

SECOND AMENDMENT TO PERFORMANCE AGREEMENT

THIS SECOND AMENDMENT TO PERFORMANCE AGREEMENT, dated December 21, 2018 (this “**Amendment**”), amends that certain Performance Agreement dated as of February 29, 2016 and, as previously amended by that certain First Amendment to Performance Agreement dated February 6, 2017 (collectively, the “**Prior Agreement**” and, as amended by this Amendment, the “**Agreement**”), 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**”). *All capitalized terms used herein and not otherwise defined will have the meanings assigned to such terms in the Prior Agreement.*

RECITALS:

1. Pursuant to the provisions of Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended, and Article VI, Section 27(b) of the Missouri Constitution, as amended (collectively, the “**Act**”), on December 21, 2015, the City Council of the City approved a Plan for an Industrial Development Project and Cost-Benefit Analysis (the “**Original Plan**”) and authorized the issuance by the City of its Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016, in the aggregate principal amount of not to exceed \$229,000,000 (the “**Bonds**”), to finance the costs of the Project Improvements and the Project Equipment for the Company. The Bonds were issued by the City on February 29, 2016, and were purchased by the Company pursuant to a Bond Purchase Agreement of the same date. The Company remains the sole owner of the Bonds.

2. Pursuant to a Trust Indenture dated February 29, 2016, between the City and BOKF, N.A., as trustee, the Bonds are secured by and payable from an assignment of rentals payable by the Company pursuant to a Lease Agreement of even date therewith. Under the Lease Agreement, the City, as lessor, agreed to take title to the Project Site (including the Existing Real Property and the Project Improvements) and the Project Equipment, and to lease the Project to the Company, in consideration of rentals in amounts that will be sufficient to pay the principal of and interest on the Bonds.

3. The Project Equipment was acquired and placed into service during the 2016 calendar year. The Project Improvements were completed in the 2017 calendar year. The Original Plan estimated the completed market value of the Project Improvements to be \$115,000,000. The Company now believes that the fair market value of the Project Site, including the Existing Real Property and the Project Improvements, does not exceed \$10,000,000, while the County Assessor has assigned a market value of approximately \$99,200,000 for the 2018 tax year. As a result of this very substantial difference between the County Assessor’s determination of the market value of the completed Project Improvements and the Company’s expectation of the market value, after notice and hearing as required by the Act, by ordinance approved by the City Council of the City on December 20, 2018, at the Company’s request, the City has approved an Amended Plan for an Industrial Development Project (the “**Amended Plan**”), amending the Original Plan to provide for a stipulated market value of the Project Improvements in each year, beginning with the 2018 tax year and continuing through the maximum term of the Lease (December 31, 2026), as described therein.

4. As a result of the City’s approval of the Amended Plan, it is necessary for the Company and the City to enter into this Amendment for the purpose of modifying 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.

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:

Section 1. Amendment of Method of Determining the Market Value for Calculation of PILOT Payments. Section 3.2 of the Prior Agreement is hereby deleted and replaced with the following:

Section 3.2. Payments in Lieu of Taxes.

(a) By virtue of the City's ownership of the Project, the Company and the City agree that the Project will be exempt from ad valorem taxes until the termination of the Lease, whether at its stated termination date (December 31, 2026), or upon the Company's exercise of its option to purchase the Project pursuant to **Section 11.5** of the Lease. The Company represents and warrants that it has paid all PILOT Payments due under the Prior Agreement through the 2017 tax year, as well as all ad valorem taxes payable for taxable property owned by the Company within Adair County, Missouri, through the 2017 tax year. The Company covenants and agrees to pay future PILOT Payments to the City on or before each December 31, commencing December 31, 2018, until the termination of the Lease, whether at its stated termination date (December 31, 2026), or upon the Company's exercise of its option to purchase the Project pursuant to **Section 11.5** of the Lease, with the amounts of the PILOT Payments to be calculated as set forth below:

(i) **Existing Real Property.** The Base PILOT with respect to the Existing Real Property shall equal 100% of the amount of ad valorem real property taxes which would be payable but for the City's ownership of the Project, provided that the market value of the Existing Real Property for purposes of such calculation is stipulated by the parties at \$2,578,344 (being the last assessed value thereof prior to construction of the Project Improvements), without regard to any annual appraisal or assessment which may be rendered by the County Assessor with respect to the Existing Real Property or the Project Improvements.

(ii) **Project Improvements.** PILOT Payments with respect to the Project Improvements shall equal 50% of the amount of ad valorem real property taxes which would be payable but for the City's ownership of the Project, provided that the market value of the Project Improvements for purposes of such calculation shall be (A) for the 2018 tax year, \$40,523,190, such amount representing a stipulated market value of the Project Site, including the Existing Real Property and the Project Improvements (collectively referred to as the "**Real Property**" in this Section 3.2) of \$43,101,534, less \$2,578,344 attributable to the Existing Real Property; and (B) for the tax years 2019 through 2026, the Stipulated Value of the Real Property (determined pursuant the process described in subparagraph 3.2(d) below), less \$2,578,344 attributable to the Existing Real Property. The City and the Company agree to the calculation of PILOT Payments with respect to the Project Improvements, based upon these stipulated market values, using the applicable assessment ratio then in effect in the State of Missouri, without regard to any annual appraisal or assessment which may be rendered by the County Assessor with respect to the Existing Real Property or the Project Improvements.

