
PERFORMANCE AGREEMENT

Dated as of January __, 2015

BETWEEN

CITY OF KIRKSVILLE, MISSOURI

AND

KRAFT HEINZ FOODS COMPANY

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT, dated as of December __, 2015, as from time to time amended and supplemented in accordance with the provisions hereof (this "Agreement"), is between the **CITY OF KIRKSVILLE, MISSOURI**, a third-class city and municipal corporation organized and existing under the laws of the State of Missouri (the "City"), and **KRAFT HEINZ FOODS COMPANY**, a corporation organized and existing under the laws of the State of Pennsylvania (the "Company").

RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "**Act**"), to purchase, construct, extend and improve certain projects (as defined in Section 100.010 of the Revised Statutes of Missouri, as amended) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Following notice to affected taxing jurisdictions in accordance with Section 100.059.1 of the Act, the City Council adopted Ordinance No. _____ (the "**Ordinance**") on December 21, 2015, (i) approving a plan for a Project (as defined herein) for Kraft Heinz Foods Company, a Pennsylvania corporation (the "**Company**"), and (ii) authorizing the issuance of \$229,000,000 principal amount of Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016 (the "**Bonds**"), to pay the costs of a portion of the Project consisting of (a) the design and construction of a building expansion (collectively, the "**Project Improvements**," as more fully described on **Exhibit B** hereto) to the existing building owned by the Company (the "**Facility**"), located on certain real property in the City (the "**Project Site**," as more fully described on **Exhibit A** hereto), which is within the corporate limits of the City, (b) associated site work and infrastructure, and (c) the acquisition and installation of equipment to upgrade the technology located in the building (the "**Project Equipment**," as more fully described on **Exhibit C** hereto).

3. Pursuant to the Ordinance the City is authorized to execute and deliver (a) a Trust Indenture of even date herewith (the "**Indenture**"), between the City and [Name of Trustee], as trustee (the "**Trustee**"), for the purpose of issuing and securing the City's Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016 in the maximum principal amount of \$229,000,000 (the "**Bonds**"), (b) a Lease Agreement of even date herewith (the "**Lease**") with the Company, as lessee, under which the City, as lessor, will purchase, construct, improve and equip the Project and will lease the Project to the Company, in consideration of rentals which will be sufficient to pay the principal of and interest on the Bonds, and (c) this Agreement for the purpose of setting forth the terms and conditions of the Project's exemption from ad valorem real and personal property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.

4. Pursuant to the foregoing, the City desires to enter into this Agreement with the Company in consideration of the Company's desire to purchase, construct, improve and equip the Project upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Company hereby represent, covenant and agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to the words and terms defined in the Recitals, the following words and terms as used herein shall have the following meanings:

“Agreement” means this Performance Agreement dated as of January __, 2015, between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

“Annual Compliance Report” means the Annual Compliance Report required to be filed by the Company by **Section 3.3** hereof, a copy of which is attached hereto as **Exhibit B**.

“Base PILOT” means an amount equal to the amount assessed on the Existing Real Property, on an annual basis, by the Adair County Assessor’s Office.

“County Assessor” means the Assessor of Adair County, Missouri.

“Event of Default” means any Event of Default as provided in **Section 6.1** hereof.

“Existing Real Property” means the Project Site and the improvements existing thereon at the date of this Agreement.

“Job” means a full-time equivalent position with the Company of not less than 37.5 hours per week at the Project Site, which shall include normal full-time employee benefits offered by the Company. Positions filled by workers who are not directly employed by the Company do not qualify as “Jobs” for purposes of this definition.

“Leased Property” means, collectively, the Existing Real Property and the Project.

“PILOT Payments” means the payments in lieu of taxes provided for in **Article III** hereof.

“Project” means, collectively, (i) the Project Improvements to be constructed on the Project Site, excluding the Existing Real Property, and (ii) the Project Equipment, and all additions, modifications, improvements, replacements and substitutions made to the Project pursuant to the Lease as they may at any time exist, the costs of which will be paid in whole or in part, or for which the Company will be reimbursed in whole or in part, from the proceeds of the sale of the Bonds.

“Project Costs” means all costs of purchasing, constructing, improving and installing the Project.

“Project Equipment” shall have the same meaning as provided in **Exhibit C** to the Indenture.

