

92669

**HOLD HEARING ON AND APPROVE  
DEVELOPMENT AGREEMENT AND  
TAX INCREMENT PAYMENTS**

**(H.J. Heinz Company, L.P.)**

**421464-39**

**Muscatine, Iowa**

**February 20, 2014**

A meeting of the City Council of the City of Muscatine, Iowa, was held at 7:00 o'clock p.m., on February 20, 2014, at the City Hall Council Chambers, Muscatine, Iowa, pursuant to the rules of the Council.

The Mayor presided and the roll was called, showing members present and absent as follows:

**Present: Rehwaldt, Fitzgerald, Natvig, Shihadeh, Bynum, Phillips, and Spread**

**Absent: None**

The City Council investigated and found that notice of the intention of the Council to conduct a public hearing on a Development Agreement between the City and the H.J. Heinz Company, L.P. in connection with the Company's expansion of its manufacturing facilities, operations and workforce in the Urban Renewal Area, which Agreement provides for certain financial incentives in the form of annual appropriation, incremental property tax payments in a total amount not exceeding \$880,000, had been published according to law and as directed by the Council and that this is the time and place at which the Council shall receive oral or written objections from any resident or property owner of the City. All written objections, statements, and evidence heretofore filed were reported to the Council, and all oral objections, statements, and all other exhibits presented were considered.

The following named persons presented oral objections, statements, or evidence as summarized below; filed written objections or statements, copies of which are attached hereto; or presented other exhibits, copies of which are attached hereto:

(Here list all persons presenting written or oral statements or evidence and summarize each presentation.)

There being no further objections or comments, the Mayor Pro Tem announced that the hearing was closed.

Council Member Spread introduced the resolution next hereinafter set out and moved its adoption, seconded by Council Member Bynum; and after due consideration thereof by the Council, the Mayor Pro Tem put the question upon the adoption of said resolution, and the roll being called, the following named Council Members voted:

Ayes: Rehwaldt, Fitzgerald, Natvig, Shihadeh, Bynum, Phillips, and Spread

Nays: None

Whereupon, the Mayor Pro Tem declared said resolution duly adopted, as follows:

RESOLUTION 92669-0214

Approving Development Agreement with H.J. Heinz Company, L.P., Authorizing Annual Appropriation Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

WHEREAS, the City of Muscatine, Iowa (the "City"), pursuant to and in strict compliance with all laws applicable to the City, and in particular the provisions of Chapter 403 of the Code of Iowa, has adopted an Urban Renewal Plan for the Consolidated Muscatine Urban Renewal Area (the "Urban Renewal Area"); and

WHEREAS, this City Council has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Area pursuant to Section 403.19 of the Code of Iowa and establishing the fund referred to in Subsection 2 of Section 403.19 of the Code of Iowa (the "Urban Renewal Tax Revenue Fund"), which fund and the portion of taxes referred to in that subsection may be irrevocably pledged by the City for the payment of the principal and interest on indebtedness incurred under the authority of Section 403.9 of the Code of Iowa to finance or refinance in whole or in part projects in the Urban Renewal Area; and

WHEREAS, a certain development agreement (the "Agreement") between the City and H.J. Heinz Company, L.P. (the "Company") has been prepared in connection with the Company's expansion of its manufacturing facilities, operations and workforce in the Urban Renewal Area (the "Heinz Project"); and

WHEREAS, under the Agreement, the City would provide annual appropriation tax increment payments to the Company in a total amount not exceeding \$880,000; and

WHEREAS, this City Council, pursuant to Section 403.9 of the Code of Iowa, has published notice, has held a public hearing on the Agreement on February 20, 2014, and has otherwise complied with statutory requirements for the approval of the Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa ("Chapter 15A") declares that economic development is a public purpose for which a City may provide grants, loans, tax incentives, guarantees and other financial assistance to or for the benefit of private persons; and

WHEREAS, Chapter 15A requires that before public funds are used for grants, loans, tax incentives or other financial assistance, a City Council must determine that a public purpose will reasonably be accomplished by the spending or use of those funds; and

WHEREAS, Chapter 15A requires that in determining whether funds should be spent, a City Council must consider any or all of a series of factors;

NOW, THEREFORE, It Is Resolved by the City Council of the City of Muscatine, Iowa, as follows:

Section 1. Pursuant to the factors listed in Chapter 15A, the City Council hereby finds that:

(a) The Heinz Project will add diversity and generate new opportunities for the Muscatine and Iowa economies;

(b) The Heinz Project will generate public gains and benefits, particularly in the creation of new jobs, which are warranted in comparison to the amount of the proposed financial incentives.

