File #: ORD-21:028, **Version:** 1

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS TO FINANCE CERTAIN INDUSTRIAL FACILITIES; AUTHORIZING THE LEASING OF SUCH FACILITIES TO NESTLÉ PREPARED FOODS COMPANY; AUTHORIZING A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE SALE OF THE BONDS; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO

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 land, buildings or facilities which can be used in securing or developing industry; and

WHEREAS, on application of Nestlé USA - Prepared Foods Division, Inc. (now Nestlé Prepared Foods Company), a Pennsylvania corporation (the "Company"), the City has heretofore issued its industrial development revenue bonds for the purpose of financing the costs of acquiring, constructing and equipping an industrial facility located at 1 Nestle Way, Jonesboro, Arkansas 72401 (the "Plant"), which is being leased by the City to the Company pursuant to a Lease and Agreement dated as of July 1, 2002; and

WHEREAS, the Company has now requested that the City issue its revenue bonds under the provisions of the Act for the purpose of financing an expansion to the Plant, including the acquisition and installation of various machinery, equipment and other personal property (the "Project"), and paying the expenses of issuing the bonds; 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 $100,000,000 (the "Bonds"), and in connection therewith to enter into a Trust Indenture (the "Indenture"), between the City and The Bank of New York Mellon Trust Company, National Association, Pittsburgh, Pennsylvania, as Trustee (the "Trustee"), to secure the Bonds; and

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

WHEREAS, the Bonds will be sold to Nestlé Capital Corporation (the "Purchaser") pursuant to a Bond Purchase Agreement (the "Purchase Agreement") among the City, the Company, and the Purchaser; and

WHEREAS, the Company will enter into an Agreement for Payments in Lieu of Taxes (the "PILOT Agreement") with the City as hereinafter provided; and

WHEREAS, forms of the Purchase Agreement, the Indenture, the Lease Agreement, and the PILOT Agreement have been presented to and are before this meeting; 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 the Bonds;

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

Section 1. The City Council hereby finds that the accomplishment 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 $100,000,000, 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 Prepared Foods Company Project), Series 2021." The Bonds shall bear interest at the rate of 1.97% per annum, payable as set forth in the Indenture, and shall mature in the year 2051, which terms are recommended by the Company. 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 the Purchaser or its designee for the purchase price of 100% of par, which price is recommended by the Company, and upon the terms and conditions set forth in the Purchase Agreement. The Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company, the Purchaser, and others in order to complete the Purchase Agreement and to execute and deliver the same on behalf of the City in substantially the form presented to this meeting with such changes as shall be approved by him, his execution to constitute conclusive evidence of such approval..

Section 4. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor and City Clerk are hereby authorized and directed to execute and acknowledge the Indenture for and on behalf of the City. 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 him, his 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 him, his execution to constitute conclusive evidence of such approval.

Section 6. There is hereby authorized the execution and delivery of the PILOT Agreement, and the Mayor is hereby authorized to execute and deliver the PILOT Agreement for and on behalf of the City. The PILOT 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 PILOT Agreement in substantially the form submitted to this meeting with such changes as shall be approved by him, his execution to constitute conclusive evidence of such approval.

Section 7. The acquisition and construction of the Project, and the issuance and sale of the Bonds, are exceptional situations 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 8. 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 9. 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 Purchase Agreement, the Indenture, the Lease Agreement, and the PILOT Agreement, and such documents shall be on file for inspection by any interested person.

Section 10. 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 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 12. 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 AND APPROVED THIS 20TH DAY OF JULY, 2021.

powered by Legistar™