

COUNCIL ACTION FORM

SUBJECT: APPROVAL OF IOWA ECONOMIC DEVELOPMENT AUTHORITY HIGH QUALITY JOBS PROGRAM CONTRACT FOR FINANCIAL ASSISTANCE FOR BARILLA AMERICA, INC. WITH LOCAL MATCH IN THE FORM OF INDUSTRIAL PROPERTY TAX ABATEMENT

BACKGROUND:

Barilla America, Inc. (Barilla) is a subsidiary of Barilla, an Italian company that provides food products to a global market. Barilla's Ames facility, located east of Interstate 35, produces dry pasta.

Barilla is initiating an expansion project that will include construction of storage and production facilities to add a gluten free pasta products line to the Ames facility. Total investment expected for the project is over \$26 million. Assistance from the State of Iowa will include tax credits totaling approximately \$850,000. The company expects to grow employment by 23 additional jobs with the expansion. The local match will be limited to property tax abatement available through the City's existing Industrial Property Tax Abatement program. The estimated incremental value eligible for abatement is \$3,336,000, resulting in a five year total abatement of around \$217,900 across all taxing bodies.

City Council endorsed an application for assistance to the Iowa Economic Development Authority (IEDA) at the January 13, 2015 meeting. The application for assistance was approved and contract awarded by the IEDA. For the project to continue, Council must authorize entering into the contract for award. For Barilla to receive the local match, the company will need to apply for the City's Industrial Abatement Program and the project must qualify with the terms. Qualification for the Industrial Abatement Program will require additional action by Council prior to the City Assessor processing the abatement for Barilla. The proposed project is unique in that much of the added value for the project will be created within the shell of the existing facility. The improvement has been described as a "building within a building" to provide isolation of the gluten free product production.

The City's Industrial abatement program was established under Iowa Code Section 427B which generally allows abatement only for "new construction". Under the Iowa Code "new construction" **does not** include "reconstruction of an existing building or structure which does not constitute complete replacement of an existing building or structure or refitting of an existing building or structure, unless the reconstruction of an existing building or structure is required due to economic obsolescence and the reconstruction is necessary to implement recognized industry standards for the manufacturing and processing of specific products and the reconstruction is required."

For the Barilla project to qualify for abatement under the reconstruction terms of the Industrial Abatement program, the City Council must provide prior approval. This is different from the more typical abatement for new construction where no initial Council action is required.

It is clear that this project meets the terms of Iowa Code Section 427B for Industrial Abatement of improvements “necessary to implement recognized industry standards for the manufacturing and processing of specific products.” The improvements will be required to meet industry standards for production of gluten free pasta.

Council approval of both the economic development contract and the Iowa Code Section 427B abatement for reconstruction are required to move forward with this project.

ALTERNATIVES:

1. Adopt a resolution approving a contract for economic development assistance with Barilla America, Inc. and the Iowa Economic Development Authority with local match to be limited to Industrial Property Tax abatement and approve Industrial Property tax abatement for reconstruction under the project.
2. Do not adopt a resolution of approving the contract and associated abatement.

CITY MANAGER’S RECOMMENDED ACTION:

Barilla is global food company and has selected Ames as a location to make a significant investment of capital to expand jobs without the cost of additional City infrastructure. In keeping with the Council’s goal to promote economic development, this project will expand the number of quality jobs within our city. Reconstruction of the existing facility is necessary to add the new product line.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1 as described above.

***ECONOMIC DEVELOPMENT
ASSISTANCE CONTRACT***

BY

BARILLA AMERICA, INC.,

THE CITY OF AMES,

AND THE

IOWA ECONOMIC DEVELOPMENT AUTHORITY

CONTRACT NUMBER: 15-TC-029

TABLE OF CONTENTS

ARTICLE 1:	CONTRACT DURATION
ARTICLE 2:	DEFINITIONS
ARTICLE 3:	AWARD TERMS
ARTICLE 4:	CONDITIONS TO DISBURSEMENT OF FUNDS AND ISSUANCE OF TAX CREDIT NUMBER; DISBURSEMENT TERMS
ARTICLE 5:	SECURITY REQUIREMENTS
ARTICLE 6:	REPRESENTATIONS AND WARRANTIES
ARTICLE 7:	COVENANTS OF THE RECIPIENT
ARTICLE 8:	COVENANTS OF THE COMMUNITY
ARTICLE 9:	EVENTS OF DEFAULT; NOTICE AND OPPORTUNITY TO CURE; AND REMEDIES AVAILABLE TO IEDA
ARTICLE 10:	MISCELLANEOUS

CONTRACT EXHIBITS

Exhibit A -	Recipient's Financial Assistance Application (on file with IEDA), Application # 15-HQJTC-031
Exhibit B-2	High Quality Jobs Program - Tax Credit Special Conditions
Exhibit C -	Description of the Project and Award Budget
Exhibit D -	Job Obligations
Exhibit E -	Reserved
Exhibit F -	Reserved

Economic Development Assistance Contract

RECIPIENT:	BARILLA AMERICA, INC.
COMMUNITY:	CITY OF AMES
CONTRACT NUMBER:	15-TC-029
AWARD DATE:	JANUARY 16, 2015
AWARD AMT. – TAX INCENTIVES	\$765,090

This ECONOMIC DEVELOPMENT ASSISTANCE CONTRACT (Contract) is made as of the Contract Effective Date by the Iowa Economic Development Authority (IEDA), 200 East Grand Avenue, Des Moines, IA 50309, and Barilla America, Inc. (Recipient), 3311 East Lincoln Way, Ames, Iowa 50010 and the City of Ames (Community), 515 Clark Avenue, Ames, IA 50010.

WHEREAS, the Recipient submitted an application to IEDA requesting assistance in the financing of its Project as more fully described in Exhibit C, *Description of the Project and Award Budget* (the Project); and

WHEREAS, the Iowa Economic Development Authority Board (IEDA Board) awarded the Recipient assistance for the Project from the funding sources identified herein (collectively, the Award), all of which are subject to the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the Recipient, the Community and IEDA agree to the following terms:

ARTICLE 1: CONTRACT DURATION

This Contract shall be in effect on the Contract Effective Date and shall remain in effect until after completion of each of the following:

(a) *Through Project Period Completion Date.* Through the Project Period Completion Date and for a reasonable period of time after Project Period Completion Date during which IEDA will conduct Project closeout procedures to verify that the Project was completed in compliance with Contract requirements.

(b) *Through Maintenance Period Completion Date and Contract Closeout.* Through the Maintenance Period Completion Date and for a reasonable period of time after Maintenance Period Completion Date during which IEDA will conduct closeout procedures to verify that the Project was maintained in compliance with Contract requirements.

(c) *Repayment or payment Obligation.* Until all outstanding amounts due to IEDA, if any, are received by IEDA or all outstanding obligations to IEDA are satisfied in full.

(d) *Contract End Date.* Until IEDA has completed Contract closeout procedures and provided Recipient and Community with written Notice of Final Contract Closeout. This Contract shall terminate as of the date stated in the written Notice of Final Contract Closeout; such date shall be the Contract End Date.

ARTICLE 2: DEFINITIONS

The following terms apply to this Contract:

“*Award*” means the sum of any and all assistance provided by IEDA for the Project under this Contract.

“*Award Date*” means the date first stated in this Contract and is the date the IEDA Board approved the awarding of financial assistance to the Recipient for the Project.

“*Base Employment Level*” means the number of full-time equivalent positions at a business, as established by the authority and a business using the business’s payroll records, as of the date a business applies for tax incentives or project completion assistance. The number of jobs the business has pledged to create and retain shall be in addition to the base employment level.

“*Benefits*” means nonwage compensation provided to an employee. Benefits include medical and dental insurance plans, pension, retirement, and profit-sharing plans, child care services, life insurance coverage, vision insurance coverage, and disability insurance coverage.

“*Contract Effective Date*” means the latest date on the signature page of this Contract.