Section 2. The City Council further finds that a public purpose will reasonably be accomplished by entering into the Agreement and providing the incremental property tax payments to the Company.

Section 3. The Agreement is hereby approved and the Mayor Pro Tem and City Clerk are hereby authorized and directed to execute and deliver the Agreement on behalf of the City, in substantially the form and content in which the Agreement has been presented to this City Council, and such officers are also authorized to make such changes, modifications, additions or deletions as they, with the advice of bond counsel, may believe to be necessary, and to take such actions as may be necessary to carry out the provisions of the Agreement.

Section 4. All payments by the City under the Agreement shall be subject to annual appropriation by the City Council, in the manner set out in the Agreement. As provided and required by Chapter 403 of the Code of Iowa, the City's obligations under the Agreement shall be payable solely from a subfund (the 'Heinz Subfund') which is hereby established, into which shall be paid that portion of the income and proceeds of the Urban Renewal Tax Revenue Fund attributable to property taxes derived from the property described as follows:

*Certain real property situated in the City of Muscatine, County of Muscatine, State of Iowa legally described as follows:*

**[See Attached Description)**

Section 5. The City hereby pledges to the payment of the Agreement the Heinz Subfund and the taxes referred to in Subsection 2 of Section 403.19 of the Code of Iowa to be paid into such Subfund, provided, however, that no payment will be made under the Agreement unless and until monies from the Heinz Subfund are appropriated for such purpose by the City Council.

Section 6. After its adoption, a copy of this resolution shall be filed in the office of the County Auditor of Muscatine County to evidence the continuing pledging of Heinz Subfund and the portion of taxes to be paid into such Subfund and, pursuant to the direction of Section 403.19 of the Code of Iowa, the Auditor shall allocate the taxes in accordance therewith and in accordance with the tax allocation ordinance referred to in the preamble hereof.

Section 7. All resolutions or parts thereof in conflict herewith are hereby repealed.

Passed and approved this 20<sup>th</sup> day of February 2014.



  
\_\_\_\_\_  
Mayor Pro Tem

Attest:

  
\_\_\_\_\_  
City Clerk

## LEGAL DESCRIPTION OF THE PROPERTY

*Certain real property situated in the City of Muscatine, County of Muscatine, State of Iowa more particularly described follows:*

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25 AND IN THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 77 NORTH, RANGE 2 WEST OF THE 5<sup>TH</sup> P.M., IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA. BEGINNING AT THE SOUTHEAST CORNER OF SECTION 26; THENCE NORTH 89°34'42" WEST 382.70 FEET; THENCE NORTH 00°33'24" EAST 160.00 FEET; THENCE NORTH 89°34'42" WEST 240.55 FEET TO THE EASTERLY RIGHT OF WAY OF ISETT AVENUE; THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES: NORTH 17°04'52" WEST 711.99 FEET TO THE BEGINNING OF A 607.50 FOOT RADIUS CURVE CONCAVE EASTERLY WHOSE 431.76 FOOT CHORD BEARS NORTH 03°44'05" EAST; THENCE NORTHEASTERLY AN ARC DISTANCE OF 441.41 FEET; THENCE NORTH 24°36'18" EAST 512.25 FEET; THENCE NORTH 16°13'04" EAST 235.74 FEET TO THE SOUTHERLY RIGHT OF WAY OF CLAY STREET; THENCE NORTH 74°24'37" EAST 513.06 FEET ALONG SAID RIGHT OF WAY TO THE BEGINNING OF A 5729.65 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY WHOSE 1126.17 FOOT CHORD BEARS SOUTH 15°34'56" EAST; THENCE SOUTHEASTERLY AN ARC DISTANCE OF 1127.99 FEET; THENCE NORTH 89°33'05" WEST 53.77 FEET TO THE BEGINNING OF A 5779.65 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY WHOSE 460.68 FOOT CHORD BEARS SOUTH 23°18'33" EAST; THENCE SOUTHEASTERLY AN ARC DISTANCE OF 460.80 FEET; THENCE SOUTH 59°12'08" WEST 223.46 FEET TO THE BEGINNING OF A 1959.88 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY WHOSE 49.02 FOOT CHORD BEARS NORTH 38°50'18" WEST; THENCE NORTHWESTERLY AN ARC DISTANCE OF 49.02 FEET; THENCE SOUTH 50°26'43" WEST 35.00 FEET TO THE BEGINNING OF A 1924.88 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY WHOSE 585.72 FOOT CHORD BEARS SOUTH 30°48'28" EAST; THENCE SOUTHEASTERLY AN ARC DISTANCE OF 588.01 FEET; THENCE NORTH 89°36'49" WEST TO THE POINT OF BEGINNING, CONTAINING 42.261 ACRES AND IS SUBJECT TO EASEMENTS OF RECORD.

