The proposed use of the facility, nature of construction, time schedule, map, property description and improvement list as provided in the application for Tax Abatement;
- (e) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Section III, VI, VII, and VIII..

- (f) The size of investment and average number of jobs involved.

Such agreement shall normally be executed within sixty days after the applicant has forwarded all necessary information and documentation to the City.

## **SECTION VI RECAPTURE**

(1) **Termination.** In the event that the company or individual (a) allows its ad valorem taxes owned the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or (b) violates any of the terms and conditions of the abatement agreement and fails to cure during the cure period, the agreement then may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within thirty days of the termination.

(2) **Cure Notification.** Should the City determine that the company or individual is in default according to the terms and conditions of its agreement, the City shall notify the company or individual in writing at the address stated in the agreement, and if such is not cured within thirty days from the date of such notice (**Cure Period**), then the agreement may be terminated.

## **SECTION VII ADMINISTRATION**

(1) **Assessment Determination.** The Chief Appraiser of Montgomery County Central Appraisal District shall annually determine an assessment of the real property covered under the abatement. Each year, the company or individual receiving abatement shall furnish the Chief Appraiser with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the City of the amount of the assessment.

(2) **Access Guaranteed.** The agreement shall stipulate that employees and/or designated representatives of the City of Magnolia will have access to the abated property during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty four hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more

representatives of the company or individual and in accordance with its safety standards.

(3) **Annual Assessment Reports.** Upon completion of construction the designated representative of the City shall annually evaluate information regarding each facility receiving abatement to insure compliance with the agreement, and a formal report shall be made to the City Council.

(4) **Timely Filing.** The City shall timely file with the Texas Department of Commerce and the State Comptroller's Office all information required by the Tax Code.

## **SECTION VIII ASSIGNMENT**

An abatement agreement may be transferred and assigned to a new owner or lessee of the same facility upon the approval by resolution of the City Council of the City of Magnolia subject to the financial capacity of the assignee. Any assignment shall provide that all conditions, terms and obligations in the original abatement agreement are guaranteed by the execution of an additional contractual agreement with the City as an addendum to the abatement agreement. No assignment shall be approved if the parties to the existing agreement, the new owner or new lessee are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

## **SECTION IX SUNSET PROVISION**

These guidelines and criteria are effective upon the date of their adoption and will remain in effect for two years, unless amended by three-quarters vote of the City Council of the City of Magnolia as so provided for the Tax Code, at which time all reinvestment zones and tax abatement agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the guidelines and criteria will be modified, renewed or eliminated.

## **SECTION X DISCRETION OF THE CITY**

The adoption of these guidelines and criteria by the City does not:



(1) Limit the discretion of the City Council to decide whether to enter into a specific Tax Abatement agreement.

(2) Limit the discretion of the City Council to delegate to its employees the authority to determine whether or not the City Council should consider a particular application or request for Tax Abatement.

(3) Create any property, contract, or other legal right in any person, partnership, corporation or other entity to have the City Council consider or grant a specific application of request for Tax Abatement.

PASSED AND APPROVED THIS 8TH DAY OF DECEMBER, 1998

Councilwoman Ogden	<u>Aye</u>
Councilman Mattern	<u>Aye</u>
Councilman Smith	<u>Aye</u>
Councilwoman Cloyd	<u>Aye</u>
Councilwoman Clapp	<u>Aye</u>

ATTEST:

Mary M. Jurey  
City Secretary

John Bramlett  
John Bramlett, Mayor