“*Contract End Date*” means the date stated in the Notice of Final Contract Closeout issued by IEDA pursuant to Article 1.

“*Created Job*” means a new, permanent, full-time equivalent (FTE) position added to a business’s payroll in excess of the base employment level at the time of application for tax incentives or project completion assistance.

“*Full-time equivalent job*” or “*full-time*” means the employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or
2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year including paid holidays, vacations, and other paid leave.

For purposes of this definition, “employment of one person” means the employment of one natural person and does not include “job sharing” or any other means of aggregation or combination of hours worked by more than one natural person.

“*Job Obligations*” means the jobs that must be created or retained as a result of a project’s receiving state or federal financial assistance, project completion assistance, or tax incentives from the authority and that are required to meet the qualifying wage threshold requirements. Recipients job obligations are specified in Exhibit D of this contract. Jobs that do not meet the qualifying wage threshold requirements shall not be counted toward a business’s job creation or job retention obligations contained in Exhibit D. The job obligations in Exhibit D include the business’s base employment level and the number of new jobs required to be created above the base employment level.

“*Laborshed Wage*” means the qualifying wage threshold applicable to recipient’s project as calculated pursuant to rule 261-173.2 and 261-chapter 174 and as specified in Exhibit D of this contract.

“*Maintenance Period*” means the period of time between the Project Completion Date and the Maintenance Period Completion Date. The Project must be maintained in Iowa for this period of time.

“*Maintenance Period Completion Date*” means the date on which the Maintenance Period ends. The specific date on which the project maintenance period ends is identified in Exhibit D.

“*Project*” means the description of the work and activities to be completed by the Recipient as outlined in Exhibit C - Description of the Project and Award Budget.

“*Project Completion Date*” means the date by which a recipient of incentives or assistance has agreed to meet all the terms and obligations contained in this agreement. The project completion date will be a date on which the project must be completed, all incented jobs must be created or retained, and all other applicable requirements must be met. The specific date on which the project completion period ends is identified in Exhibit D.

“*Project Completion Assistance*” means financial assistance or technical assistance provided to an eligible business in order to facilitate the start-up, location, modernization, or expansion of the business in this state and provided in an expedient manner to ensure the successful completion of the start-up location, modernization, or expansion project.

“*Project Completion Period*” means the period of time between the date financial assistance is awarded (the “award date”) and the project completion date.

“*Qualifying Jobs*” are those Created or Retained Jobs that meet or exceed the Qualifying Wage Threshold Requirement established to qualify for program funding for the programs providing assistance to this Project.

“*Qualifying Wage Threshold*” means the laborshed wage as calculated by IEDA pursuant to statute and rule for each program that is providing financial assistance or tax credit incentives for this Project. The Qualifying Wage Threshold Requirement for this Project is outlined in Exhibit D, Job Obligations.

“Retained Job” means an existing job that meets the Qualifying Wage Threshold Requirements and would be eliminated or moved to another state if the Project did not proceed in Iowa.

“Sufficient Benefits” means that the employer offers to each full-time equivalent permanent position a benefits package that meets one of the following:

1. The employer pays 80 percent of the premium costs for a standard medical and dental plan for single employee coverage with a \$750 maximum deductible; or
2. The employer pays 50 percent of the premium costs for a standard medical and dental plan for employee family coverage with a \$1,500 maximum deductible; or
3. The employer provides medical coverage and pays the monetary equivalent of paragraph “1” or “2” above in supplemental employee benefits. Benefits counted toward monetary equivalent could include medical coverage, dental coverage, vision insurance, life insurance, pension, retirement (401k), profit sharing, disability insurance, child care services.

“Tax Incentives” means the tax credits, refunds and other authorized benefits IEDA has awarded for this Project as detailed in Article 3.

“Total Project Cost” means the cost incurred by the Recipient to complete the Project as described in Exhibit C.

ARTICLE 3: AWARD TERMS

3.1 Total Award Amount. The IEDA Board has approved an Award to the Community and Recipient from the funding sources and in the maximum amounts shown below:

TAX INCENTIVES		
High Quality Jobs Program	Tax Incentives	\$ 765,090
TOTAL STATE TAX INCENTIVES:		\$ 765,090

3.2 Terms and Conditions of Award. The terms and conditions of the Award shall be as described in this Contract and the following incorporated exhibit(s):

Exhibit B-2 High Quality Jobs Program – Tax Credit Component Special Conditions

ARTICLE 4: CONDITIONS TO AWARD; DISBURSEMENT AND ISSUANCE TERMS

4.1 Reserved.

4.2 Tax Incentives–Conditions to Issuance of Tax Credit Number.

(a) *Tax Credit Number Required to Claim Incentives.* Recipient shall not claim the Tax Incentives described in Article 3 until IEDA has issued a tax credit number for this Project and Recipient has undertaken the activities described in this Contract and the applicable law to be eligible for such Tax Incentives.

(b) *Issuance of Tax Credit Number.* Upon satisfaction of the conditions described in herein, IEDA will issue a tax credit number to the Recipient for this Project. The tax credit number shall be used in preparing any claims for Tax Incentives

(c) *Conditions to Issuance of Tax Credit Number.* The obligation of IEDA to issue a tax credit number shall be subject to the conditions precedent described in Article 4.

(d) *Documents Submitted.* IEDA shall have received the documents described in section 4.3, properly executed and completed, and approved by IEDA as to form and substance, prior to issuing any tax credit number.

4.3 Documents required.

(a) *Contract.* Fully executed Contract.

(b) *Incorporation Documents.* Copies of the Articles of Incorporation or the Articles of Organization, whichever is appropriate, of the Recipient, certified in each instance by its secretary or assistant secretary.

(c) *Certificate of Existence; Certificate of Authority.* A certificate of existence for the Recipient from the State of incorporation or organization, whichever is appropriate, and a certificate of authority authorizing the Recipient to conduct business in the state of Iowa, if it is not organized or incorporated in Iowa.

(d) *Results of Lien and Tax Search and Documentation of Satisfactory Credit History.* Financing statement, tax and judgment lien search results, in the Recipient's state of incorporation or organization, against the Recipient and documentation of satisfactory credit history of the Recipient and guarantors, as applicable, with no judgments or unsatisfied liens or similar adverse credit actions.

(e) *Other Required Documents.* IEDA shall have received such other contracts, instruments, documents, certificates and opinions as IEDA may reasonably request.

(f) *Solid or Hazardous Waste Audit.* To comply with Iowa Code section 15A.1(3)"b," if the Recipient generates solid or hazardous waste, it must either: a) submit a copy of the Recipient's existing in-house plan to reduce the amount of waste and safely dispose of the waste based on an in-house audit conducted within the past 3 years; or b) submit an outline of a plan to be developed in-house; or c) submit documentation that the Recipient has authorized the Iowa Department of Natural Resources or Iowa Waste Reduction Center to conduct the audit.

(g) *Release Form – Confidential Tax Information.* A signed Authorization for Release of Confidential State Tax Information form to permit IEDA to receive the Recipient's state tax information directly from the Iowa Department of Revenue for the purpose of evaluation and administration of tax credit programs and other state financial assistance programs.

(h) *Project Financial Commitments.* The Recipient shall have submitted documentation acceptable to IEDA from the funding sources identified in Exhibit A committing to the specified financial involvement in the Project and received the IEDA's approval of the documentation. The documentation shall include the amount, terms and conditions of the financial commitment, as well as any applicable schedules and may include agreements and resolutions to that effect.

(i) *State Building Code Bureau Approval.* If any part of the Award proceeds will be used for the construction of new buildings, bidding for construction shall not be conducted prior to the written approval of the final plans by the State Building Code Bureau of the Iowa Department of Public Safety, and only if either of the following applies:

1. The building or structure is located in a governmental subdivision which has not adopted a local building code; or

2. The building or structure is located in a governmental subdivision which has adopted a building code, but the building code is not enforced.