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On motion and vote the meeting adjourned.



  
\_\_\_\_\_  
Mayor Pro Tem

Attest:

  
\_\_\_\_\_  
City Clerk

STATE OF IOWA  
COUNTY OF MUSCATINE           SS:  
CITY OF MUSCATINE

I, the undersigned, Clerk of the City of Muscatine, hereby certify that the foregoing is a true and correct copy of the minutes of the Council of the City relating to holding a public hearing and adopting a resolution to approve a Development Agreement.

WITNESS MY HAND this 20<sup>th</sup> day of February, 2014.

  
\_\_\_\_\_  
City Clerk



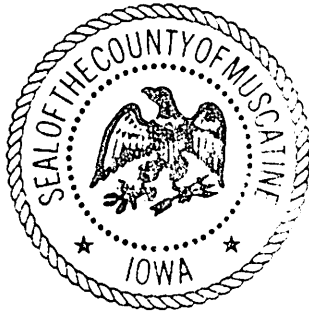
STATE OF IOWA

SS:

COUNTY OF MUSCATINE

I, the undersigned, County Auditor of Muscatine County, in the State of Iowa, do hereby certify that on the 4<sup>th</sup> day of April, 2014, the City Clerk of the City of Muscatine filed in my office a certified copy of a resolution of the City shown to have been adopted by the City Council and approved by the Mayor thereof on February 20, 2014, entitled: "Resolution Approving Development Agreement with H.J. Heinz Company, L.P., Authorizing Annual Appropriation Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement", and that I have duly placed the copy of the resolution on file in my records.

WITNESS MY HAND this 4<sup>th</sup> day of April, 2014.



Gessie A. Soule  
County Auditor

## **DEVELOPMENT AGREEMENT**

This Agreement is entered into between the City of Muscatine, Iowa (the "City") and H.J. Heinz Company, L.P. (the "Company") as of the 20<sup>th</sup> day of February, 2014 (the "Commencement Date").

WHEREAS, the City has established the Consolidated Muscatine Urban Renewal Area (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Areas; and

WHEREAS, the Company owns certain real property which is situated in the City and lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the "Property"); and

WHEREAS, the Company has proposed to undertake the expansion of its manufacturing facilities, operations and workforce on the Property and the installation of equipment in such facilities for use in its condiment and food processing operations (the "Project"); and

WHEREAS, the Company has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Company in paying the costs of constructing and maintaining the Project; and

WHEREAS, the base valuation of the Property for purposes of Section 403.19 of the Code of Iowa is \$880,000 (the "Base Valuation"); 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. Company's Covenants**

**1. Project Construction.** The Company agrees to construct the Project on the Property and to maintain and use the completed Project as part of its business operations throughout the Term, as hereinafter defined. Furthermore, the Company agrees to invest not less than \$24,000,000 into capital improvements for the Project, including construction work and equipment acquisition. The Company will submit a detailed site plan (the "Site Plan") for the development of the Project to the City. Upon approval by the City, the Site Plan will be attached as Exhibit B hereto. The Company agrees to construct the Project in accordance with the Site Plan and to substantially complete such construction by no later than December 1, 2014.

**2. Property Taxes.** The Company agrees to make timely payment of all property taxes as they come due with respect to the Property with the completed Project thereon throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment.

3. **Company's Certifications.** The Company agrees to submit documentation to the reasonable satisfaction of the City by no later than each October 15 during the Term, as hereinafter defined, commencing October 15, 2015, demonstrating that the completed Project is being used as part of the Company's business operations and that the ongoing use of the Project is in compliance with the terms of a certain agreement between the Company and the State of Iowa (the "State Agreement") as set forth on Exhibit C hereto.

