

## **AGREEMENT TO ISSUE BONDS**

**THIS AGREEMENT** is made as of [September \_\_\_\_], 2016, by and between the City of Jonesboro, Arkansas, a city of the first class under the laws of the State of Arkansas (the "City") and Frito-Lay, Inc. (the "Company"), for the purpose of carrying out the purposes set forth in the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* (the "Act").

### **WITNESSETH:**

**WHEREAS**, the City is authorized by Amendment 65 to the Arkansas Constitution and the Act to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, or contract concerning, or otherwise deal in or dispose of any land, buildings, or facilities of any and every nature that can be used in securing or developing industry within or near the City; and

**WHEREAS**, the City has determined that such purposes may be served by cooperation with the Company in the acquisition, construction, and equipping of an industrial facility within the City, consisting of the acquisition and construction of warehouse and manufacturing facilities, infrastructure and improvements and the acquisition and installation of equipment for the preparation, processing, packaging, handling and storage of food products (the "Project"); and

**WHEREAS**, the City and the Company desire to cooperate in the acquisition, constructing, and equipping of the Project and to secure and develop the Project with the proceeds of revenue bonds of the City (the "Bonds") to be issued in one or more series pursuant to the Act in an aggregate principal amount now estimated not to exceed \$150,000,000; and

**WHEREAS**, the City and the Company intend to enter into a lease agreement relating to the real and personal property constituting the Project, which contemplates that the Project will be leased to and operated by the Company and that the rental payments due thereunder together with other moneys available therefor shall be sufficient to pay debt service on the Bonds and all related costs.

**NOW, THEREFORE**, in consideration of the premises, mutual benefits, covenants, and agreements herein expressed and other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Company agree as follows:

**1. Proceedings.** All proceedings in connection with the issuance of the Bonds shall be consistent with the requirements of the Act. All references contained herein to the issuance of the Bonds shall be subject to compliance with the formalities of the Act when the facts required to do so are determined.

**2. Acquisition, Construction, and Equipping.** The City and the Company will cooperate in causing to be commenced and continued the required acquisition, construction, and equipping of the Project, and the Company may provide, or cause to be provided, the necessary interim financing to permit work on the Project to commence and continue expeditiously pending the issuance of Bonds. Not later than the date of issuance of the Bonds, the Company will convey and transfer or cause to be conveyed and transferred to the City, the Project or portions thereof previously acquired, constructed, and equipped. There shall also be conveyed to the City any easements and rights-of-way necessary to permit construction, equipping, installation, operation, and maintenance of the Project. The City acknowledges that the Project, or portions of the Project, may be subject to liens or security interests in favor of third party creditors at the time that the Project is transferred to the City.

**3. Lease.** The City and the Company will enter into a lease agreement (the "Lease") relating to the real and personal property constituting the Project, which contemplates that the Project will be leased to and operated by the Company and that the rental payments due thereunder together with other moneys available shall be sufficient to pay debt service on the Bonds and all related costs. The Lease shall include such terms and conditions as are agreed to by the City and the Company, including, but not limited to, purchase options for nominal consideration and transferability of ownership.

**4. Sale of Bonds, Security.** The City will take such steps as are necessary to issue, sell, and deliver the Bonds, pursuant to the terms of the Act, for the purposes of financing the costs of the Project, in each case only upon receipt of the written designation by the Company of the purchasers thereof, such Bonds to be in such series, to be in such principal amount, to mature in such amount and times, to bear

interest at such rate or rates, to be payable on such dates, and to have such optional and mandatory redemption features and prices as are determined by the City and approved in writing by the Company. The City further agrees that it will enter into the Lease with the Company for the purpose of providing rental payments sufficient, with other amounts available from the Company or directly or indirectly from the proceeds of the Bonds, to pay the principal of and interest on the Bonds as they become due, and pledging and otherwise securing the payment of such rental payments for the benefit of the holder(s) of the Bonds. The City will cooperate in consummating the transactions so contemplated.