(iii) **Project Equipment.** PILOT Payments with respect to the Project Equipment shall equal 50% of the ad valorem taxes which would be payable but for the City's ownership of the Project, with the taxable value of the Project Equipment, using

the applicable assessment ratio then in effect in the State of Missouri, being determined by the County Assessor as described in subparagraph (c) below. The Company, represents and warrants to the City that (A) to the best of its knowledge, **Exhibit A** hereto includes a true and accurate listing of all of the personal property constituting the Project Equipment as of January 1, 2018, the costs of which were paid from proceeds of the Bonds, (B) all Project Equipment was placed in service in 2016, and (C) all Project Equipment is depreciable based upon a 7-year recovery period. Not later than March 1st of each year (subject to permitted extensions), the Company agrees to file with the County Assessor a listing of personal property constituting the Project Equipment, with the same level of detail as the personal property return required by the County Assessor for the Company's taxable personal property.

(b) The Company shall exercise its option to purchase the Project pursuant to **Section 11.5** of the Lease no later than December 31, 2026. If title to the Project 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 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.

(c) The County Assessor will, until the Agreement is terminated, (i) determine an assessed valuation with respect to exclusively the Project Equipment as of January 1 of each year, 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 Equipment were in the name of the Company and not the City, and (ii) provide written notification to the City and the Company of the assessed valuation of the Project Equipment not later than 60 days after receipt by the County Assessor of the property listing described in paragraph (a)(iii) above. The Company will pay costs imposed by the County Assessor for its determination of the assessed valuation of the Project Equipment pursuant to Section 6 of the Prior Agreement. It is expressly agreed and understood that, notwithstanding anything to the contrary in the Prior Agreement, with respect to the Project, for the tax years 2018 through and including 2026, the County Assessor shall only be responsible for determining the assessed valuation of the Project Equipment, and not of the Project Improvements.

(d) The term "**Stipulated Value of the Real Property**," as used in subparagraph (b)(ii) above, shall be the fair market value of the Real Property, determined by the following appraisal process:

(i) No later than January 31, 2019, the City and the Company shall confer and select a real estate appraiser ("**Designated Appraiser**"), who shall, no later than July 1, 2019, prepare and deliver to the Company and the City, an MAI appraisal of the market value of the Real Property to be used to determine the valuation of the Project Improvements in the computation of the PILOT Payments under subparagraph 3.2(a)(ii) above (herein, the "**Stipulated Value of the Real Property**"). If the City and the Company fail to select the Designated Appraiser by said date, then either party thereafter shall be entitled to apply to the local chapter of the Appraisal Institute in Kansas City, Missouri, to select the Designated Appraiser to prepare the MAI appraisal based on the qualifications set forth in subparagraph (ii) below. The Designated Appraiser shall thereafter diligently complete a MAI appraisal of the market value of the Real Property, which shall be used as the Stipulated Value of the Real Property for purposes of this Section 3.2. The Company shall pay all costs of the Designated Appraiser in preparing such appraisal. The Company agrees to cooperate with the Designated Appraiser in

furnishing information about the Real Property, reasonably requested in the preparation of the MAI appraisal. Once determined by the Designated Appraiser, the Stipulated Value of the Real Property shall be fixed for the calendar years 2019 through and including 2026, and shall be final and binding on the City and the Company, except as provided in **Section 8.3** of the Lease with respect to additional buildings and improvements constructed by the Company, not paid for with Bond proceeds, on portions of the Project Site not theretofore occupied by buildings or improvements.

(ii) The Designated Appraiser shall (A) be a designated MAI real estate appraiser, licensed as a Missouri State Certified General Real Estate Appraiser, in good standing with the Appraisal Institute in the State of Missouri, (B) have ten (10) years or more of commercial and industrial real estate appraisal experience with facilities similar in size and type as the Project operated by the Company, (C) be principally a commercial and industrial real estate appraiser, (D) use an MAI-approved methodology to determine the valuation, and (E) not have previously rendered any appraisal services to either the City or the Company.

Section 2. Amendment of Company's Right to Protest Taxes. To recognize the stipulated market value of the Project Site after the date of this Amendment, **Section 3.10** of the Prior Agreement is hereby deleted and replaced with the following:

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 (a) with respect to the Existing Real Property and the Project Improvements, the parties have stipulated the market value, which shall not be contested by either party to this Agreement, and (b) with respect to the Project Equipment, the Company 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 Project Equipment for such year to be greater than 105% of the total amount of assessed valuation for the Project Equipment set forth in the cost-benefit analysis contained in the Amended Chapter 100 Plan.