4. **Property Tax Payment Certification.** Furthermore, the Company agrees to certify to the City by no later than October 15 of each year, commencing October 15, 2015, an amount (the "Company's Estimate") equal to the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property factored by the Annual Percentage (as herein defined). In submitting each such Company's Estimate, the Company will complete and submit the worksheet attached hereto as Exhibit D. The City reserves the right to review and request revisions to each such Company's Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental taxable valuation of the Property, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district instructional support and physical plant and equipment levies and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

Upon request, the City staff shall provide reasonable assistance to the Company in completing the worksheet required under this Section A.4.

5. **Remedy.** The Company hereby acknowledges that failure to comply with the requirements of this Section A, will result in the City having the right to withhold Payments under Section B of this Agreement at its sole discretion, until such time as the Company has demonstrated, to the satisfaction of the City, that it has cured such non-compliance.

6. **Legal and Administrative Costs.** The Company hereby agrees to pay for the reasonable legal fees and administrative costs incurred by the City in connection with the drafting, negotiation and authorization of this Agreement, including the prerequisite amendment to the urban renewal plan, up to an amount not in excess of \$5,000. The Company agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Company evidencing such costs.

## **B. City's Obligations**

1. **Payments.** In recognition of the Company's obligations set out above, the City agrees to make five (5) annual economic development tax increment payments (the "Payments") to the Company 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 Payments shall not exceed \$880,000 (the "Maximum Payment Total"), and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

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

It is assumed that the new valuation from the Project will go on the tax rolls as of January 1, 2015. Accordingly, the Payments will be made on June 1 of each fiscal year, beginning on June 1, 2017 and continuing to, and including, June 1, 2021, or until such earlier date upon which total Payments equal to the Maximum Payment Total have been made.

**2. Annual Appropriation.** Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the term of this Agreement, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount (the "Appropriated Amount") of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Company's Estimate factored by the annual percentage (the "Annual Percentage") scheduled to be in effect in the following fiscal year. The Annual Percentages shall be as follows:

For the Payment coming due in the 2016-2017 Fiscal Year:	75%
For the Payment coming due in the 2017-2018 Fiscal Year:	60%
For the Payment coming due in the 2018-2019 Fiscal Year:	45%
For the Payment coming due in the 2019-2020 Fiscal Year:	30%
For the Payment coming due in the 2020-2021 Fiscal Year:	15%

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Company will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payments shall not render this Agreement null and void, and the Company shall make the next succeeding submission of the Company's Estimate as called for in Section A.4 above, provided however that no Payment shall be made after June 1, 2021.

**3. Payment Amounts.** Each Payment shall be in an amount equal to the corresponding Appropriated Amount (for example, for the Payment due on June 1, 2018, the amount of such Payment would be determined by the Appropriated Amount determined for certification by December 1, 2016), provided, however, that each Payment shall not exceed the amount of Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer attributable to the taxable valuation of the Property.

**4. Certification of Payment Obligation.** In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section

B.2 above, then the City Clerk will certify by December 1 of each such year to the Muscatine County Auditor an amount equal to the most recently obligated Appropriated Amount.

**C. Administrative Provisions**

1. **Amendment and Assignment.** This Agreement may not be amended or assigned by either party without the written consent of the other party. However, the City hereby gives its permission that the Company's rights to receive the Payments hereunder may be assigned by the Company to a private lender, as security on a credit facility taken with respect to the Project, without further action on the part of the City.

2. **Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

3. **Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on June 1, 2021 or on such earlier date upon which the aggregate sum of Payments made to the Company equals the Maximum Payment Total.

4. **Choice of Law.** 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.

The City and the Company 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.



Attest:


  
\_\_\_\_\_  
City Clerk

CITY OF MUSCATINE, IOWA

By:   
\_\_\_\_\_  
Mayor Pro Tem

H.J. HEINZ COMPANY, L.P.

