

**COUNCIL ACTION FORM**

**SUBJECT: DEVELOPMENT AND MINIMUM ASSESSMENT AGREEMENTS FOR BARILLA AMERICA INC WITH TAX INCEMENT REBATE INCENTIVES AND PROJECT DEVELOPMENT REQUIREMENTS**

**BACKGROUND:**

In February 2017, the City Council approved proceeding with economic development assistance for the expansion of Barilla manufacturing facilities in Ames as a local match for Iowa Economic Development Authority (IEDA) incentives. In July 2017, the City Council approved the establishment of the Barilla Urban Renewal Area and Tax Increment District to provide for the local match in the form of a rebate of incremental taxes. A summary of the project is provided below.

The project includes: 1) a building expansion of 71,374 square feet to house two additional processing lines and associated packaging/feeding equipment, 2) a rail yard expansion to accommodate a larger number of train cars, and 3) six new silos to store wheat. The total investment in this project is estimated to be approximately \$62 million including engineering/design work, construction, machinery, and equipment. When completed, the assessed value of the expansion project is estimated to be \$16,320,000. In addition, 41 new jobs will be added at the Ames site.

The Iowa Economic Development incentive package totals \$1,591,000. The package consists of: 1) \$375,000 in the form of a Forgivable Loan if the 41 jobs are created in a timely manner, 2) \$400,000 in Investment Tax Credits, and 3) \$816,000 in State Sales Tax Credits.

**The City local match consists of a rebate of incremental property taxes generated by the new valuation for the facility expansion for a period of 10 years or a total of \$3,000,000, whichever comes first. The company in return will agree to a minimum assessment of \$16,320,000 for the expanded facility and a requirement for job creation to continue to receive the full rebate.**

**NEXT STEPS:**

City staff, with the assistance of the City's Bond Counsel, has negotiated a development agreement with Barilla per the terms approved by City Council. City Council approval is required for this agreement. The rebate of incremental taxes constitutes a debt for the City and is subject to the local government debt limit. To avoid recording the entire rebate against the debt limit, City Council will be required to approve an annual tax increment resolution. This is the same process for the Kingland rebate and will be a Council action item each November beginning in November of 2018 and continuing until the terms of the agreement have been fulfilled.

**ALTERNATIVES:**

1. Adopt a resolution approving the development and minimum assessment agreements with Barilla America, Inc. with tax increment rebate incentives and project development requirements.
2. Do not adopt a resolution approving the application.

**MANAGER'S RECOMMENDED ACTION:**

Barilla is an international company with a long-term presence in Ames and has expanded the Ames facility multiple times. Barilla is again making a significant investment of capital to expand employment. In keeping with the Council's goal to promote economic development, this project will expand the number of quality jobs within our city.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1, adopting Adopt a resolution approving the development and minimum assessment agreements with Barilla America, Inc. with tax increment rebate incentives and project development requirements.

**NOTE:** Attached are the most recent drafts of the Development Agreement and Minimum Assessment Agreement. City legal and finance staff are still working with Barilla's legal counsel on a few details in these agreements. Final versions will be provided to the Council prior to the Council meeting.

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**DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR RECORDER**

Prepared by: Mark O. Lambert, City Attorney, City of Ames, 515 Clark Avenue, Ames, IA 50010; (515) 239-5146  
Return recorded document to: Ames City Clerk, 515 Clark Avenue, P.O. Box 811, Ames, IA 50010

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**DEVELOPMENT AGREEMENT FOR  
BARILLA AMERICA, INC., WITH TAX INCREMENT REBATE  
INCENTIVES AND PROJECT DEVELOPMENT REQUIREMENTS**

This Agreement is entered into between the City of Ames, Iowa (the “City”) and Barilla America, Inc. (the “Developer”) as of the \_\_\_\_ day of \_\_\_\_\_, 2018.