“Project Improvements” shall have the same meaning as provided in **Exhibit B** to the Indenture.

“Project Site” means all of the real estate described in **Exhibit A** attached hereto and by this reference made a part hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1. City's Representations. The City hereby represents that the Project will significantly benefit the City of Kirksville and the State of Missouri by (i) stimulating economic development in the City and the State through the retention of permanent jobs; and (ii) increasing local and state tax revenues.

Section 2.2. Company's Representations. The Company hereby represents that the Project will significantly benefit the City of Kirksville and the State of Missouri by (i) stimulating economic development in the City and the State through the retention of permanent jobs; and (ii) increasing local and state tax revenues.

ARTICLE III

PROPERTY TAX EXEMPTION; PILOT PAYMENTS

Section 3.1. Property Tax Exemption. So long as the City owns title to the Leased Property, the City expects that the Leased Property will be exempt from ad valorem taxes on real and personal property. The first year of the exemption period shall begin on January 1, 2017. Notwithstanding any other provision of this Agreement to the contrary, the last year of such exemption period shall be 2026. The Company covenants and agrees that, during each year the Leased Property is exempt from ad valorem taxes by reason of the City owning title, the Company will (i) pay the Base PILOT which amount represents the ad valorem real property taxes on the Existing Real Property, and (ii) make annual payments in lieu of taxes to the City (each such payment, a "**PILOT Payment**") as described in this **Article III** relating to the Project. The City and the Company hereby agree that the tax abatement provided by this Agreement shall only apply to the Existing Real Property and the property financed with the proceeds of the Bonds (*i.e.*, property constituting a part of the Project) and shall not apply to property not financed with proceeds of the Bonds.

Section 3.2. Payments in Lieu of Taxes.

(a) The Company covenants and agrees to (i) pay the Base PILOT on or before each December 31, commencing December 31, 2016, and (ii) make PILOT Payments to the City on or before each December 31, commencing December 31, 2017, in an amount equal to 50% of the amount of ad valorem real property taxes which would otherwise be due with respect to the Project Improvements.

(b) The Company and the City agree that each item of personal property financed with the Bonds shall be exempt from ad valorem taxes through 2026. Personal property financed with the Bonds is expected to be placed in service in 2016. The personal property that comprises a portion of the Project would otherwise be exempt from ad valorem personal property taxes during the entire term of the Lease, therefore the Company agrees that it shall make a PILOT Payment to the City on or before December 31 of each year, commencing December 31, 2017, in an amount equal to 50% of the ad valorem taxes which would otherwise be due with respect to the Project Equipment.

(c) The Company shall exercise its option pursuant to **Section 11.4** of the Lease to purchase the Project no later than December 31, 2026. If title to the Project or the applicable portion thereof as described in the preceding sentence has not been transferred by the City to the Company before December 31, 2026, then on December 31, 2027, and each year thereafter until title to the Project or the applicable portion thereof as described in the preceding sentence is transferred to the Company, the Company shall pay to the City a PILOT Payment equal to 100% of the amount that would otherwise be payable to each taxing jurisdiction but for the City's ownership thereof.

(d) The County Assessor will, until this Agreement is terminated, determine an assessed valuation with respect to the Project in accordance with Article X, Section 4(b) of the Missouri Constitution and Section 137.115 of the Revised Statutes of Missouri, as amended, as if title to the Project were in the name of the Company and not the City. Such assessment shall be performed as of January 1 of each year. To facilitate the assessment, the Company agrees to provide to the County Assessor each year, by the same date on which property declarations are required by law to be made, a report that includes the following information:

- (1) a list of Project Equipment acquired during the calendar year;
- (2) a list of the Project Improvements completed during the calendar year; and
- (3) such other information as the County Assessor may reasonably require to complete the assessment of the Project.

The itemization shall be consistent with the information provided to the City and the Trustee under **Section 4.4** of the Lease.

(e) The County Assessor shall notify the City and the Company of the assessed valuation in writing.

Section 3.3. Agreement to Maintain Jobs. The Company hereby represents that it currently maintains 463 Jobs, and that it expects to add 69 Jobs as a result of the Project. In consideration of the property tax abatement set forth in **Section 3.1** above, beginning on November 1, 2016 and on each November 1 thereafter, for so long as the abatement described herein is in effect, the Company agrees to maintain no fewer than 479 Jobs. On or before November 15 of each year, the Company shall file with the City an Annual Compliance Report in the form of **Exhibit B** hereto.