By: Heinz Management, LLC  
Its Sole Managing General Partner

  
\_\_\_\_\_  
TROY SHAW  
UP, GLOBAL MANUFACTURING

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

*Certain real property situated in the City of Muscatine, County of  
Muscatine, State of Iowa more particularly described follows:*

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EXHIBIT C - SITE PLAN



0 1 2 3 IN  
0 1 2 3 4 5 6 7 8 cm

**NELSON**  
CARL A. NELSON, P.E.  
Building Solutions  
Since 1913

1815 DES MOINES AVE.  
BURLINGTON, IA 52601  
319-754-8415



All information contained in the drawings and specifications relating to this project is the property of Carl A. Nelson & Associates, Inc. and shall not be used for any other project without the written consent of Carl A. Nelson & Associates, Inc.

HEINZ  
VINEGAR PRODUCTION ADDN  
MUSCATINE, IA  
PROJECT NUMBER

REVISION DESCRIPTION  
1/23/14

HEINZ  
OVERALL SITE  
PLAN

NO. C-1 REV.

**EXHIBIT C**

**STATE AGREEMENT**

**[ATTACH STATE AGREEMENT HERE]**



***ECONOMIC DEVELOPMENT  
ASSISTANCE CONTRACT***

**BY**

**HJ HEINZ COMPANY LP & HEINZ MANAGEMENT LLC,**

**THE CITY OF MUSCATINE,**

**AND THE**

**IOWA ECONOMIC DEVELOPMENT AUTHORITY**

**CONTRACT NUMBER: 14-TC-019**

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### CONTRACT EXHIBITS

Exhibit A -	Recipient's Financial Assistance Application (on file with IEDA), Application # 14-HQJTC-017
Exhibit B-2	High Quality Jobs Program - Tax Credit Special Conditions
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## *Economic Development Assistance Contract*

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RECIPIENT:	HJ HEINZ COMPANY LP & HEINZ MANAGEMENT LLC
COMMUNITY:	CITY OF MUSCATINE
CONTRACT NUMBER:	14-TC-019
AWARD DATE:	DECEMBER 20, 2013
AWARD AMT. – TAX INCENTIVES	\$825,000

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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 HJ Heinz Company LP and Heinz Management LLC (Recipient), 357 Sixth Avenue, Pittsburgh, PA 15222 and the City of Muscatine (Community), 215 Sycamore Street, Muscatine, IA 52761.

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.

*"Force Majeure"* Anything herein to the contrary notwithstanding, if either party is prevented from performing any of its obligations under this Contract (other than any obligation hereunder to pay money)

by causes beyond its reasonable control, including civil commotion, war, casualty, inability to obtain materials or services, or acts of God, such defaulting party will be excused from performance for the period of the delay and for a reasonable time thereafter. The Recipient shall, within twenty (20) days after the beginning of any such enforced delay, have notified the IEDA in writing of the cause or causes thereof, and requested an extension for the period of the enforced delay.

*"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.

#### **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. Factors IEDA considers when determining whether to exercise its discretion under this paragraph include, but are not limited to the percentage of the Recipient's workforce affected; the total number of employees involved; whether the action is seasonal, temporary or permanent; whether employees are relocated to other Iowa facilities; the reasons causing the layoff, relocation or closure; and the impact on the Project; and the impact on the State; or

(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.**

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**ARTICLE 6: REPRESENTATIONS AND WARRANTIES**

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**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 effecting 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**

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

(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 Recipient.

## **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.

(c) *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 <sup>st</sup> 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.* The Recipient shall promptly provide IEDA with written notice of any major changes that would impact the success of the Project.

(b) *Notice of Meetings.* The Recipient shall notify IEDA prior to making any public disclosures following any meeting at which the Project is discussed, the outcome of which is likely to result in a negative impact on the Project, and Recipient shall timely provide IEDA with a written summary of the outcome of any such Project-related discussion.

(c) *Notice of Proceedings.* The Recipient shall promptly notify IEDA of the initiation of any claims, lawsuits, bankruptcy proceedings or other proceedings brought against the Recipient which would adversely impact the Project.

**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**

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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's ownership, structure or operation, or any other similar occurrence, the Community shall promptly provide written notice to IEDA.