WHEREAS, the City has established the Barilla Urban Renewal Area (the “Urban Renewal Area”), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer owns certain real property which is situated within the Urban Renewal Area and specifically described as:

Parcel “B” being a part of the Southeast Quarter (SE ¼) and East Half (E ½) of the Southwest Quarter (SW ¼), Section Six (6), Township Eighty-three (83) North, Range Twenty-three (23) West of the 5th P.M., City of Ames, Story County, Iowa as described in a Plat of Survey filed in the office of the Recorder of Story County, Iowa, on July 22, 1997, in Certificate & Field Notes Book 15, Page 18.

and

Beginning at a point on the South Line of the Southeast Quarter (SE ¼) of Section Six (6), Township Eighty-three (83) North, Range Twenty-three (23) West of the 5th P.M., Story County, Iowa, Four Hundred Seventy-seven (477) Feet East of the South Quarter (S ¼) Corner of said Section Six (6); thence North 2° 03’ East Four Hundred Fifty Five (455) Feet; thence East Three Hundred Sixty-eight (368) Feet; thence South 2° 03’ West Four Hundred Fifty-five (455) Feet; thence West along the Section line Three Hundred Sixty-eight (368) Feet to the Point of Beginning, now in the City of Ames, Iowa, subject to easements to the State of Iowa recorded in Book 98, Page 123 and Book 88, Page 295.

(the “Real Property”) and;

WHEREAS, the Developer proposes to construct a manufacturing facility for food production and warehouse uses on the Real Property (the “Project”); and

WHEREAS, the Story County Assessor has increased the assessed valuation of the Real Property and buildings and improvements on the Real Property (collectively, the “Property”) on the Story County property tax rolls as of the assessment date January 1, 2018, by the amount of \$4,196,000; and

WHEREAS, the Developer has entered into an agreement with the Iowa Economic Development Authority (the “IEDA”) under the State of Iowa’s High Quality Jobs Program (the “State Agreement”) which includes certain conditions related to the Developer’s investment and employment levels related to the Project; and

WHEREAS, the Developer has requested tax increment financing assistance from the City in paying the costs of the Project; and

WHEREAS, the financial assistance to be provided by the City pursuant to this Agreement is to serve as the local match that the City is required to make under the State Agreement; and

WHEREAS, as of January 1, 2017, the assessed valuation of the Property was \$38,644,000, the exempt portion of the Property was \$1,568,400 (under the Industrial Five Year Abatement), and the taxable percentage of the Property was 90% (pursuant to the rollback for property classified as Industrial), resulting in a taxable valuation of \$33,368,040 (the “Base Taxable Valuation”) for purposes of calculating Incremental Property Tax Revenues (as hereinafter defined) under Section 403.19 of the Code of Iowa and this Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW, THEREFORE, the parties hereto agree as follows:

**A. Developer’s Covenants**

1. The Developer agrees to complete construction of the Project by January 1, 2019, and to maintain and use the Project as a manufacturing facility throughout the term of this Agreement.

2. The Developer agrees to make timely payment of all property taxes as they come due throughout the term of this Agreement and to submit a receipt or cancelled check to the City Clerk in evidence of each such payment.

3. The Developer agrees that the buildings and other improvements constructed by Developer as part of the Project (the “Project Improvements”) shall have an assessed valuation of not less than \$16,320,000 as of January 1, 2019, and that such assessed valuation of the Project Improvements shall be maintained until January 1, 2028, or until such

earlier date on which the City has made Incentive Payments, as hereinafter defined, to the Developer under this Agreement equal to \$3,000,000.

4. The Developer agrees to establish and maintain an employment level of a minimum of 41 new full-time employees (the "Minimum Jobs Requirement") in connection with the Project in accordance with the terms and conditions set forth in the State Agreement. This Minimum Jobs Requirement satisfies the job creation requirements of the Iowa High Quality Jobs Program in order for the Developer to qualify for the Incentive Payments, as hereinafter defined, set forth in Section B. The terms and conditions of the State Agreement are incorporated herein by this reference. Developer agrees to satisfy the Minimum Jobs Requirement as described in the State Agreement for all periods after the State Agreement has been terminated but for which this Agreement is still in effect.

The Developer agrees to submit documentation to the satisfaction of the City by no later than July 31 of each year during the life of this Agreement, demonstrating its compliance with the State Agreement and the Minimum Jobs Requirement. Such submission shall include the total number of full-time equivalent employees, as defined by Section 261-173.2 of the Iowa Administrative Code, then employed in connection with the Developer's operations at the Property as of June 30 of each year that this Agreement is in effect. The Developer may meet this reporting requirement by providing the City with copies of annual status reports submitted to the IEDA pursuant to the terms of the State Agreement. For periods after the State Agreement has been terminated but for which this Agreement is still in effect, Developer agrees to submit documentation to the satisfaction of the City by no later than July 31 of each year demonstrating compliance with the terms of this Agreement.