Section 3.4. Distribution of PILOTS. Within 30 days of the date of receipt of the Base PILOT and each PILOT Payment, the City or designated billing/collection agent shall distribute the Base PILOT and each PILOT Payment, after reduction for the administrative costs of the City as provided by **Section 3.6** below, among the taxing jurisdictions in proportion to the amount of taxes which would have been paid in each year had the Leased Property not been exempt from taxation pursuant to this Agreement.

Section 3.5. Obligation of City to Effect Tax Abatement. The City agrees to take all actions within its control to obtain and/or maintain in effect the exemption referred to in **Section 3.1** above, including any filing required with any governmental authorities; provided, however, the City shall not be liable for any failure of Adair County, Missouri or any other governmental taxing authority to recognize the exemption provided herein. The City covenants that it will not voluntarily take any action that may cause or induce the levy or assessment of ad valorem taxes on the Leased Property. In the event such a levy or assessment should occur, the City shall, at the Company's request and at the Company's

expense, fully cooperate with the Company in all reasonable ways to prevent and/or remove any such levy or assessment against the Leased Property.

Section 3.6. Administration Costs. Under Section 100.050 of the Act, the City may require the Company to reimburse the City for its actual costs of issuing the Bonds and administering the plan including costs associated with this Performance Agreement, in an amount of no greater than \$1,000 per year, and any costs imposed by the County Assessor for performance of its duties hereunder. The City will provide a statement for such costs to the Company not later than November 15th of each year and the Company will reimburse the City and the County Assessor for their costs on or before December 31 of each year continuing until December 31 of the year in which this Agreement expires or is terminated.

Section 3.7. Other Property Taxes In Connection with the Leased Property. The real and personal property tax exemption provided by the City's ownership of the Leased Property is expected to apply to all interests in the Leased Property during the period it is owned by the City. If any ad valorem property taxes are levied by or on behalf of any taxing jurisdiction against any interest in the Leased Property during the period the City owns the Leased Property (including, without limitation, any ad valorem taxes levied against the Company's rights in the Lease), the amount of ad valorem tax payments related to such levy or levies which are paid by the Company and received by the City shall be credited against and reduce on a *pro rata* basis the amount of the PILOT Payments the Company is obligated to pay pursuant to this Agreement. The Company shall be responsible for any taxes related to any interest in the Leased Property which the Company owns in its own name or granted to the Company other than pursuant to the Lease.

Section 3.8. Sales Taxes on the Leased Property.

(a) Within fifteen (15) days of the date of this Agreement, the City will provide a project exemption certificate to the Company to allow sales tax exemption for purchase of the construction materials in connection with the Project Improvements. In consideration thereof, the Company agrees to use its best efforts to purchase such construction materials from sellers located within the City.

(b) Except as described in subparagraph (a) above, the purchase, construction, improvement and installation of the Project shall not otherwise be exempt from any sales taxes imposed by any governmental authority by virtue of the City's ownership of the Leased Property, and neither the City nor the Company shall request any such exemption. Nothing herein shall limit the Company's right to any exemption of sales taxes not resulting from the City's ownership of title to the Leased Property.

Section 3.9. Credits for Certain Tax Payments. Nothing in this Agreement shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit hereunder to such extent it has made any payment for ad valorem property taxes on the Leased Property to Adair County, Missouri.

Section 3.10. Company's Right To Protest Taxes. Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement shall be construed to limit or in any way restrict the availability of any provision of Missouri law which confers upon the Company the right to appeal, protest or otherwise contest any property tax valuation, assessment, classification or similar action; provided, however, the Company agrees that it will not appeal, protest or otherwise contest any property tax valuation or assessment unless the amount of such valuation or assessment will cause the total assessed valuation of all property for such year to be greater than 105% of the total amount of assessed valuation set forth in the cost-benefit analysis contained in the Chapter 100 Plan.

Section 3.11. Cessation of Operations at the Project Site. If for any reason the Company completely vacates, abandons or ceases operations at the Project Site during the term of this Agreement, and fails to exercise its option to purchase the Project within 90 days after such vacancy, abandonment or cessation of operations, the Company shall make a PILOT Payment to the City (to be distributed as provided in **Section 3.3**) equal to 100% of the amounts that would otherwise be payable to each taxing jurisdiction if the Project was not owned by the City. Such payment shall be made on or before December 31 in the year in which the Company ceases operations and on each December 31 thereafter for each year in which the Project is, on January 1 of such year, still titled in the name of the City, and the Company has ceased operations.