#### **ARTICLE 9: DEFAULTS AND REMEDIES**

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**9.1 Default by Recipient.** An unremedied Event of Default, notwithstanding Force Majeure, 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. Factors IEDA considers when determining whether to exercise its discretion under this paragraph include, but are not limited to the percentage of the Recipient's workforce affected; the total number of employees involved; whether the action is seasonal, temporary or



permanent; whether employees are relocated to other Iowa facilities; the reasons causing the layoff, relocation or closure; and the impact on the Project; and the impact on the State; or

14. *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.**

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##### **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:*

HJ Heinz Company LP & Heinz Management LLC  
Bill Durbin  
357 Sixth Avenue  
Pittsburgh, PA 15222

E-mail: bill.durbin@us.hjheinz.com  
Telephone: 412-576-1855

*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 Muscatine  
Gregg Mandsager, City Administrator  
215 Sycamore Street  
Muscatine, IA 52761

E-mail: gmandsager@muscatineiowa.gov  
Telephone: 563-264-1550

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),<br>Application # 14-HQJTC-017 |
| 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.

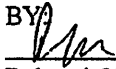
2. Exhibit A - Recipient's Financial Assistance Application (on file with IEDA),  
Application # 14-HQJTC-017
3. Exhibit B-2 High-Quality Jobs Program – Tax Credit Component Special Conditions
4. Exhibit C - Description of the Project and Award Budget
5. Exhibit D - Job Obligations
6. Exhibit E - Reserved
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.

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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

4/11/14  
Date

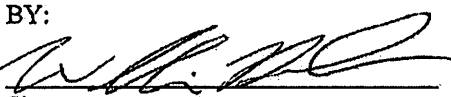
FOR HJ HEINZ COMPANY LP:

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

William Durbin / Manufacturing Director  
Printed/Typed Name and Title


3/18/14  
Date

FOR HEINZ MANAGEMENT LLC:

BY:   
\_\_\_\_\_  
Signature  
William Durbin / Manufacturing Director  
Printed/Typed Name and Title

3/18/14  
Date

FOR THE COMMUNITY:

BY:   
\_\_\_\_\_  
Signature  
DELWAYNE M. HAWKINS  
Printed/Typed Name and Title

4/2/14  
Date

## LIST OF EXHIBITS

- Exhibit A - Recipient's Financial Assistance Application (on file with IEDA), Application # 14-HQJTC-017
- 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 # 14-TC-019**

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**

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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: \$625,000.

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

(a)	Capital Investment.	\$ 24,500,000
(b)	Qualifying Investment.	\$ 24,500,000
(c)	Investment Qualifying for Tax Credits.	\$ 24,500,000

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	\$ 90,000
<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 (3%)</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$ 735,000
<i>Research Activities Credit.</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ 0
<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 statutes 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, 2013 – June 30, 2014	\$ 147,000
July 1, 2014 – June 30, 2015	\$ 147,000
July 1, 2015 – June 30, 2016	\$ 147,000
July 1, 2016 – June 30, 2017	\$ 147,000
July 1, 2017 – June 30, 2018	\$ 147,000

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) *Reserved.*

(f) *Reserved.*

### SECTION 3: ADDITIONAL COVENANTS

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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

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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: HJ Heinz Company LP & Heinz Management LLC  
 Name of Community: City of Muscatine  
 Contract Number: 14-TC-019

**PROJECT DESCRIPTION**

HJ Heinz Company LP & Heinz Management LLC will expand their facility with building remodeling and additional manufacturing machinery and equipment.

**AWARD BUDGET**

SOURCE OF FUNDS	AMOUNT	FORM	USE OF FUNDS	COST
IEDA Programs HQJP Tax Credit  Business	   \$24,500,000	   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	   \$3,000,000   \$21,500,000
<b>Total</b>	<b>\$24,500,000</b>		<b>Total</b>	<b>\$24,500,000</b>

<sup>1</sup>\$825,000 estimated benefit value

**OTHER FUNDING**

SOURCE OF FUNDS	TOTAL AMOUNT	FORM/TERM	USED AS MATCH
TIF Rebate	TBD		Yes
Tax Abatement			
260E Job Training			
In-Kind Contributions			
RISE			
RED			
Other			

**EXHIBIT D – JOB OBLIGATIONS**

**Recipient: HJ Heinz Company LP & Heinz Management LLC**  
**Community: City of Muscatine**  
**Contract Number: 14-TC-019**

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. Only jobs that meet or exceed the qualifying wage thresholds will count towards the business's contract job obligations.