4.4 Suspension, Reduction or Delay of Award. Any one or more of the following shall be grounds for IEDA to delay the issuance of a tax credit number or receipt of other Tax Incentives:

(a) *Unremedied event of default.* Upon the occurrence of an Event of Default (as defined in this Contract) by the Recipient, the IEDA may suspend the issuance of the Award to the Recipient until such time as the default has been cured to IEDA's satisfaction.

(b) *Layoff, closure or relocation.* In the event the Recipient experiences a layoff within the state of Iowa, relocates or closes any of its Iowa facilities IEDA has the discretion to reduce or eliminate some or all of the amount of tax incentives to be received.

(c) *Reduction, discontinuance or alteration of state funding/programs.* Any termination, reduction, or delay of tax incentives available due, in whole or in part, to (i) lack of, reduction in, or a deappropriation of tax incentives previously appropriated or authorized for this Contract, or (ii) any other reason beyond the IEDA's control may, in the IEDA's discretion, result in the suspension, reduction or delay of authorization or issuance of Tax Incentives to the Recipient.

ARTICLE 5: RESERVED.

ARTICLE 6: REPRESENTATIONS AND WARRANTIES

6.1 Representations of Recipient. The Recipient represents and warrants to IEDA as follows:

(a) *Organization and Qualifications.* The Recipient is duly organized, validly existing and in good standing under the state of its incorporation or organization, whichever is appropriate, and is authorized to conduct business in the state of Iowa. The Recipient has full and adequate power to own its property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the property owned or leased by it requires such licensing or qualifying, except where the failure to so qualify would not have a material adverse effect on the Recipient's ability to perform its obligations hereunder.

(b) *Authority and Validity of Obligations.* The Recipient has full right and authority to enter into this Contract. The person signing this Contract has full authority on behalf of Recipient to execute this Contract and issue, execute or otherwise secure or deliver any documents or obligations required under this Contract on behalf of the Recipient; and to perform, or cause to be performed, each and all of the obligations under the Contract.

The Contract delivered by the Recipient has been duly authorized, executed and delivered by the Recipient and constitute the valid and binding obligations of the Recipient and is enforceable against it in accordance with its terms. This Contract and related documents do not contravene any provision of law or any judgment, injunction, order, or decree binding upon the Recipient or any provision of the corporate governance documents of the Recipient, nor does this Contract contravene or constitute a default under any covenant, indenture or contract of or effecting the Recipient or any of its properties.

(c) *Subsidiaries.* The Recipient has no Subsidiaries involved with the Project on the Contract

Effective Date.

(d) *Financial Reports.* The balance sheet of the Recipient furnished to IEDA fairly presents its financial condition as at said date in conformity with Generally Accepted Accounting Principles (GAAP) applied on a consistent basis. The Recipient has no contingent liabilities which are material to it, other than as indicated on such financial statements or, with respect to future periods, on the financial statements furnished to IEDA.

(e) *No Material Adverse Change.* Since the Award Date, there has been no change or the Recipient foresees no change in the condition (financial or otherwise) of the Recipient or the prospects of the Recipient, except those occurring in the ordinary course of business, none of which individually or in the aggregate have been materially adverse. To the knowledge of the Recipient, there has been no material adverse change in the condition of the Recipient (financial or otherwise) or the prospects of the Recipient.

(f) *Full Disclosure; Recipient's Financial Assistance Application.* The statements and other information furnished to the IEDA by Recipient in its Financial Assistance Application and in connection with the negotiation of this Contract do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading. The IEDA acknowledges that as to any projections furnished to the IEDA, the Recipient only represents that the same were prepared on the basis of information and estimates it believed to be reasonable.

(g) *Trademarks, Franchises and Licenses.* The Recipient owns, possesses, or has the right to use all necessary patents, licenses, franchises, trademarks, trade names, trade styles, copyrights, trade secrets, knowhow and confidential commercial and proprietary information to conduct its business as now conducted, without known conflict with any patent, license, franchise, trademark, trade name, trade style, copyright or other proprietary right of any other Person. As used in this Contract, "Person" means an individual, partnership, corporation, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

(h) *Governmental Authority and Licensing.* The Recipient has received all licenses, permits, and approvals of all Federal, state, local, and foreign governmental authorities, if any, necessary to conduct its business, in each case where the failure to obtain or maintain the same could reasonably be expected to have a material adverse effect. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit, or approval is pending or, to the knowledge of the Recipient threatened.

(i) *Litigation and Other Controversies.* There is no litigation or governmental proceeding pending, nor to the knowledge of the Recipient threatened, against the Recipient which if adversely determined would result in any material adverse change in the financial condition, properties, business or operations of the Recipient, nor is the Recipient aware of any existing basis for any such litigation or governmental proceeding.

(j) *Good Title.* The Recipient has good and defensible title to (or valid leasehold interests in) all of its property involved with the Project (including, without limitation, the Secured Property if real property is a security for this Contract) reflected on the most recent balance sheets furnished to the IEDA (except for sales of assets in the ordinary course of business).

(k) *Taxes.* All tax returns required to be filed by the Recipient in any jurisdiction have, in fact, been filed, and all taxes, assessments, fees and other governmental charges upon the Recipient or upon any of its property, income or franchises, which are shown to be due and payable in such returns, have been paid, except such taxes, assessments, fees and governmental charges, if any, as are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and as to which adequate reserves established in accordance with GAAP have been provided. The Recipient knows

of no proposed additional tax assessment against it for which adequate provisions in accordance with GAAP have not been made on its accounts. Adequate provisions in accordance with GAAP for taxes on the books of the Recipient have been made for all open years, and for their current fiscal period.

(l) *Other Contracts.* The Recipient is not in default under the terms or any covenant, indenture or contract of or affecting either the Recipient's business or any of its properties, which default, if uncured, would have a material adverse effect on its financial condition, properties, business or operations.

(m) *No Event of Default.* No Event of Default, as defined in Article 9, has occurred or is continuing.

(n) *Compliance with Laws.* The Recipient is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to the business operations of the Recipient and laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes or substances, non-compliance with which could have a material adverse effect on the financial condition, properties, business or operations of the Recipient. The Recipient has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental or health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, properties, business or operations of the Recipient.

(o) *Effective Date of Representations and Warranties.* The warranties and representations of this Article are made as of the Contract Effective Date and shall be deemed to be renewed and restated by the Recipient each time Tax Incentives are claimed by the Recipient.

6.2 Representations of Community.

(a) *Local Approvals Received; Authority and Validity of Obligations.* The Community has secured all necessary local approvals and has full right and authority to enter into this Contract. The person signing this Contract has full authority on behalf of the Community to:

1. Sign this Contract, and
2. Perform each and all of the Community's obligations under this Contract.

The Contract delivered by the Community has been duly authorized, executed and delivered by the Community and constitutes the valid and binding obligations of the Community and is enforceable against it in accordance with its terms. This Contract and related documents do not contravene any provision of law or any judgment, injunction, order or decree binding upon the Community, contravene or constitute a default under any covenant, indenture or contract of or affecting the Community or any of its properties.

(b) *Local Commitment.* The Community represents that there are legally enforceable commitments in place for the Community local commitment identified for the Project in *Exhibit C -Description of the Project and Award Budget.*

(c) *No Material Adverse Change.* Since the Award Date, there has been no material adverse change in the Community's ability to perform its obligations under this Contract.

(d) *Full Disclosure; Community's Financial Assistance Application.* The statements and other information furnished to the IEDA by the Community in its Financial Assistance Application and in connection with the negotiation of this Contract do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading. The IEDA acknowledges that as to any projections furnished to the IEDA, the Community only

represents that the same were prepared on the basis of information and estimates it believed to be reasonable.

(e) *Governmental Authority and Licensing.* The Community has received all licenses, permits, and approvals of all federal, state, local, and foreign governmental authorities, if any, necessary to perform its obligations under this Contract. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit, or approval is pending or, to the knowledge of the Community threatened.