The Developer hereby acknowledges that failure to meet the Minimum Jobs Requirement will give the City cause and right to rescind or amend the Incentive Payments, as set forth in Section B.

5. The Developer hereby acknowledges that failure to comply with the requirements of Section 4 will result in the City having the right to withhold approval of or rescind approval of the Incentive Payments under Section B of this Agreement. The percentage of the Incentive Payments to be withheld by the City pursuant to this paragraph shall not exceed the percentage shortfall between the number of jobs actually created by the Developer and the 41 new jobs pledged by the Developer in the State Agreement and in this Agreement.

The City will notify the Developer whenever the City becomes aware that the Developer has failed to comply with the requirements of this Section A. The Developer will have 90 business days after receipt of written notice to cure any deficiency that has resulted in the failure to comply with requirements of this Section A.

6. The Developer agrees that it shall not apply for or participate in any real estate tax abatement programs for the Property as long as any Incentive Payments are being made to the Developer under this Agreement.

7. Notwithstanding anything in this Agreement to the contrary, the Developer shall have the right to appeal the assessed valuation of any portions of the Property

that are not Project Improvements, as well as the assessed valuation of the Project Improvements in excess of the agreed-upon minimum valuation for such improvements of \$16,320,000.

**B. City's Obligations**

In recognition of the Developer's obligations set out above, the City agrees to make economic development tax increment payments (the "Incentive Payments") to the Developer in each fiscal year during the term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa, provided, however, that the aggregate, total amount of the Incentive Payments shall not exceed \$3,000,000, and all Incentive Payments shall be subject to annual appropriation by the City Council.

The Incentive Payments will be made from incremental property tax revenues received by the City with respect to an increase in the taxable valuation of the Property over the Base Taxable Valuation (the "Incremental Property Tax Revenues"). The Incentive Payments will be made on December 1 and June 1 of each fiscal year, beginning on December 1, 2020 and continuing until June 1, 2030 or until such earlier date upon which total Incentive Payments equal to \$3,000,000 have been made.

Before making any Incentive Payments, the City may retain Incremental Property Tax Revenues in an amount necessary to pay the City's actual expenses, not to exceed \$15,000, related to the preparation and approval of this Agreement and the related urban renewal plan for the Urban Renewal Area. Thereafter, each Incentive Payment shall be in an amount equal to 100% of the Incremental Property Tax Revenues attributable to the Property that are received by the City during the six months immediately preceding the due date of each Incentive Payment.

Incremental Property Tax Revenues shall be calculated by multiplying the consolidated property tax levy times the taxable valuation of the Property in excess of the Base Taxable Valuation, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district physical plant and equipment and instructional support levies, and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

The Incentive Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues attributable to the Property that are received by the City from the Story County Treasurer.

Each Incentive Payment shall be subject to annual appropriation by the City Council. Prior to November 30 of each year during the term of this Agreement, the City Council shall consider the question of obligating for appropriation to the funding of the Incentive Payments due in the next succeeding fiscal year an amount of Incremental Property Tax Revenues to be collected in such following fiscal year equal to the City's estimate of the amount of Incremental Property Tax Revenues that could be collected in such year (the "Appropriated Amount"). Each such estimate shall be based on then current consolidated property tax levy and most recent incremental valuation of the Property.

To the extent the City Council decides to obligate funds for appropriation to the Incentive Payments, the City agrees to certify to the Story County Auditor by December 1 of each year

during the term of this Agreement an amount equal to the most recently determined Appropriated Amount.

All determinations to not appropriate funds for any Incentive Payments shall be made by resolution (each a “Non-Appropriation Resolution”) of the City Council. Each Non-Appropriation Resolution will identify (1) which Incentive Payments shall be subject to the non-appropriation and (2) the reason for the non-appropriation. Following any Non-Appropriation Resolution, the City shall make any and all required reports of the corresponding non-appropriation decision onto EMMA, the financial reporting repository website of the Municipal Securities Rulemaking Board (or equivalent successor repositories).

