

**DRAFT**  
**Friday, Eldredge & Clark, LLP**  
**6/21/21**

## **BOND PURCHASE AGREEMENT**

This BOND PURCHASE AGREEMENT, dated as of \_\_\_\_\_ 1, 2021, by and among the CITY OF JONESBORO, ARKANSAS, , a municipality organized and existing under the laws of the State of Arkansas (the "Issuer"), NESTLÉ PREPARED FOODS COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania (the "Company"), and NESTLÉ CAPITAL CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of Delaware (the "Purchaser").

### 1. Background

(a) The Issuer proposes to issue and sell not to exceed \$100,000,000 in aggregate principal amount of its Taxable Industrial Development Revenue Bonds (Nestlé Prepared Foods Company Project), Series 2021 (the "Bonds"), the proceeds of which shall be used to finance the cost of acquiring, constructing and installing certain industrial facilities located within the boundaries of the Issuer, which are to be leased by the Issuer to the Company pursuant to a Lease Agreement dated as of \_\_\_\_\_ 1, 2021 (the "Lease Agreement"), by and between the Issuer and the Company. The Bonds are to be issued under and secured by a Trust Indenture dated as of \_\_\_\_\_ 1, 2021 (the "Indenture"), by and between the Issuer and The Bank of New York Mellon Trust Company, National Association, Pittsburgh, Pennsylvania, as Trustee (the "Trustee"). All the rights and interest of the Issuer in and to the Lease Agreement (except for certain rights specified therein) will be assigned under the Indenture to the Trustee to secure the payment of the principal of and interest on the Bonds. In addition, the payment of the principal and interest will be unconditionally guaranteed by the Company pursuant to a Guaranty Agreement dated as of \_\_\_\_\_ 1, 2021 (the "Guaranty Agreement"), entered into between the Company and the Trustee.

(b) The Issuer proposes to sell the Bonds to the Purchaser, and the Purchaser proposes to purchase the Bonds for its own investment purposes and not with a view towards any resale or public distribution thereof.

(c) The parties hereto contemplate that the interest paid on the Bonds will be includable in gross income of the recipient or recipients thereof for federal income tax purposes because of the application of certain provisions of the Internal Revenue Code of 1986, as amended. The parties hereto further contemplate that the interest paid on the Bonds will be exempt from Arkansas income tax.

2. Purchase and Sale. Subject to the terms and conditions and in reliance on the representations, warranties, and covenants herein set forth, the Purchaser agrees to purchase the Bonds from the Issuer and the Issuer agrees to sell the Bonds to the Purchaser at a price of 100% of the principal amount of the Bonds and at a closing the time and place of which shall be mutually agreed upon.

3. Private Sale. The Purchaser agrees that it is purchasing the Bonds for its own investment account and not with a view towards any resale or public distribution thereof.

4. Issuer's Representations and Warranties. The Issuer makes the following representations and warranties to the Purchaser:

(a) The Issuer is a municipality and a political subdivision under the Constitution and the laws of the State of Arkansas.

(b) The Issuer has full power and authority under the Constitution and laws of the State of Arkansas (i) to finance the acquisition, construction and installation of the Project by issuing and selling the Bonds, (ii) to lease the Project to the Company as provided in the Lease Agreement, (iii) to pledge the rents, revenues, and receipts derived pursuant to the Lease Agreement to the Trustee as provided in the Indenture, (iv) to execute, deliver, and perform this Bond Purchase Agreement, the Lease Agreement, and the Indenture in accordance with their respective terms, and (v) to carry out and consummate all other transactions contemplated by each of the aforesaid documents.

(c) The Issuer has duly authorized the execution and delivery of this Bond Purchase Agreement, the Lease Agreement, and the Indenture, and has taken all actions necessary or appropriate to insure that such documents constitute valid and legally binding obligations of the Issuer in accordance with their respective terms.

(d) When delivered to and paid for by the Purchaser in accordance with the terms of this Bond Purchase Agreement, the Bonds will have been duly authorized, executed, authenticated, and issued and will constitute legal, valid and binding limited obligations of the Issuer enforceable in accordance with their terms and entitled to the benefits of the Indenture.

(e) The execution and delivery of this Bond Purchase Agreement, the Bonds, the Lease Agreement, and the Indenture and the compliance with the provisions thereof, do not and will not conflict with or constitute on the part of the Issuer a violation of, breach of, or default under any constitutional provision, statute, indenture, mortgage, deed of trust, or other agreement or instrument to which the Issuer is a party or by which the Issuer is presently bound.

(f) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting the Issuer, nor to the best of the knowledge of the Issuer is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Bond Purchase Agreement.

5. Company's Representations and Warranties. The Company makes the following representations and warranties to the Issuer:

(a) The Company is a Pennsylvania corporation and has duly qualified to do business and is in good standing in the State of Arkansas. The Company has full corporate power, authority and legal right to engage in the business and activities conducted or proposed to be conducted by

it with respect to the Project, to execute, deliver and perform the Lease Agreement, the Guaranty Agreement, and this Bond Purchase Agreement and to perform its obligations thereunder and hereunder, including the making of payments as provided in the Lease Agreement.

(b) The Company has duly authorized all action for the execution, delivery, and performance of the Lease Agreement, the Guaranty Agreement, and this Bond Purchase Agreement and has taken all actions necessary or appropriate to insure that such documents, when executed and delivered by the Company, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except to the extent that their enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights, and subject to the application of principles of equity, if equitable remedies are sought.