(f) *Litigation and Other Controversies.* There is no litigation or governmental proceeding pending, nor to the knowledge of the Community threatened, against the Community which if adversely determined would result in any material adverse change in the Community's ability to perform under this Contract nor is the Community aware of any existing basis for any such litigation or governmental proceeding.

(g) *No Event of Default.* No Event of Default by the Community, as defined in Article 9, has occurred or is continuing.

(h) *Compliance with Laws.* The Community is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to the operations of the Community and laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes or substances, non-compliance with which could have a material adverse effect on the financial condition, properties, business or operations of the Community. The Community has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental or health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, properties, business or operations of the Community.

(i) *Effective Date of Representations and Warranties.* The warranties and representations of this Article are made as of the Contract Effective Date.

ARTICLE 7: COVENANTS OF THE RECIPIENT

For the duration of this Contract, the Recipient covenants to IEDA as follows:

7.1 Project Performance Obligations.

(a) *Reserved.*

(b) *Meet and Maintain Eligibility Requirements.* Recipient shall continue to meet and maintain all statutory eligibility requirements for the funding sources providing assistance under this Contract.

(c) *Project Time Period.* This Contract covers the five (5) year Project time period from the Award Date through the Maintenance Period Completion Date. Recipient shall complete and maintain the Project within the Project time period shown below:

COMPLIANCE MEASUREMENT POINT

COMPLIANCE MEASUREMENT POINT

Award Date	Project Completion Period	Project Completion Date	Maintenance Period	Maintenance Period Completion Date	Contract Closeout
<p><i>"Award Date"</i> means the date first stated in this Contract and is the date the IEDA Board approved the awarding of financial assistance to the Recipient for the Project.</p>	<p><i>"Project Completion Period"</i> means the period of time between the Award Date and the Project Completion Date.</p>	<p><i>"Project Completion Date"</i> means the date 3 years from the Award Date. Recipient must complete the Project by this date.</p> <p>At this point, IEDA will review the Project to verify compliance with Contract terms and obligations.</p>	<p><i>"Maintenance Period"</i> means the period of time between the Project Completion Date and the Maintenance Period Completion Date. The Project must be maintained in Iowa for this period of time.</p>	<p><i>"Maintenance Period Completion Date"</i> means the date 2 years from the Project Completion Date and is the date on which the Maintenance Period ends.</p> <p>At this point, IEDA will review the Project to verify that it was maintained in compliance with Contract terms and obligations.</p>	<p>IEDA will conduct Contract Closeout procedures after all events described in Article 1 have been met.</p> <p><i>"Contract End Date"</i> means the date stated in IEDA's written Notice of Final Contract Closeout that is issued pursuant to Article 1.</p>

(d) *Complete Project by Project Completion Date.* By the Project Completion Date, Recipient shall complete the Project, make the total investment it pledged for the Project and in accordance with the Award Budget as detailed in Exhibit C - Description of the Project and Award Budget, and comply with all other performance requirements described in this Contract.

(e) *Total Project Costs.* By the Project Completion Date, Recipient shall have completed the Project with a Total Project Cost as detailed in Exhibit C - Description of the Project and Award Budget.

(f) *Maintain Project through Maintenance Period Completion Date.* Recipient shall maintain the Project through the Maintenance Period Completion Date.

(g) *Maintain Project in Iowa During Contract Period.* The Recipient shall at all times preserve and maintain its existence as a corporation in good standing and maintain the Project in Iowa. The Recipient will preserve and keep in force and affect all licenses, permits, franchises, approvals, patents, trademarks, trade names, trade styles, copyrights and other proprietary rights necessary to the proper conduct of its respective business.

7.2 Taxes and Insurance.

(a) *Pay Taxes and Assessments.* The Recipient shall duly pay and discharge all taxes, rates, assessments, fees, and governmental charges upon or against its properties, in each case before the same become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith and by appropriate proceedings and adequate reserves are provided therefore.

(b) *Maintain Insurance.* The Recipient shall insure and keep insured in good and responsible insurance companies, all insurable property owned by it which is of a character usually insured by Persons similarly situated and operating like properties against loss or damage from such hazards or risks as are insured by Persons similarly situated and operating like properties; and the Recipient shall insure such other hazards and risks (including employers' and public liability risks) in good and responsible insurance companies as and to the extent usually insured by Persons similarly situated and conducting similar business. The Recipient will upon request of IEDA furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Article.

7.3 Preserve Project.

(a) *Maintenance of Properties.* The Recipient shall maintain, preserve and keep its properties in good repair, working order and condition (ordinary wear and tear excepted) and will from time to time make all needful and proper repairs, renewals, replacements, additions and betterments thereto so that at all times the efficiency thereof shall be fully preserved and maintained in accordance with prudent business practices.

(b) *Reserved.*

7.4 Recipient Changes.

(a) *No Changes in Recipient Operations.* The Recipient shall not materially change the Project or the nature of the business and activities being conducted, or proposed to be conducted by Recipient, as described in the Recipient's approved application for funding, Exhibit A of this Contract, unless approved in writing by IEDA prior to the change.

(b) *Changes in Recipient Ownership, Structure and Control.* The Recipient shall not materially change the ownership, structure, or control of the business if it would adversely affect the Project. This includes, but is not limited to, entering into any merger or consolidation with any person, firm or corporation or permitting substantial distribution, liquidation or other disposal of assets directly associated with the Project. Recipient shall provide IEDA with advance notice of any proposed changes in ownership, structure or control. The materiality of the change and whether or not the change affects the Project shall be as reasonably determined by IEDA.

7.5 Required Reports.

(a) *Review of Reports.* The Recipient shall prepare, sign and submit required reports, in the form and content required by IEDA, as specified in this Contract.

(b) *Reports.* The Recipient shall prepare, sign and submit the following reports to the IEDA throughout the Contract period:

<u>Report</u>	<u>Due Date</u>
<u>Annual Project Status Report</u> The Annual Project Status Report will collect information from the Recipient about the status of the Project.	July 31 st for the period ending June 30th
<u>End of Project Report</u> The End of Project Report will collect information from the Recipient about the completed Project.	Within 30 days of Project Completion Date
<u>End of Maintenance Period Report</u> The End of Maintenance Period Report will collect information from the Recipient's continued maintenance of the Project.	Within 30 days of the end of the Job Maintenance Period Completion Date

(c) *Additional Reports, Financial Statements as Requested by IEDA.* The IEDA reserves the right to require more frequent submission of reports if, in the opinion of the IEDA, more frequent submissions would provide needed information about Recipient's Project performance, or if necessary in order to meet requests from the Iowa General Assembly, the Department of Management or the Governor's office. At

the request of IEDA, Recipient shall submit its annual financial statements completed by an independent CPA, or other financial statements including, but not limited to, income, expense, and retained earnings statements.

7.6 Compliance with Laws.

(a) *State, local and federal laws.* Recipient shall comply in all material respects with the requirements of all applicable federal, state and local laws, rules, regulations and orders.

(b) *Environmental laws.* Recipient shall comply in all material respects with all applicable environmental, hazardous waste or substance, toxic substance and underground storage laws and regulations, and the Recipient shall obtain any permits or, licenses and shall acquire or construct any buildings, improvements, fixtures, equipment or its property required by reason of any applicable environmental, hazardous waste or substance, toxic substance or underground storage laws or regulations.

(c) *Nondiscrimination laws.* Recipient shall comply in all material respects with all applicable federal, state, and local laws, rules, ordinances, regulations and orders applicable to the prevention of discrimination in employment, including the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action.

(d) *Worker rights and safety.* The Recipient shall comply in all material respects with all applicable federal, state and local laws, rules, ordinances, regulations and orders applicable to worker rights and worker safety.

(e) *Immigration laws.* Recipient shall only employ individuals legally authorized to work in this state. In addition to any and all other applicable penalties provided by current law, all or a portion of the Award is subject to recapture by IEDA if Recipient is found to knowingly employ individuals not legally authorized to work in the state of Iowa.

