

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

## **AGREEMENT FOR PAYMENTS IN LIEU OF TAXES**

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

Nestlé Prepared Foods Company, a Pennsylvania corporation (the "Company"), has requested the City of Jonesboro, Arkansas (the "City") to issue not to exceed \$100,000,000 in principal amount of its Taxable Industrial Development Revenue Bonds (Nestlé Prepared Foods Company Project), Series 2021 (the "Bonds"), under the laws of the State of Arkansas, including particularly Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Act"), for the purpose of assisting the Company in financing an expansion to the Company's existing industrial facility located within the boundaries of the City (the "Project"), generally consisting of the construction of various improvements and the acquisition and installation of various machinery, equipment and other tangible personal property.

The Project will be leased by the City to the Company under a Lease Agreement dated as of \_\_\_\_\_ 1, 2021 (the "Lease Agreement"). The Lease Agreement will have a stated term expiring on \_\_\_\_\_ 1, 2051, with the ownership of the Project reverting to the Company at the conclusion of the Lease Agreement upon the happening of certain events which will be more fully described in the Lease Agreement. The properties comprising the original Project and leased under the Lease Agreement, together with all replacements and substitutions thereof which become the property of the Issuer pursuant to the provisions of the Lease Agreement, are included in the term "Project" as used herein.

The City and the Company have entered into a Lease Agreement dated as of July 1, 2002 (the "Prior Lease"), pursuant to which the City has leased to the Company certain industrial facilities financed, in whole or in part, with the proceeds of the City's Taxable Industrial Development Revenue Bonds (Nestlé USA Project), Series 2002.

The Lease Agreement provides that the Company is obligated to pay all taxes and assessments levied and assessed on the Project during the term of the Lease Agreement. The Company and the City understand and agree that, notwithstanding such provision in the Lease Agreement, under Article 16, Section 5 of the Constitution of the State of Arkansas, as interpreted by the Arkansas Supreme Court in *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960), and *Pulaski County v. Jacuzzi Bros. Div.*, 332 Ark. 91, 964 S.W.2d 788 (1998), the Project will be exempt from ad valorem taxes because they will be owned by the City and used for a public purpose within the meaning of the applicable Constitutional and statutory provisions affording the exemption. Thus, the Company and the City agree that the Company, as lessee of the Project, will, in fact, have no ad valorem taxes to pay under the provisions of the Lease Agreement.

To induce the City to proceed with the issuance of the Bonds, which will inure to the benefit of the Company, and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Company agrees with the City as follows:

1. Payments. The Company will make annual payments in lieu of taxes to the Treasurer of Craighead County, Arkansas (the "County"), annually at the times regular ad valorem taxes are payable, as follows:

- (a) During the stated term of the Lease Agreement, an amount equal to thirty-five percent (35%) of the ad valorem taxes which would be payable if the property comprising the Project were subject to ad valorem taxes.
- (b) Thereafter, an amount equal to one hundred percent (100%) of the ad valorem taxes which would be payable if the property comprising the Project were subject to ad valorem taxes.

2. Assessed Valuation. Representatives of the Company will meet annually with the Assessor of the County and determine the assessed valuation of the properties comprising the Project. The determination shall be made by mutual agreement if possible, and if not shall be made by the Assessor as though the Project were privately owned. The amount to be paid each year shall be determined by applying the millage that would be applicable to the Project for that year if the Project were privately owned. The Company shall be entitled to any refund occasioned by overpayment or a reduction in millage which requires a refund by the taxing authorities.

3. Distribution. Each payment made pursuant to Section 1 hereof shall be distributed to the political subdivisions which would have received ad valorem tax payments on the Project had the Project not been exempt from ad valorem taxes in accordance with applicable law.

4. Payments Limited. The payments to be made by the Company under Section 1 hereof are intended to be in lieu of all ad valorem taxes that would have to be paid on the Project to the State of Arkansas, the City, the County, Jonesboro School District (the "District"), and/or other present and future political subdivisions of the State of Arkansas if the Project were not exempt from ad valorem taxes under the provisions of Article 16, Section 5 of the Constitution of the State of Arkansas as interpreted by the Supreme Court of the State of Arkansas in *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960), and *Pulaski County v. Jacuzzi Bros. Div.*, 332 Ark. 91, 964 S.W.2d 788 (1998). Therefore, such payments shall not as to any year be in an amount greater than would be payable for such year in ad valorem taxes, in the aggregate, if the Project were not exempt from ad valorem taxes.

5. Change of Law or Application. If by reason of a change in the Constitution, a change by the Supreme Court of the State of Arkansas in its interpretation of the Constitution, or otherwise ad valorem taxes are no longer imposed on property of the type comprising the Project, no payments shall be due by the Company hereunder from and after the effective date of such change.

Furthermore, if by reason of a change in the Constitution, a change by the Supreme Court of the State of Arkansas in its interpretation of the Constitution, or otherwise the Company is required to pay any real or personal property ad valorem tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of taxes and need only pay the difference, if any, to the City. It is understood that such deduction shall include payments made by the Company for sales taxes, use taxes, or any other taxes, excises or imposts of any kind or character which have been imposed by the State of Arkansas, the City, the County, the District, and/or any other taxing authority in lieu of and as a substitute for ad valorem taxes.

6. Parties to Support Agreement. The City and the Company agree to use their best efforts to sustain the validity and enforceability of this Agreement.

7. Termination. This Agreement shall terminate and be of no further force and effect from and after the date that the Lease Agreement shall terminate for any purpose other than an uncured default on the part of the Company. If such termination shall be at a point constituting a portion of a tax year, the Company shall pay for the year in which termination occurred that portion of the specified annual payment that the number of days in such tax year that the Company was Lessee prior to the termination bears to 365 or 366 days, as appropriate.

8. Prior Lease. The payments hereunder shall be made in full in accordance with Section 1 of this Agreement notwithstanding the fact that the real property comprising the Project may be covered by and subject to the Prior Lease (so long as the Prior Lease is in force and effect), as more fully set forth in Section 5.6 of the Lease Agreement.

9. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Company. This Agreement may be assigned by the Company to a corporation, limited liability company, or other entity organized under the laws of the United States of America, the District of Columbia or one of the states of the United States qualified to do business in the State of Arkansas, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless the Company simultaneously assigns the Lease Agreement and under the terms thereof is thereby relieved of further obligations thereunder.

10. Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

11. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Arkansas.

When executed, this instrument shall constitute a valid and binding contract between the Company and the City.

DATED as of \_\_\_\_\_ 1, 2021.

NESTLÉ PREPARED FOODS COMPANY

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

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

ACCEPTED:

CITY OF JONESBORO, ARKANSAS

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