**5. Bonds to be Special Obligations.** The City shall have no financial responsibility with respect to the Project, the Bonds, or the costs associated with either, and the Bonds shall be special obligations of the City and shall never constitute a general obligation, indebtedness, or pledge of the credit of the City within the meaning of any constitutional or statutory provision and shall never be paid in whole or in part out of any funds raised or to be raised by taxation or any other revenues or other funds of the City except those (including unexpended Bond proceeds) derived from or in connection with the sale or lease of the Project as provided for herein.

**6. Conditions of Issuance.** The Bonds may be issued either at one time or in several series from time to time, in such aggregate principal amount or amounts as the Company shall request in writing; provided, however, that all conditions of the Act shall have been met.

**7. Costs to be Financed.** The costs of the Project may include any costs permissible under the Act, including but not limited to reasonable and necessary costs, expenses, and fees incurred by the City in connection with the issuance of the Bonds or in connection with the Project, including, but not limited to, fees and out-of-pocket expenses of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. (“bond counsel”) and other counsel to the Company. The City will upon request provide or cause to be provided any data or information which may be reasonably required to verify any of the costs, expenses, and fees enumerated above.

**8. Termination.** In the event that the Bonds shall not be sold within three years from the date hereof, this Agreement shall automatically terminate unless the parties

hereto shall agree in writing to its extension for a further period of time specified in such writing, which agreement on the part of the City shall not be unreasonably withheld. The Company may unilaterally terminate this Agreement without liability to the City (except for any amounts due and owing by the Company to the City arising out of the transactions occurring on or before the time of such termination, which shall be promptly paid by the Company to the City) by giving notice by ordinary mail, postage prepaid, to the City specifying therein the date of termination, which may be the date of the notice.

**9. Protection to the City.** The Company shall pay all of the City's costs and expenses reasonably and necessarily incurred in connection with this Agreement or any other related document or instrument.

**10. Ad Valorem Taxation Exemption.** The City and the Company recognize that under the Arkansas Constitution and decisions of the Supreme Court of Arkansas and in accordance with Ark. Code Ann. §§ 14-164-701 to -704, the Project will be exempt from ad valorem taxation. The City agrees that the Company shall be required to enter into a Payment in Lieu of Taxes Agreement (a "PILOT Agreement") with the City providing for payments in lieu of a portion of the ad valorem taxes that would otherwise be levied by local public bodies with taxing authority. The City and the Company agree that the final form of PILOT Agreement will be considered for approval at the meeting of the City Council at which the ordinance authorizing the issuance of the Bonds is considered for approval, subject to compliance with the terms of the Act, including, but not limited to statutory notice requirements.

**11. Purpose and Effect.** The Bonds are to be issued, sold, and delivered under the authority of the Act and all related actions and documents shall be in conformity therewith. The City intends this Agreement to be the expression of its present intent, pursuant to the terms hereof, to issue the Bonds in an aggregate amount not to exceed \$150,000,000 and to expend the Bond proceeds to defray the costs of the Project.

**12. Assignment.** The Company may assign this Agreement in whole or in part to an affiliate of the Company without the prior written consent of the City and to an entity which is not an affiliate of the Company with the prior written consent of the City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no

assignment and no dealings or transactions between the City and any assignee shall relieve the Company of any of its obligations under this Agreement.

**IN WITNESS WHEREOF**, the City of Jonesboro, Arkansas, acting pursuant to a Resolution of its City Council, has caused its name to be hereunto subscribed by its Mayor and City Clerk and the Company has caused its corporate name to be subscribed hereto by its duly authorized officer, all as of the year and date first above written.

**CITY OF JONESBORO, ARKANSAS**

ATTEST:

APPROVED:

\_\_\_\_\_  
Donna Jackson, City Clerk

\_\_\_\_\_  
Harold Perrin, Mayor

**FRITO-LAY, INC.**

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

Name: \_\_\_\_\_

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