Section 3.12. No Abatement on Special Assessments, Licenses or Fees. The City and the Company hereby agree that the property tax exemptions described in this Agreement shall not apply to special assessments and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Leased Property. The Company hereby agrees to make payments with respect to all special assessments, licenses and fees which would otherwise be due with respect to the Leased Property if such Leased Property was not owned by the City.

ARTICLE IV

COVENANTS, REPRESENTATIONS AND AGREEMENTS OF THE COMPANY

Section 4.1. Inspection. The Company agrees that the City and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least 48 hours advance notice and to the Company's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and the records of the Company which demonstrate compliance with this Agreement.

Section 4.2. Compliance with Laws. To the best of the Company's knowledge, the Leased Property is and will be in material compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Leased Property, including environmental laws, subject to all applicable rights of the Company to contest the same.

Section 4.3. Purchase, Construction, Improvement, Installation and Operation. The Project will be purchased, constructed, improved, installed and operated in a manner that is consistent with the description of the Project herein and in the Lease. In the event the Project purchased, constructed, improved and installed is materially inconsistent with the description of the Project contained herein and in the presentation to the City Council of the City, the City reserves the right to declare an Event of Default in accordance with **Section 6.1** hereof.

ARTICLE V

SALE AND ASSIGNMENT

The benefits granted by the City to the Company pursuant to this Agreement shall belong solely to the Company, and such benefits shall not be transferred (other than to an affiliate of the Company), assigned, pledged or in any other manner hypothecated without the express written consent of the City, except that the Company shall have the right to assign or transfer its interest hereunder, including the benefits hereunder, in connection with any assignment or transfer of its interest in the Leased Property that is permitted pursuant to the Lease; but nothing herein shall preclude the Company from assigning or

pledging its interest in the Leased Property so long as the Company continues to occupy the Leased Property and otherwise remains responsible for its undertakings herein.

ARTICLE VI

DEFAULT AND REMEDIES

Section 6.1. Events of Default. If any one or more of the following events occurs and is continuing, it is hereby defined as and declared to be and to constitute an Event of Default hereunder:

- (a) the Company fails to make the Base PILOT or any PILOT Payments required to be paid hereunder within 10 days after written notice and demand by the City;
- (b) the Company shall fail to perform any of its obligations hereunder for (i) a period of 60 days (or such longer period as the City and the Company may agree in writing) following written notice to the Company from the City of such failure which notice shall include a specific description of the Company's failure hereunder), or (ii) if such failure is not subject to cure within such 60 days, Company shall have failed to initiate action to cure such default and shall pursue such action diligently; or
- (c) any representation of the Company contained herein proves to be materially false or erroneous and is not corrected or brought into compliance within 30 days (or such longer period as the City and the Company may agree in writing) after the City has given written notice to the Company specifying the false or erroneous representation and requiring it to be remedied; provided, that if such matter is not subject to cure within such 30 days after such notice, the Company fails to initiate action to cure the default within such 30 days after such notice and fails to pursue such action diligently.

Section 6.2. Remedies on Default. Upon an Event of Default hereunder this Agreement may be terminated by written notice to the Company from the City. Upon such termination the Company shall make a PILOT to the City equal to (i) the pro rata amount payable pursuant to **Section 3.3** hereof from January 1 of the year in question through the effective date of termination, plus (ii) the pro rata amount of taxes that would be due for the remaining portion of the year assuming the Leased Property was placed on the tax rolls effective on the date of termination through December 31; provided, however, the payment of PILOTS following cessation of operations shall be governed by **Section 3.11**.

Upon any termination of this Agreement the Company agrees to pay interest and penalties on all amounts due hereunder to the same extent as if such payments were taxes under Missouri law.

Section 6.3. Payments on Defaulted Amounts. Any amounts due hereunder which are not paid when due shall bear interest at the interest rate imposed by Missouri law on overdue ad valorem real estate taxes from the date such payment was first due. In addition, amounts payable hereunder in lieu of ad valorem real personal property taxes which are not paid when due shall be subject to penalties imposed by Missouri law on overdue ad valorem real estate taxes.