Section 3. Payment of Costs. The Company agrees to pay to the City the sum of \$60,000.00 on or before December 28, 2018, as reimbursement of the City's legal fees incurred in connection with the Amended Chapter 100 Plan and this Amendment.

Section 4. Effect of Amendment. The provisions of the Prior Agreement, including without limitation the representations, warranties and covenants and the rules of construction included therein, are hereby ratified and confirmed, except as modified and amended by this Amendment.

Section 5. Execution in Counterparts. This Amendment 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 6. Full Force and Effect. Each of the City and the Company acknowledges and agrees that the Lease and Prior Agreement, together with the Bonds and the Indenture, are in full force and effect, and that, to the best of their knowledge, neither the City nor the Company is in default under the Prior Agreement or the Lease. The word "knowledge", as used in this Section 6, is limited, as to the

City, to the actual knowledge of its City Manager and its Finance Director, and, as to the Company, to the actual knowledge of its State & Local Tax Manager and its Plant Manager for the Project.

Section 7. Effective Date. This Amendment shall be effective as of December 21, 2018.

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

[signature pages follow]

CITY OF KIRKSVILLE, MISSOURI

By: _____
Name: Chuck Long
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Lindsay Leckbee
Title: City Clerk

KRAFT HEINZ FOODS COMPANY

By: _____
Name:
Title:

Second Amendment to Performance Agreement, dated December 21, 2018,
Between the City of Kirksville, Missouri, and
Kraft Heinz Foods Company

Kraft Heinz Foods Company
Kirksville, Missouri
2016 Chapter 100 Bonds
List of Project Equipment

EXHIBIT A

Asset #	Asset Category	Asset Description	Taxable Cost of Equipment	
326981	Machinery and Equipment	KIRK Refrigeration	\$	19,812,958.94
327025	Machinery and Equipment	KIRK Primary Packaging	\$	14,812,352.73
327017	Machinery and Equipment	KIRK Cooking	\$	14,038,842.39
327031	Machinery and Equipment	KIRK Process Installation	\$	9,511,200.84
327023	Machinery and Equipment	KIRK Slicing	\$	7,996,434.12
327021	Machinery and Equipment	KIRK Crusting	\$	6,634,319.48
327027	Machinery and Equipment	KIRK Secondary Packaging	\$	6,529,597.97
327003	Machinery and Equipment	KIRK Whole Muscle Processing	\$	3,692,388.42
327013	Machinery and Equipment	KIRK Racking	\$	3,517,207.89
327019	Machinery and Equipment	KIRK Chilling	\$	3,049,148.50
327011	Machinery and Equipment	KIRK Stuffing	\$	2,714,297.10
327015	Machinery and Equipment	KIRK Rack Handling	\$	2,094,679.47
327007	Machinery and Equipment	KIRK Dumping	\$	1,507,035.81
327001	Machinery and Equipment	KIRK Spice Handling	\$	1,154,756.61
327009	Machinery and Equipment	KIRK Mixing	\$	378,824.13
331422	Machinery and Equipment	KIRK Compressed Air System	\$	218,223.14
331958	Machinery and Equipment	KIRK Network Equip	\$	144,650.46
332800	Machinery and Equipment	LECO	\$	59,340.85
244429	Machinery and Equipment	X-Ray Ham	\$	29,920.50
327005	Machinery and Equipment	KIRK Grinding Process	\$	25,994.94
332806	Machinery and Equipment	X-met 8000	\$	21,714.46
330300	Machinery and Equipment	KIRK Salami	\$	16,080.64
326983	Machinery and Equipment	KIRK Boiler/Steam Generation	\$	14,077.67
244423	Machinery and Equipment	AHU	\$	10,966.97
332804	Machinery and Equipment	Incubator	\$	3,485.96
332802	Machinery and Equipment	Lab mixer/grinder	\$	3,253.60
244431	Machinery and Equipment	Installation	\$	2,453.07
			\$	97,994,207

ACKNOWLEDGMENT AND AGREEMENT BY COUNTY

The County Commission of Adair County, Missouri, authorizes and agrees that the County Assessor will perform the assessment of the Project Equipment, as described in Section 3.2 of the Performance Agreement, dated February 29, 2016, between the City of Kirksville, Missouri (the “City”), and Kraft Heinz Foods Company (the “Company”), as amended by the foregoing Second Amendment to Performance Agreement, dated December 21, 2018. No determination of the market value of any real or personal property pursuant to the Performance Agreement, as amended, will be binding upon the County Assessor’s future valuation of such property upon termination of the Performance Agreement and the conveyance of title by the City to the Company; and all such future valuations will be solely in accordance with the laws of the State of Missouri.

ADAIR COUNTY, MISSOURI

By: _____
Presiding Commissioner

Acknowledged and Agreed:

County Assessor, Adair County, Missouri