(f) *Compliance with IEDA's Administrative Rules.* Recipient shall comply with IEDA's administrative rules for the programs providing assistance to the Project and rules governing administration of this Contract.

7.7 Inspection and Audit. The Recipient shall permit the IEDA and its duly authorized representatives, at such reasonable times and reasonable intervals as the IEDA may designate, to:

(a) Conduct site visits and inspect the Project.

(b) Audit financial records related to the Project.

(c) Examine and make copies of the books of accounts and other financial records of the Recipient related to the Project.

(d) Discuss the affairs, finances and accounts of the Recipient with, and to be advised as to the same by, its officers, and independent public accountants (and by this provision the Recipient authorizes such accountants to discuss with the IEDA and the IEDA's duly authorized representatives the finances and affairs of the Recipient).

7.8 Maintenance and Retention of Records.

(a) *Maintain Accounting Records.* The Recipient is required to maintain its books, records and all

other evidence pertaining to this Contract in accordance with GAAP and such other procedures specified by IEDA.

(b) *Access to Records.* Records to verify compliance with the terms of this Contract shall be available at all times, and made available to IEDA and its designees at places and times designated by IEDA, for the duration of this Contract and any extensions thereof. Recipient shall make its records available to: (i) IEDA; (ii) IEDA's internal or external auditors, agents and designees; (iii) the Auditor of the State of Iowa; (iv) the Attorney General of the State of Iowa; and (v) the Iowa Division of Criminal Investigations and any other applicable law enforcement agencies.

(c) *Records Retention Period.* Recipient shall retain the records for a period of three (3) years from the Contract End Date, unless the records are the subject of an audit, investigation, or administrative or legal proceeding. In those instances, the records shall be retained until the audit, investigation or proceeding has been resolved.

7.9 Required Notices from Recipient to IEDA.

(a) *Notice of Major Changes.* Recipient shall promptly provide IEDA with written notice of: (a) any event that has a material adverse effect on Recipient's ability to complete the Project in accordance with the terms of this Contract; (b) the termination of the business conducted at the Project; (c) a material modification of the nature of the business conducted at the Project; and (d) the transfer of the Project or any material interest in the Project in connection with a financing or refinancing of the Project.

(b) *Notice of Proceedings.* Without limiting Section 7.9(a), Recipient shall promptly provide IEDA with written notice of any claims, lawsuits, bankruptcy proceedings, or other proceedings brought against Recipient that have a material adverse effect on Recipient's ability to complete the Project in accordance with the terms of this Contract.

7.10 Indemnification. The Recipient shall indemnify, defend and hold harmless the IEDA, the State of Iowa, its departments, divisions, agencies, sections, commissions, officers, employees and agents from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

(a) Any claim, demand, action, citation or legal proceeding arising out of or resulting from the Project;

(b) Any claim, demand, action, citation or legal proceeding arising out of or resulting from a breach by the Recipient of any representation, warranty or covenant made by the Recipient in this Contract;

(c) Any claim, demand, action, citation or legal proceeding arising out of or related to occurrences that the Recipient is required to insure against as provided for in this Contract; and

(d) Any claim, demand, action, citation or legal proceeding which results from an act or omission of the Recipient or any of their agents in its or their capacity as an employer of a person.

7.11 Repayment of Unallowable Costs. Recipient shall repay any Award received or realized that is determined by IEDA, its auditors, agents or designees, the Auditor of the State of Iowa, or similar authorized governmental entity to be unallowable under the terms of this Contract.

ARTICLE 8: COVENANTS OF THE COMMUNITY

For the duration of this Contract, the Community covenants to IEDA as follows:

8.1 Local Match. The Community shall provide the local financial assistance for the Project as described in Exhibit C, Project Description and Award Budget.

8.2 Notice to IEDA. In the event the Community becomes aware of any material alteration in the Project, initiation of any investigation or proceeding involving the Project, change in the Recipient' ownership, structure or operation, or any other similar occurrence, the Community shall promptly provide written notice to IEDA.

ARTICLE 9: DEFAULTS AND REMEDIES

9.1 Default by Recipient. An unremedied Event of Default can result in termination of this Contract and repayment of all or a portion of the value of the Tax Incentives actually received, plus applicable default interest and costs.

(a) *Events of Default* Any one or more of the following shall constitute an "Event of Default" under this Contract:

1. *Nonpayment.* Failure to make a payment when due (whether by lapse of time, acceleration or otherwise) for more than ten (10) business days of the due date thereof of any Loan or other payment required by this Contract; or

2. *Noncompliance with Covenants.* Default in the observance or performance of any covenant set forth in Article 7, for more than five (5) business days; or

3. *Noncompliance with Security Documents.* Default in the observance or performance of any term of any Security Document if required in Article 5 beyond any applicable grace period set forth therein; or

4. *Noncompliance with Contract.* Default in the observance or performance of any other provision of this Contract; or

5. *Material Misrepresentation.* Any representation or warranty made by the Recipient in this Contract or in any statement or certificate furnished by it pursuant to this Contract, or made in Exhibit A, Recipient's Financial Assistance Application, or in connection with any of the above, proves untrue in any material respect as of the date of the issuance or making thereof; or

6. *Security Deficiencies.* Any of the Security Documents that represent the Security pledged by Recipient to secure this Contract shall for any reason fail to create a valid and perfected priority security interest in favor of the IEDA; or

7. *Judgment.* Any judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes entered or filed against the Recipient or against any of its property and remains unvacated, unbonded or unstayed for a period of 30 days which materially and adversely affects Recipient's ability to perform its obligations under this Contract; or

8. *Adverse Change in Financial Condition.* Any change shall occur in the financial condition of the Recipient which would have a material adverse effect on the ability of the Recipient to perform under this Contract; or

9. *Bankruptcy or Similar Proceedings Initiated.* Either the Recipient shall (i) have entered

involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (vi) fail to contest in good faith any appointments or proceeding described below; or

10. *Appointment of Officials.* A custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for either the Recipient or any substantial part of any of its respective property, or a proceeding described above shall be instituted against either the Recipient and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) days; or

11. *Insecurity.* IEDA shall in good faith deem itself insecure and reasonably believes, after consideration of all the facts and circumstances then existing, that the prospect of payment and satisfaction of the obligations under this Contract, or the performance of or observance of the covenants in this Contract, is or will be materially impaired; or

12. *Failure to Submit Required Reports.* The Recipient fails to submit complete reports by the required due dates as outlined in Article 7; or

13. *Layoffs, Relocation or Closure.* The Recipient experiences a layoff, relocates or closes any of its facilities within the state of Iowa; or

14. *Hiring workers not authorized to work in state.* The Recipient fails to only employ individuals legally authorized to work in the state of Iowa. If Recipient is found to knowingly employ individuals not legally authorized to work in the state of Iowa then, in addition to any and all other applicable penalties provided by current law, all or a portion of the assistance received is subject to repayment; or

15. *Failure to Maintain Program Eligibility Requirements.* Recipient fails to maintain a statutory eligibility requirement for a program providing assistance under this Contract.

(b) *Notice of Default and Opportunity to Cure.* If IEDA has reasonable cause to believe that an Event of Default has occurred under this Contract, IEDA shall issue a written Notice of Default to the Recipient, setting forth the nature of the alleged default in reasonable specificity, and providing therein a reasonable period of time, which shall not be fewer than thirty (30) days from the date of the Notice of Default, in which the Recipient shall have an opportunity to cure, provided that cure is possible and feasible.

(c) *Remedies Available to IEDA.* When an Event of Default has occurred and is not cured within the required time period, IEDA may, after written notice to Recipient:

1. Terminate this Contract.
2. Reserved.
3. Reserved.
4. Revoke or reduce authorized Tax Incentives.

5. Require full repayment of all or a portion of the value of Tax Incentives received.

(d) *Reserved.*

(e) *Expenses.* The Recipient agrees to pay to the IEDA all expenses reasonably incurred or paid by IEDA including reasonable attorneys' fees and court costs, in connection with any Default or Event of Default by the Recipient or in connection with the enforcement of any of the terms of this Contract.