**C. Administrative Provisions**

1. Except for the assignment of this Agreement to an Affiliate (as hereinafter defined) of Developer, this Agreement may not be amended or assigned by either party without the express permission of the other party. However, the City hereby gives its permission that the Developer’s rights to receive the Incentive Payments hereunder may be assigned by the Developer to a lender, as security, without further action on the part of the City. For purposes of this Agreement, an “Affiliate” is defined to include (a) Developer’s parent company, and (b) any company whose stock is 80% or more owned, either directly or indirectly, by Developer’s parent company.

2. This Agreement shall inure to the benefit of and be binding upon the Developer, its successors and assigns. Each party hereto agrees to cooperate with the other in executing a Memorandum of Agreement that may be recorded in place of this document.

3. Unless otherwise terminated according to the terms and conditions contained herein, this Agreement will terminate on the date the City makes the final Incentive Payment to Developer, such Incentive Payment being due to Developer on or before June 1, 2030, or on such earlier date upon which total Incentive Payments equal to \$3,000,000 have been made.

4. This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

5. The parties acknowledge and agree that this Agreement is being executed without review or approval of specific plans for development of the Property. The parties acknowledge and agree that it is not possible to anticipate all the infrastructure requirements the Developer may be required to complete to properly develop the site. Therefore, the parties agree that all work done by or on behalf of the Developer with respect to, but not limited to, a traffic study and any improvements identified by that study, public streets, sidewalks, bike paths, building design, construction and utilities, both on-site and off-site, shall be made in compliance with the Iowa Code, SUDAS and all other federal, state, and local laws and policies of general application, including but not limited to subdivision and zoning codes, whether or not such requirements are specifically stated in this Agreement.

The City and the Developer have caused this Agreement to be signed, in their names and on their behalf, by their duly authorized officers, all as of the day and date written above.

CITY OF AMES, IOWA

By: \_\_\_\_\_  
John A. Haila, Mayor

Attest:

\_\_\_\_\_  
Diane Voss, City Clerk

BARILLA AMERICA, INC.

By: \_\_\_\_\_

DRAFT



**DRAFT**

**DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR RECORDER**

Prepared by: Mark O. Lambert, Ames City Attorney, 515 Clark Ave., Ames, IA 50010; (515) 239-5146

Return recorded document to: Ames City Clerk, 515 Clark Ave., P.O. Box 811, Ames, IA 50010

## **BARILLA AMERICA, INC. MINIMUM ASSESSMENT AGREEMENT**

This Minimum Assessment Agreement is entered into this 13<sup>th</sup> day of November, 2018, by and between the City of Ames, Iowa (hereinafter "City"), Barilla America, Inc., (hereinafter "Developer"), and the City Assessor for the City of Ames, Iowa (hereinafter "Assessor").

### **WITNESSETH:**

**WHEREAS**, on or about November 13, 2018, City and Developer have entered into a Development Agreement with Tax Increment Rebate Incentives and Project Development Requirements (the "Development Agreement") regarding certain real property located in City; and

**WHEREAS**, it is contemplated that pursuant to said Development Agreement, Developer will undertake the redevelopment of property within City (hereinafter referred to as "Real Property") which is described as follows:

Parcel "B" being a part of the Southeast Quarter (SE ¼) and East Half (E ½) of the Southwest Quarter (SW ¼), Section Six (6), Township Eighty-three (83) North, Range Twenty-three (23) West of the 5th P.M., City of Ames, Story County, Iowa as described in a Plat of Survey filed in the office of the Recorder of Story County, Iowa, on July 22, 1997, in Certificate & Field Notes Book 15, Page 18.

and

Beginning at a point on the South Line of the Southeast Quarter (SE ¼) of Section Six (6), Township Eighty-three (83) North, Range Twenty-three (23) West of the 5th P.M., Story County, Iowa, Four Hundred Seventy-seven (477) Feet East of the South Quarter (S ¼) Corner of said Section Six (6); thence North 2° 03' East Four Hundred Fifty Five (455) Feet; thence East Three Hundred Sixty-eight (368) Feet; thence South 2° 03' West Four Hundred Fifty-five (455) Feet; thence West along the Section line Three Hundred Sixty-eight (368) Feet to the Point of Beginning, now in the City of Ames, Iowa, subject to easements to the State of Iowa recorded in Book 98, Page 123 and Book 88, Page 295.

and,

**WHEREAS**, the Developer proposes to construct a manufacturing facility for food production and warehouse uses on the Real Property (the “Project”);

and,

**WHEREAS**, pursuant to section 403.6 of the Code of Iowa, as amended, City and Developer desire to establish a minimum actual value for the improvements to be constructed or placed upon the Real Property by Developer pursuant to the Development Agreement as part of the Project, which shall be effective upon substantial completion of such improvements and from then until this Minimum Assessment Agreement is terminated pursuant to the terms herein and which is intended to reflect the minimum actual value of such improvements, exclusive of the value of the unimproved land;

and,

**WHEREAS**, City and the Assessor have reviewed the preliminary plans and specifications including the Developer’s agreement applicable to the improvements contemplated to be erected as part of the Project.

