



Legislation Text

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AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR THE PURPOSE OF FINANCING CERTAIN INDUSTRIAL FACILITIES; AUTHORIZING A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF JONESBORO, ARKANSAS AND NESTLÉ USA - PREPARED FOODS DIVISION, INC.; AUTHORIZING THE SALE OF THE BONDS; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Jonesboro, Arkansas (the "City"), is authorized and empowered under the provisions of Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Act"), to issue revenue bonds and to expend the proceeds thereof to finance the acquisition, construction and equipment of land, buildings or facilities which can be used in securing or developing industry; and

WHEREAS, Nestlé USA - Prepared Foods Division, Inc., a Pennsylvania corporation (the "Company"), proposes to acquire, construct and equip a food processing plant, with land and related machinery, equipment and other personal property, to be located in the Craighead Technology Park (the "Project"); and

WHEREAS, it is proposed that the City issue its revenue bonds under the Act for the purpose of financing the cost of acquiring, constructing and equipping the Project and the expenses of issuing such bonds; and

WHEREAS, pursuant to and in accordance with applicable provisions of Arkansas law, a public hearing was held on the date hereof before the City Council on the question of the issuance of such revenue bonds under the Act; and

WHEREAS, after due consideration the City has determined to proceed with financing the Project and to issue and sell its revenue bonds under the provisions of the Act, in the aggregate principal amount of not to exceed \$225,000,000 (the "Bonds"), and in connection therewith to enter into a Trust Indenture (the "Indenture"), by and between the City and a bank or trust company as shall be recommended by the Company which will serve as Trustee there under (the "Trustee"), to secure the Bonds; and

WHEREAS, the Project will be leased by the City to the Company pursuant to the provisions of a Lease Agreement (the "Lease Agreement"), by and between the City and the Company; and

WHEREAS, copies of the Indenture and Lease Agreement have been presented to and are before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Jonesboro, Arkansas:

SECTION 1: The City Council hereby finds that the acquiring, constructing and equipping of the Project and the issuance of the Bonds to finance the same, will provide substantial employment and payrolls and will thereby secure and develop industry within and near the City.

SECTION 2: The issuance of the Bonds in the aggregate principal amount of \$225,000,000, or such lesser amount as shall be requested by the Company, is hereby authorized. The Bonds shall be designated "City of

Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds (Nestlé USA Project), Series 2001." The Bonds shall bear interest at a fixed rate per annum as shall be recommended by the Company, but not to exceed the maximum permitted by Amendment No. 60 to the Arkansas Constitution or other applicable law. The Bonds shall mature in the year 2031, and the principal thereof shall be payable as shall be recommended by the Company, all as more fully set forth in the Indenture. The Bonds shall be in the forms and denominations; shall be numbered, shall be dated, and shall be subject to redemption prior to maturity all upon the terms and conditions recommended by the Company and set forth in the Indenture.

SECTION 3: The Bonds shall be sold to Nestlé Capital Corporation, a Delaware corporation, or its designee, for the purchase price of 100% of par, plus accrued interest, if any, from the date of the Bonds to the date of delivery, which price is recommended by the Company.

SECTION 4: To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the Indenture, and the City Clerk is hereby authorized and directed to execute and acknowledge the Indenture and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Indenture to be accepted, executed and acknowledged by the Trustee. The Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee and others in order to complete the Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

SECTION 5: There is hereby authorized the execution and delivery of the Lease Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company and others in order to complete the Lease Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

SECTION 6: The issuance and sale of the Bonds are an exceptional situation in which the City has no responsibility for payment of the costs and expenses thereof, all of which are payable by the Company, and the Company's recommendations with respect thereto are acceptable to the City. Therefore, pursuant to applicable laws of the State of Arkansas, including the Act, competitive bidding is hereby waived.

SECTION 7: The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the documents herein authorized and the performance of all obligations of the City thereunder, the issuance, execution, sale and delivery of the Bonds, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and City Clerk are hereby further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

SECTION 8: The City Clerk is hereby authorized and directed to file in the office of the City Clerk, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person copies of the Indenture and the Lease Agreement, and such documents shall be on file for inspection by any interested person.

SECTION 9: The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or

provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

SECTION 10: All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 11: There is hereby found and declared to be an immediate need for the securing and developing of industry in order to provide substantial employment and payrolls, thereby alleviating unemployment and otherwise benefitting the public health, safety and welfare of the City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the other action authorized hereby are immediately necessary for the accomplishing of these public benefits and purposes. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

PASSED: November 5, 2001.