9.2 Default by Community. An unremedied Event of Default can result in termination of this Contract and repayment by Community of all or a portion of the pledged local match, plus applicable default interest and costs.

(a) *Events of Default.* Any one or more of the following shall constitute an "Event of Default by Community" under this Contract:

1. *Noncompliance with Covenants.* Default in the observance or performance of any covenants of the Community set forth in Article 8, for more than five (5) business days; or

2. *Material Misrepresentation.* Any representation or warranty made by the Community in this Contract or in any statement or certificate furnished by it pursuant to this Contract, or made by Community in Exhibit A, Recipient's Financial Assistance Application, or in connection with any of the above, proves untrue in any material respect as of the date of the issuance or making thereof; or

(b) *Notice of Default and Opportunity to Cure.* If IEDA has reasonable cause to believe that an Event of Default has occurred under this Contract, IEDA shall issue a written Notice of Default to the Community, setting forth the nature of the alleged default in reasonable specificity, and providing therein a reasonable period time, which shall not be fewer than thirty (30) days from the date of the Notice of Default, in which the Community shall have an opportunity to cure, provided that cure is possible and feasible.

(c) *Remedies Available to IEDA.* When an Event of Default by Community has occurred and is not cured within the required time period, IEDA may, after written notice to Community:

1. Suspend or reduce pending and future disbursements to Community.

2. Require repayment by Community for the amount of local financial assistance pledged to the Project but not provided.

(d) *Default Interest Rate.* If an Event of Default occurs and remains uncured, a default interest rate of 6% shall apply to repayment of amounts due under this Contract. The default interest rate shall accrue from the first date Tax Incentives are received.

(e) *Expenses.* The Community agrees to pay to the IEDA all expenses reasonably incurred or paid by IEDA including reasonable attorneys' fees and court costs, in connection with any Default or Event of Default by the Community or in connection with the enforcement of any of the terms of this Contract.

ARTICLE 10: MISCELLANEOUS.

10.1 Choice of Law and Forum; Governing Law.

(a) In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the proceeding shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if such court has jurisdiction. If however, such court lacks jurisdiction and jurisdiction lies only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

(b) This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the IEDA, the State of Iowa or its members, officers, employees or agents.

(c) This Contract and the rights and duties of the parties hereto shall be governed by, and construed in accordance with the internal laws of the State of Iowa without regard to principles of conflicts of laws.

10.2 Contract Amendments. Neither this Contract nor any documents incorporated by reference in connection with this Contract, may be changed, waived, discharged or terminated orally, but only as provided below:

(a) *Writing required.* The Contract may only be amended if done so in writing and signed all the parties. Examples of situations requiring an amendment include, but are not limited to, time extensions, budget revisions, and significant alterations of existing activities or beneficiaries.

(b) *IEDA Board review.* Requests to amend this Contract shall be processed by IEDA in compliance with the IEDA Board's rules and procedures applicable to contract amendments.

10.3 Notices. Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation by fax) and shall be given to the relevant party at its address, e-mail address, or fax number set forth below, or such other address, e-mail address, or fax number as such party may hereafter specify by notice to the other given by United States mail, by fax or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

To the Recipient at:

Barilla America, Inc.
Larry Covington
3311 East Lincoln Way
Ames, IA 50010

E-mail: larry.covington@barilla.com
Telephone: 515.988.9020
Facsimile: 515.956.4465

To the IEDA at:

Iowa Economic Development Authority
Compliance
200 East Grand Avenue
Des Moines, Iowa 50309
Attention: Business Development - Compliance

E-mail: Compliance@iowa.gov
Telephone: 515.725.3000
Facsimile: 515.725.3010

To the Community at:

City of Ames
Duane Pitcher
515 Clark Avenue
Ames, IA 50010

E-mail: dpitcher@city.ames.ia.us
Telephone: 515.239.5113
Facsimile: 515.239.5320

Each such notice, request or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this Article and a confirmation of such facsimile has been received by the sender, (ii) if given by e-mail, when such e-mail is transmitted to the e-mail address specified in this Article and a confirmation of such e-mail has been received by the sender, (iii) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iv) if given by any other means, when delivered at the addresses specified in this Article.

10.4 Headings. Article headings used in this Contract are for convenience of reference only and are not a part of this Contract for any other purpose.

10.5 Final Authority. The IEDA shall have the authority to reasonably assess whether the Recipient has complied with the terms of this Contract. Any IEDA determinations with respect to compliance with the provisions of this Contract shall be deemed to be final determinations pursuant to Iowa Code Chapter 17A, Iowa Administrative Procedure Act.

10.6 Waivers. No waiver by IEDA of any default hereunder shall operate as a waiver of any other default or of the same default on any future occasion. No delay on the part of the IEDA in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by IEDA shall preclude future exercise thereof or the exercise of any other right or remedy.

10.7 Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

10.8 Survival of Representations. All representations and warranties made herein or in any other Contract document or in certificates given pursuant hereto or thereto shall survive the execution and delivery of this Contract and the other Contract documents and shall continue in full force and effect with respect to the date as of which they were made until all of Recipient's obligations or liabilities under this Contract have been satisfied.

10.9 Severability of Provisions. Any provision of this Contract which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. All rights, remedies and powers provided in this Contract or any other Contract document may be exercised only to the extent that the exercise thereof does not violate any applicable mandatory provisions of law, and all the provisions of this Contract and any other Contract document are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Contract or any other Contract document invalid or unenforceable.

10.10 Successors and Assigns. This Contract shall be binding upon the Recipient and its respective successors and assigns, and shall inure to the benefit of the IEDA and the benefit of their respective successors and assigns.

10.11 Nonassignment. This Contract shall not be assigned, in whole or in part, by Recipient unless approved in writing by IEDA.

10.12 Termination. This Contract can be terminated under each of the following circumstances:

(a) *Agreement of the Parties.* Upon written agreement of the Recipient, the Community and IEDA.

(b) *Unremedied Event of Default.* As a result of the Recipient's or Community's unremedied Event of Default pursuant to Article 9.

(c) *Termination or reduction in funding to IEDA.* As a result of the termination or reduction of funding to IEDA as provided in Article 4.4(c).

10.13 Documents Incorporated by Reference. The following documents are incorporated by reference and considered an integral part of this Contract:

1. Exhibit A - Recipient's Financial Assistance Application (on file with IEDA), Application # 15-HQJTC-31
2. Exhibit B-2 High-Quality Jobs Program – Tax Credit Component Special Conditions
3. Exhibit C - Description of the Project and Award Budget
4. Exhibit D - Job Obligations
5. Exhibit E- Reserved
6. Exhibit F - Reserved

10.14 Order of Priority. In the case of any inconsistency or conflict between the specific provisions of this document and the exhibits, the following order of priority shall control:

1. Article 1 - 10 of this Contract.
2. Exhibit A - Recipient's Financial Assistance Application (on file with IEDA), Application # 15-HQJTC-31
3. Exhibit B-2 High-Quality Jobs Program – Tax Credit Component Special Conditions
4. Exhibit C - Description of the Project and Award Budget
5. Exhibit D - Job Obligations
6. Exhibit E - Reserved
7. Exhibit F - Reserved

10.15 Integration. This Contract contains the entire understanding between the Parties relating to the Project and any representations that may have been made before or after the signing of this Contract, which are not contained herein, are nonbinding, void and of no effect. None of the Parties have relied on any such prior representation in entering into this Contract.

-This space intentionally left blank, signature page follows -

IN WITNESS WHEREOF in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into this Contract and have caused their duly authorized representatives to execute this Contract, effective as of the latest date stated below (Contract Effective Date).