<b>HQJTC JOB OBLIGATIONS</b>		<b>Employment Base</b>	<b>Jobs To Be Created</b>	<b>Total Job Obligations</b>
Project Completion Date:	December 31, 2016			
Maintenance Period Completion Date:	December 31, 2018			
<b>Total employment at project location</b>		273	106	379
<b>Average wage of total employment at project location</b>		\$20.59		
<b>Qualifying Laborshed Wage threshold requirement (per hr)</b>		\$16.37 (100%)		
<b>Number of jobs at or above qualifying wage</b>		229	6	235
<b>Average Wage of jobs at or above qualifying wage</b>		\$22.08		

**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].

**EXHIBIT D**

**COMPANY'S ESTIMATE WORKSHEET**

(1) Date of Preparation: May 1, 2014.

(2) Assessed Valuation of Property as of January 1, 2013:

\$ 9,843,960 \_\_\_\_\_.

(3) Base Valuation of Property:

\$ 9,843,960 \_\_\_\_\_.

(4) Incremental Valuation of Property (1 minus 2):

\$ TBD \_\_\_\_\_ (the "TIF Value").

(5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):

\$ 40.15154 \_\_\_\_\_ per thousand of value.

(6) The TIF Value (4) factored by the Adjusted Levy Rate (5).

\$ TBD \_\_\_\_\_ x \$ 40.15154 \_\_\_\_\_ /1000

(7) Company's Estimate = \$ TBD \_\_\_\_\_ x Annual Percentage =  
\$ TBD \_\_\_\_\_





City Hall, 215 Sycamore St.  
Muscatine, IA 52761-3840  
(563) 262-4141  
Fax (563) 262-4142

**COMMUNITY DEVELOPMENT**

**Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement**

**MEMORANDUM**

**To:** Mayor and City Council Members  
**Cc:** Gregg Mandsager, City Administrator  
**From:** Steven Boka, Director of Community Development  
**Date:** January 14, 2014  
**Re:** Resolution Approving Development Agreement – H. J. Heinz Company, L.P. and Authorizing Annual Appropriation Tax Increment Payments.

**INTRODUCTION:** The City Council adopted the Muscatine Consolidated Urban Renewal Area and adopted an Urban Renewal Plan as provided in Chapter 403 of the Code of Iowa. The City Council also adopted an ordinance providing for the division of taxes levied on taxable property in the Area pursuant to 403.19 of the Iowa Code.

**BACKGROUND:** The City is now requested to consider adoption of a resolution that will approve a Development Agreement with H.J. Heinz, L.P. to facilitate the expansion of their manufacturing facilities, operation and workforce within the Urban Renewal Area. The resolution will further authorize annual appropriation Tax Increment payments and pledging certain tax increment revenues to the payment of the Agreement. If adopted, the resolution would provide annual appropriations tax increment payments to the Company in a total not exceeding \$880,000.

**RECOMMENDATION/RATIONALE:** It is recommended that the City Council adopt the attached resolution approving the Development Agreement and authorizing annual appropriation tax increment payments and pledging certain tax increment revenues to payment of the Agreement to H.J. Heinz Company, L.P.

**BACKUP INFORMATION:**

1. Resolution
2. Development Agreement

**"I remember Muscatine for its sunsets. I have never seen any on either side of the ocean that equaled them" — Mark Twain**



Gregg Mandsager  
City Administrator  
City Hall, 215 Sycamore St.  
Muscatine, IA 52761-3840  
(563) 264-1550 Voice/TT  
Fax (563) 264-0750

March 6, 2014

Troy Shannan  
Heinz North America  
P.O. Box 57  
Pittsburgh, Pennsylvania 15230-0057

Dear Mr. Shannan:

Congratulations and best of luck with your project here in Muscatine. Heinz continues to be a great community partner.

Enclosed you will find three Development Agreements between the City of Muscatine and the H.J. Heinz Company approved by City Council on February 20, 2014. After signing the three documents, please keep one development agreement for your records and return everything else back to my office. A self-addressed and stamped envelope has been included for your convenience. Once the resolutions have been recorded with the Muscatine County Auditor's office, one will be returned for your records.

As part of the Development Agreement, there is an Exhibit C which is the State Agreement and an Exhibit D which is the Company's Estimate Worksheet. Please provide copies of this information with the Development Agreements you return to the City of Muscatine.

Please let me know if you have any questions or concerns. I can be reached at the number shown above, or you can email me at [gmandsager@muscatineiowa.gov](mailto:gmandsager@muscatineiowa.gov).

Sincerely,

Gregg Mandsager  
City Administrator

GJM/fad

Enclosures: Development Agreements (3)