**NOW, THEREFORE**, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Upon substantial completion of construction of the improvements included in the Project pursuant to the Development Agreement, the Assessor shall establish a minimum actual assessed value for assessment purposes on the buildings that are constructed as part of the Project of at least \$16,320,000.00. This minimum assessment requirement shall remain in effect until ten years from the date when the first Incentive Payment is made by the City to the Developer under Paragraph B of the Development Agreement to which this Minimum Assessment Agreement is attached, or until the amount of the Incremental Property Tax Revenue payments paid to Developer reach \$3,000,000.00, whichever occurs first.

2. Nothing herein shall be deemed to waive Developer’s rights under Iowa Code section 403.6(19), as amended, to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Developer seek to reduce the actual value assigned below the Minimum Actual Value established during the term of this Minimum Assessment Agreement.

3. In the event that any portion of the Project is taken through the exercise of the power of eminent domain or is damaged by natural disaster, the Minimum Actual Value shall be

reduced by the same proportion as the value of the portion of such Project so taken or damaged bears to the value of such Project in its entirety immediately prior to such taking or damage.

4. This Minimum Assessment Agreement shall be promptly recorded by Developer with the Recorder of Story County, Iowa. Developer shall pay all costs of recording.

5. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Development Agreement between City and Developer.

6. This Minimum Assessment Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

**IN WITNESS WHEREOF**, the Parties have caused the Minimum Assessment Agreement to be signed by their authorized representatives as of the date first above written.

**CITY OF AMES, IOWA**

**BARILLA AMERICA, INC.**

By \_\_\_\_\_  
John Haila, Mayor

By \_\_\_\_\_

Attest \_\_\_\_\_  
Diane R. Voss, City Clerk

By \_\_\_\_\_

STATE OF IOWA, STORY COUNTY ss:  
On this \_\_\_\_\_ day of \_\_\_\_\_,  
2018, before me, a Notary Public in and for the  
State of Iowa, personally appeared John Haila and  
Diane R. Voss, to me personally known, and, who,  
being by me duly sworn, did say that they are the  
Mayor and City Clerk, respectively, of the City of  
Ames, Iowa; that the seal affixed to the foregoing  
instrument is the corporate seal of the corporation,  
and that the instrument was signed and sealed on  
behalf of the Council on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2018, and that John  
Haila and Diane R. Voss acknowledged the  
execution of the instrument to be their voluntary act  
and deed and the voluntary act and deed of the  
corporation, by it voluntarily executed.

STATE OF IOWA, COUNTY OF STORY, ss:  
This instrument was acknowledged before me on  
\_\_\_\_\_, 2018, by  
\_\_\_\_\_, of Barilla America,  
Inc.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**CERTIFICATE OF ASSESSOR**

The undersigned, having reviewed the plans and specifications for the improvements to be constructed upon the land described in the Development Agreement, and the market value assigned to such improvements, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of the Real Property and improvements as described above, upon completion of improvements to be made in accordance with the Minimum Assessment Agreement, certifies that the actual value assigned to buildings and other improvements constructed as part of the Project shall be sixteen million three hundred twenty thousand dollars (\$16,320,000.00), until termination of this Minimum Assessment Agreement pursuant to the terms hereof.

Date: \_\_\_\_\_, 2018

\_\_\_\_\_  
Gregory P. Lynch, Ames City Assessor

STATE OF IOWA, COUNTY OF STORY, ss:  
On this \_\_\_\_\_ day of \_\_\_\_\_, 2018,  
before me, the undersigned, a Notary Public in and for said  
State, personally appeared Gregory P. Lynch, Ames City  
Assessor, to me known to be the identical person named in and  
who executed the foregoing instrument, and acknowledged that  
he executed the same as his voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa  
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