(c) The execution and delivery of this Bond Purchase Agreement, the Lease Agreement, the Guaranty Agreement, and the compliance with the provisions hereof and thereof by the Company, do not conflict with or constitute on the part of the Company a material violation of, breach of or default under (i) the Articles of Incorporation or By-Laws of the Company, (ii) any indenture, mortgage, deed of trust, lease, note agreement or other agreement or instrument to which the Company is a party or by which the Company is presently bound, or (iii) any constitutional provision or statute or any order, rule or regulation of any court or governmental or regulatory authorities, applicable to the Company.

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending, or, to the Company's knowledge, threatened against the Company which could reasonably be expected to result in a decision which would materially adversely affect the transactions contemplated by this Bond Purchase Agreement, the Guaranty Agreement, or the Lease Agreement or the validity or enforceability of the Bonds, the Lease Agreement, this Bond Purchase Agreement, the Guaranty Agreement, or any agreement or instrument to which the Company is a party, used or contemplated for use in the consummation of the transactions contemplated by this Bond Purchase Agreement, the Guaranty Agreement, or the Lease Agreement.

6. Company's Covenants. The Company covenants and agrees that it will:

(a) Indemnify and hold harmless to the extent permitted by applicable law, the Issuer, the Trustee, and their officers, directors, agents, servants and employees against any and all losses, claims, damages, expenses or liabilities, joint or several, to which they or any of them may become subject under the Securities Act of 1933, the Securities Exchange Act of 1934, or the Trust Indenture Act of 1939, the rules or regulations under said Acts, or any amendments of said Acts, insofar as such losses, claims, damages, expenses, liabilities or actions arise out of or are based upon the failure to register the Bonds under the Securities Act of 1933 or to qualify the Indenture under the Trust Indenture Act of 1939. Promptly after receipt of notice of the commencement of any action in respect of which indemnity may be sought against the Company under this Paragraph 6, the indemnifiable party will notify the Company in writing of the commencement thereof, and, subject to the provisions hereinafter stated, the Company shall assume the defense of such action (including the employment of counsel, who shall be counsel reasonably satisfactory to the Issuer, the Trustee

or such indemnifiable person, as the case may be, and the payment of expenses) insofar as such action shall relate to any alleged liability in respect of which indemnity may be sought against the Company. The Issuer, the Trustee or such indemnifiable person shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the Company unless the employment of such counsel has been specifically authorized by the Company, or in the event that the Issuer or the Trustee is required to employ separate counsel as a result of the Issuer's determination or the Trustee's determination, as the case may be, in its sole discretion, expressed in writing to the Company, that a conflict of interest exists among the indemnified parties hereunder. The Company shall not be liable to indemnify any person for any settlement of any such action effected without its consent.

(b) Refrain from taking or omitting to take any action which action or omission would in any way cause the proceeds from the sale of the Bonds to be applied in a manner contrary to that provided for in the Lease Agreement or the Indenture, as in effect from time to time.

(c) Pay or cause to be paid, all reasonable expenses and costs incident to the authorization, issuance, printing, sale and delivery, as the case may be, of the Bonds, the Lease Agreement, the Indenture, the Guaranty Agreement, and this Bond Purchase Agreement, including without limitation (i) all filing, registration and recording fees and expenses; (ii) Trustees' fees and expenses; and (iii) fees and expenses of Bond Counsel.

7. Conditions of Purchaser's Obligation. The Purchaser's obligation to purchase and pay for the Bond which is to be delivered hereunder is subject to the fulfillment of the following conditions at or before such delivery:

(a) The Lease Agreement, the Guaranty Agreement, the Indenture, and this Bond Purchase Agreement shall have been duly authorized, executed, and delivered by the respective parties thereto, in substantially the forms heretofore approved by the Purchaser, with only such changes therein as the Purchaser, the Issuer, and the Company shall mutually agree upon.

(b) The Bond to be initially delivered shall have been duly authorized, executed, and authenticated in accordance with the provisions of the Indenture.

(c) The Purchaser shall have received the following documents:

- (i) Executed counterparts of the Lease Agreement, the Guaranty Agreement, and the Indenture;
- (ii) Opinions dated as of the date of delivery of the Bond to be initially delivered of Bond Counsel and Counsel for the Company, each in substantially the form required by the Purchaser; and

- (iii) Such additional opinions, certificates, instruments, and other documents as the Purchaser or its counsel may reasonably request to evidence compliance with applicable law.

8. Notices and Other Actions. All notices, demands, and formal actions hereunder shall be in writing mailed, sent by overnight courier, or delivered to:

Issuer: City of Jonesboro, Arkansas  
300 S. Church St.  
Jonesboro, Arkansas 72401  
Attention: Mayor

Company: Nestlé Prepared Foods Company  
30003 Bainbridge Road  
Solon, Ohio 44139  
Attention: Legal Department

With a copy to:

Nestlé Prepared Foods Company  
1812 N Moore Street  
Arlington, VA 22209  
Attention: Tax Department - Elaine White

Purchaser: Nestlé Capital Corporation  
1812 N. Moore St.  
Arlington, Virginia 22209  
Attention: Treasury & Legal

The Issuer, the Company, and the Purchaser may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certifications, or other communications shall be sent.

9. Survival of Representations and Agreements. All representations, warranties and agreements of the Issuer and the Company contained herein shall remain operative and in full force and shall survive (a) the execution and delivery of this Bond Purchase Agreement, and (b) the purchase of the Bonds hereunder.

10. Counterparts. This Bond Purchase Agreement may be executed in any number of counterparts with each executed counterpart constituting an original but all of which together shall constitute one and the same instrument.

11. Successors. This Bond Purchase Agreement will inure to the benefit of and be binding upon the parties hereto and their successors, but will not be assignable or confer any rights upon any other person.

12. Governing Law. This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas.

CITY OF JONESBORO, ARKANSAS

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

NESTLÉ PREPARED FOODS COMPANY

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

NESTLÉ CAPITAL CORPORATION

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