Section 6.4. Enforcement. In addition to the remedies specified in **Section 6.2**, upon the occurrence of an Event of Default, the City or any taxing jurisdictions that would benefit from the Base PILOT and the PILOT Payments provided for in this Agreement may bring an action for specific performance to enforce such payments. In the event of litigation pertaining to the enforcement of this Agreement, the losing party shall pay all costs of litigation, including reasonable attorneys' fees.

Section 6.5. Failure of the City to Perform its Obligations. In the event the City shall fail to perform any of its obligations hereunder for (i) a period of 60 days (or such longer period as the Company and the City may agree in writing) following written notice to the City from the Company of such failure which notice shall include a specific description of the City's failure hereunder), or (ii) if such failure is not subject to cure within such 60 days, the City shall have failed to initiate action to cure such default and shall pursue such action diligently; the Company may declare that the City is in default under this Agreement and may pursue any legal remedy available to it to enforce this Agreement.

ARTICLE VII

TERM OF AGREEMENT

This Agreement shall become effective upon execution, and subject to earlier termination pursuant to the provisions of this Agreement (including particularly the following paragraph and **Article VI** hereof), shall have an initial term commencing as of the date of this Agreement and terminating on December 31, 2026 (the "Stated Expiration Date"). This Agreement shall automatically terminate prior to the Stated Expiration Date in the event the Bonds (or any Bonds issued to refund the Bonds) are no longer outstanding.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1. Severability. If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 8.2. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 8.3. Execution in Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 8.4. Waiver. The City and the Company acknowledge and agree that the amounts payable hereunder shall constitute payments due the City under the Lease executed in connection with the Bonds. The Company shall not be entitled to any extension of payment of such amounts as a result of a filing by or against the Company in any bankruptcy court.

Section 8.5. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the City and the Company with respect to the subject matter hereof.

Section 8.6. Electronic Storage of Documents. The City and the Company agree that the transaction described herein may be conducted and related documents may be stored by electronic means.

Section 8.7. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be given in the manner specified in the Indenture.

Section 8.8. Employee Verification. The Company will comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City on or before November 15 of each year during the term of this Agreement, beginning November 15, 2016, and also upon execution of this Agreement.

Section 8.9. Complete Agreement. The Company and the City understand that oral or unexecuted agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect the Company and the City from misunderstanding or disappointment, any agreements the Company and the City reach covering such matters are contained in this Performance Agreement and in the Lease, which are the complete and exclusive statements of the agreement between the Company and the City, except as the Company and the City may later agree in writing to modify this Performance Agreement and the Lease.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names, all as of the date first above written.

CITY OF KIRKSVILLE, MISSOURI

By: _____
Name: Richard Detweiler
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Vickie Brumbaugh
Title: City Clerk

KRAFT HEINZ FOODS COMPANY

By: _____
Name:
Title:

ACKNOWLEDGMENT AND AGREEMENT

The County Assessor of Adair County, Missouri, acknowledges receipt of this Agreement and agrees to perform the duties imposed on the County Assessor by **Article III** of this Agreement.

**OFFICE OF THE ADAIR COUNTY,
MISSOURI ASSESSOR**

By: _____

Name: Donnie Waybill

Title: County Assessor

EXHIBIT A

DESCRIPTION OF PROJECT SITE

The real property located at 2504 North Industrial Road in Kirksville, Missouri, as more specifically described below:

Legal Description

[to follow]

EXHIBIT B

ANNUAL COMPLIANCE REPORT

Date: November ____, 20__

A. COMPANY INFORMATION.

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact: _____ Telephone: _____

Title: _____ Fax: _____

B. EMPLOYMENT INFORMATION.

Average Annual Number of "Jobs" at the Project
as of November 1, 20__ (the November 1st prior to this Report): _____

Attached is a copy of a report verifying the above calculation containing at a minimum the following information for each Job:

1. Name or Social Security Number.
2. Hire Date.
3. Termination Date.

C. CERTIFICATION.

The undersigned hereby represents and certifies that, to the best knowledge and belief of the undersigned, this Annual Compliance Report contains no information or data, contained herein or in the exhibits or attachments, that is false or incorrect in any material respect.

Dated this __ day of _____, _____.

Signature: _____

Name: _____

Title: _____