FOR IEDA:

BY:

Deborah V. Durham, Director

Date

FOR RECIPIENT:

BY:

Signature

Typed Name and Title

Date

FOR THE COMMUNITY:

BY:

Signature

Typed Name and Title

Date

LIST OF EXHIBITS

- Exhibit A - Recipient's Financial Assistance Application (on file with IEDA), Application # 15-HQJTC-31
- Exhibit B-2 High Quality Jobs Program – Tax Credit Component Special Conditions
- Exhibit C - Description of the Project and Award Budget
- Exhibit D - Job Obligations
- Exhibit E - Reserved
- Exhibit F - Reserved

EXHIBIT B – 2
High Quality Jobs Program – Tax Credit Component

Special Conditions to Contract # 15-TC-029

The following additional terms shall apply to the Contract:

SECTION 1: ADDITIONAL DEFINITIONS.

The following additional terms are defined in this Contract as follows:

“*Capital Investment*” means the investment spent on depreciable assets. The minimum Capital Investment required for this Project is as stated in Section 2 of this Exhibit. The allowable categories of expenditures for purposes of calculating Capital Investment are described in IEDA’s administrative rule 261 IAC 174.10.

“*Investment Qualifying for the Tax Credit*” means new investment directly related to jobs created or retained by the start-up, location, expansion or modernization for this Project. Not all of the expenditure categories used to calculate the “*Investment Qualifying for the Tax Credit*” are included for purposes of claiming the tax credits. The allowable categories of expenditures for purposes of claiming the tax benefits are described in IEDA’s administrative rule 261 IAC 174.10.

“*Qualifying Investment*” means the statutorily-required minimum investment amount that must be met and maintained by the Recipient to receive High Quality Jobs Program tax benefits for this Project. This amount is as stated in Section 2 of this Exhibit. Not all expenditures count toward meeting the required Qualifying Investment. The categories of expenditures that can be included for purposes of meeting and maintaining statutorily-required investment requirements are described in IEDA’s administrative rule 261 IAC 174.10.

“*Economically Distressed Area*” means a county that ranks among the bottom 25 of all Iowa counties, as measured by either the average monthly unemployment level for the most recent 12-month period or the average annualized unemployment level for the most recent five-year period.

SECTION 2: TERMS AND CONDITIONS OF THE AWARD

2.1 Award. The Recipient is awarded the following Tax Benefits through the High Quality Jobs Program, based on the minimal investment requirements described herein: \$765,090.

2.2 Minimum Investment Requirements. As a condition of receiving Tax Benefits, the Recipient shall meet the following minimum investment requirements:

- | | | |
|-----|--|---------------|
| (a) | Capital Investment. | \$ 26,500,000 |
| (b) | Qualifying Investment. | \$ 26,109,000 |
| (c) | Investment Qualifying for Tax Credits. | \$ 26,109,000 |

2.3 Additional Tax Benefits. The Recipient is eligible for additional incentives pursuant to Iowa Code sections 15.326, et. seq. pursuant to its participation in the High Quality Jobs Program and its obligations and rights under the Contract. The following Tax Benefits, in the maximum amounts shown for each authorized benefit, are so available to the Recipient:

Authorized Benefits	Included in Award	Maximum Amt.
<i>Refund of Sales, Service, and Use Taxes.</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$ 200,016
<i>Refund of Sales Taxes Attributable to Racks, Shelving, and Conveyor Equipment.</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ 0
<i>Corporate Tax Credit For Certain Sales Taxes Paid By Third Party Developer.</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ 0
<i>Investment Tax Credit (up to 2%)</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$ 522,180
<i>Research Activities Credit.</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$ 42,750
<i>Local Property Tax Exemption Provided by Community</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ 0

2.4 Conditions for Authorized Benefits. The Recipient is responsible to seek these additional benefits through processes described in the applicable statues and corresponding administrative rules, ordinances and procedures. The following conditions shall apply to the benefits described in section 2.3 of this Exhibit.

(a) *Refund Of Sales, Service And Use Taxes Paid To Contractors Or Subcontractors.* The Recipient is eligible for a refund of sales, service and use taxes paid to contractors and subcontractors as authorized in Iowa Code section 15.331A (2011 Supplement).

1. The Recipient may apply for a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the Recipient.
2. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.
3. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the Recipient must:
 - i. Inform the Iowa Department of Revenue (IDR) in writing within two weeks of project completion. For purposes of claiming this refund, "*project completion*" means the first date upon which the average annualized production of finished product for the preceding ninety-day period at the manufacturing facility operated by the Recipient is at least fifty percent of the initial design capacity of the facility.
 - ii. Within one year after Project Completion, as defined in sub-paragraph i above, make an application to the Department Revenue.

(b) *Reserved.*

(c) *Reserved.*

(d) *Investment Tax Credit.*

1. The Recipient may claim an investment tax credit as provided in Iowa Code section 15.333. Such credit may be claimed for a portion of the Qualifying Expenditures, as defined below in subparagraph (iii), directly related to job obligations, as described in Exhibit D, of the start-up, or location, expansion, or modernization of the business under this program. The Recipient shall not claim more than the amount authorized for this benefit as stated above and in Article 2.2(b). The credit is to be taken in the year the qualifying asset is placed in service. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

2. The tax credit shall be amortized equally over a five-year period as specified below:

July 1, 2014 – June 30, 2015	\$ 104,436
July 1, 2015 – June 30, 2016	\$ 104,436
July 1, 2016 – June 30, 2017	\$ 104,436
July 1, 2017 – June 30, 2018	\$ 104,436
July 1, 2018 – June 30, 2019	\$ 104,436

3. Only Qualifying Expenditures are eligible for the investment tax credit. For purposes of this benefit, “Qualifying Expenditures” means:
- i. The purchase price of real property and any buildings and structures located on the real property.
 - ii. The cost of improvements made to real property which is used in operation of the business.
 - iii. The costs of machinery and equipment, as defined in Iowa Code section 427A.1(1) “e” and “j,” purchased for use in the operation of the business and which the purchase price may have been depreciated in accordance with GAAP.
4. If the Project includes leasing of new construction or major renovation of an existing building, the annual base rent paid to a third-party developer by a Recipient must be for a period equal to the term of the lease agreement but not to exceed the maximum term of the agreement, provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land the third-party developer’s costs to build or renovate the building for the Recipient. Limitations to annual base rent shall only be considered when the Project includes the construction of a new building or the major renovation of an existing building. The Recipient shall enter into a lease agreement with the third-party developer for a minimum of five years.

(e) *Supplemental Research Activities Credit.* The Recipient is eligible to claim an additional research activities credit as provided in Iowa Code section 15.335 (2011 Supplement). This benefit is a tax credit for increasing research activities in this state during the period the Recipient is participating in the program.

(f) *Reserved.*

SECTION 3: ADDITIONAL COVENANTS

In addition to the Covenants described in Article 7 of the Contract, the Recipient shall be bound to the additional covenants:

3.1 Job Obligations. By the Project Completion Date, the Recipient shall create and/or retain the number of FTE Created Jobs and Retained Jobs included in, for Retained Jobs, and above, for Created Jobs, the Recipient's Employment Base, as detailed in Exhibit D – Job Obligations, and maintain the jobs through the Maintenance Period.

3.2 Wage Obligations. The Qualifying Wage Threshold rates specific to this Contract that must be met are stated in Exhibit D, Job Obligations. By the Project Completion Date and through the Maintenance Completion Period Date, the Recipient shall:

(a) For the *Created Jobs*, pay 100% of the Qualifying Wage Threshold at the start of the Project Completion Period, at least 120% of the Qualifying Wage Threshold by the Project Completion Date, and at least 120% of the Qualifying Wage Threshold until the Maintenance Period Completion Date.

(b) For the *Retained Jobs*, pay at least 120% of the Qualifying Wage Threshold throughout both the Project Completion Period and the Maintenance Period

(c) For projects in *Economically Distressed Areas* the Qualifying Wage Threshold requirement applicable to all phases of the project is 100% of the Qualifying Wage Threshold if the eligible business is located in an economically distressed area.

3.3 Provide Sufficient Benefits. The Recipient shall provide all employees included as part of the job and wage obligations with Sufficient Benefits.

SECTION 4: ADDITIONAL DEFAULT PROVISIONS

In addition to the default provisions included in Article 9 of the Contract, the following additional default provisions shall apply:

4.1 Repayment of Tax Benefits Received - High Quality Jobs Program. IDR is the state agency responsible for collecting the value of any Tax Benefits received in violation of the terms of this Contract. The Community is the party responsible for collecting the value of the local tax benefits received in violation of this Contract. IEDA will determine if the Recipient has met the terms of this Contract. If there is an unremedied Event of Default, IEDA will provide written notice to IDR and the Community. Calculation of the amount owed may be based on a sliding scale in certain circumstances and may include interest assessed by IDR. Those circumstances are as follows:

(a) *Failure to Meet Job Obligations by Project Completion Date.* If the Recipient does not meet its Job Obligations as detailed in Exhibit D, Job Obligations by the Project Completion Date, Recipient shall repay a percentage of the Tax Benefits it has received. The repayment percentage will be equal to the percentage of jobs short of its Job Obligations.

The percentage to be repaid is calculated based on the number of jobs that are at or above the Qualifying Wage Threshold. For example, if the Recipient meets 90% of its Job Obligations, the amount to be repaid is 10% of the value of Tax Benefits taken (plus any interest assessed by IDR).

Upon repayment of the amount due, IEDA will reduce the Recipient's Employment Base. This reduced employment base must be maintained through the Maintenance Period Completion Date.

(b) *Job shortfall at Maintenance Period Completion Date.* If the Recipient does not maintain its adjusted Employment Base through the Maintenance Period Completion Date, Recipient shall repay an additional percentage of the Tax Benefits it has received. The repayment percentage will be equal to the percentage of jobs that the Recipient failed to maintain. The amount to be repaid will be calculated as described in subsection (a) above.

(c) *Less than Total Project Cost at Project Completion Date.* If the Recipient does not complete the Project with a Total Project Cost as stated in Exhibit C, Project Description and Award Budget, by the Project Completion Date Recipient shall repay a portion of the Tax Benefits received.

For example, if the Recipient's required Total Project Cost is 10% less than pledged, 10% of the value of the tax benefits received (plus any interest assessed by IDR) must be repaid.

(d) *Repayment Amount If Both Shortfall in Job Obligations and Less Than Total Project Cost.* If the Recipient experiences a shortfall in its Job Obligations and the Total Project Cost is less than required, IEDA will calculate the percentage owing for the job shortfall and for less than the Total Project Cost. The higher of these two amounts shall be the amount Recipient shall repay to IDR.

(e) *Selling, Disposing, or Razing of Property.* If, within five years of purchase, the Recipient sells, disposes of, razes, or otherwise renders unusable all or a part of the land, building, or other existing structures for which an investment tax credit was claimed, the income tax liability of the Recipient for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts plus any interest assessed by IDR:

1. 100% of the tax credit claimed if the property ceases to be approved for the tax credit within one full year after being placed in service.
2. 80% of the tax credit claimed if the property ceases to be approved for the tax credit within two full years after being placed in service.
3. 60% of the tax credit claimed if the property ceases to be approved for the tax credit within three full years after being placed in service.
4. 40% of the tax credit claimed if the property ceases to be approved for the tax credit within four full years after being placed in service.
5. 20% of the tax credit claimed if the property ceases to be approved for the tax credit within five full years after being placed in service.

(f) *Qualifying Investment.* If the Business does not meet its Qualifying Investment requirement as defined in Section 2 of this Exhibit, Recipient shall repay all or a portion of the value of Tax Benefits received. Repayment shall be calculated as follows plus any interest assessed by IDR:

1. If the Recipient has met 50 percent or less of the Qualifying Investment requirement, Recipient shall repay the same percentage in Tax Benefits as the Recipient failed to invest.

2. If the Recipient has met more than 50 percent but not more than 75 percent of the Qualifying Investment requirement, the Recipient shall repay one-half of the percentage in Tax Benefits as the Recipient failed to invest.
3. If the Recipient has met more than 75 percent but not more than 90 percent of the Qualifying Investment requirement, the Recipient shall repay one-quarter of the percentage in benefits as the Recipient failed to invest.

- End of Exhibit B – 2 -

**DESCRIPTION OF THE PROJECT AND AWARD BUDGET
(EXHIBIT C)**

Name of Recipient: Barilla America, Inc.

Name of Community: City of Ames

Contract Number: 15-TC-029

PROJECT DESCRIPTION

Barilla America, Inc. will add two production lines, raw material storage and associated packaging and palletizing equipment to produce Gluten Free Pasta in the Ames facility.

AWARD BUDGET

SOURCE OF FUNDS	AMOUNT	FORM	USE OF FUNDS	COST
IEDA Programs HQP Tax Credit Barilla	 \$26,830,000	 Cash/Equity	*Land Acquisition *Site Preparation *Building Acquisition *Building Construction *Building Remodeling Lease Payments *Mfg Machinery and Equipment Other Machinery and Equipment Racking, Shelving, etc. *Computer Hardware Computer Software *Furniture and Fixtures Working Capital Research and Development Job Training *included as capital investment if awarded tax credit program	 \$6,672,000 \$19,352,000 \$391,000 \$85,000 \$330,000
Total	\$26,830,000		Total	\$26,830,000

¹\$765,090 estimated benefit value

OTHER FUNDING

SOURCE OF FUNDS	TOTAL AMOUNT	FORM/TERM	USED AS MATCH
TIF Rebate			
Tax Abatement	\$217,895	427B	Yes
260E Job Training	\$67,000		
In-Kind Contributions			
New Jobs Tax Credit	\$37,674	Income tax credit	
RED			
Other			

EXHIBIT D – JOB OBLIGATIONS

Recipient: Barilla America, Inc.
Community: City of Ames
Contract Number: 15-TC-029

This Project has been awarded benefits from the High Quality Jobs Program (HQJP) – Tax Credit Component. The chart below outline the contractual job obligations related to this Project.

Data in the “Employment Base” column has been verified by the Authority and reflects the employment characteristics of the facility receiving funding before this award was made. Jobs to be retained as a part of this Project must be included in these calculations.

Data in the “Jobs To Be Created” column outlines the new full-time jobs (including their wage characteristics) that must be added to the employment base and, if applicable, statewide employment base as a result of this award.

At the Project Completion Date and through the Maintenance Period Completion Date, the Business must achieve (at a minimum) the numbers found in the “Total Job Obligations” column.

HQJP JOB OBLIGATIONS		Employment Base	Jobs To Be Created	Total Job Obligations
Project Completion Date:	January 31, 2018			
Maintenance Period Completion Date:	January 31, 2020			
Total employment at project location		159*	23	182
Average wage of total employment at project location		\$22.25		
Qualifying Laborshed Wage threshold requirement (per hr)		\$23.21		
Number of jobs at or above qualifying wage		46	2	48
Average Wage of jobs at or above qualifying wage		\$31.87		

* Please note that Barilla has 162 total full-time jobs located in the Ames area, however only the 159 base jobs referenced above are related to Barilla’s operation in Ames. Since the other 3 jobs are not related to this project and could be located anywhere in the U.S., they were not counted in the employment base.

Notes re: Qualifying Wages

1. Bonus or commission payments are not included when calculating the Qualifying Wage rate.
2. Employment Base includes 0 “Retained Jobs”.
3. If the Recipient uses or proposes to use a non-standard work week (8 hours a day, 5 days a week, 52 weeks a year including holidays, vacation and other paid leave), check the box below and describe that alternative schedule. The alternative schedule must meet the requirements of 261 IAC 173.2.) By not checking the box and not providing the alternative schedule, IEDA will consider “*Full-time Equivalent (FTE) Job*” to mean the employment of one person for 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave.

The Recipient shall use an alternative work week for purposes of its employees described in the Contract. The alternative work week is as follows: [description].