



Hamilton County Board of Commissioners

RESOLUTION

No. 706-17

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE McKEE FOODS CORPORATION PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE INDUSTRIAL DEVELOPMENT BOARD OF HAMILTON COUNTY, TENNESSEE, AND TO AUTHORIZE THE COUNTY MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.

- WHEREAS,** pursuant to Tennessee Code Annotated, Section 7-53-305(b) Hamilton County (the "County") is permitted to delegate to The Industrial Development Board of Hamilton County, Tennessee (the "Corporation"), the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Corporation upon a finding by the County that such payments are deemed to be in furtherance of the Corporation's public purposes; and,
- WHEREAS,** McKee Foods Corporation (the "Company") intends to expand its manufacturing plant located at 10638 Apison Pike in Collegedale, Hamilton County, Tennessee (the "City"), and to purchase certain furniture, equipment, and other tangible personal property, and, because of the substantial economic benefits to the County resulting from the project, the Company has asked the Corporation and the County to approve payments in lieu of ad valorem taxes; and
- WHEREAS,** A form of Agreement for Payment In Lieu of Ad Valorem Taxes has been submitted to the County and has been reviewed for legal sufficiency by counsel for the County; and
- WHEREAS,** the Company expects to invest approximately \$17 million on a building and other improvements to real property ("Facility") and \$58 million in new equipment and other personal property (the "Personal Property") by December 31, 2008, in the planned expansion; and
- WHEREAS,** the Company expects that when the expansion is completed and the new production lines are operational, this expansion will result in at least 175 full-time jobs with average annual wages, excluding benefits, of \$36,800; and

WHEREAS, the Company has agreed that if its new investment in the Facility and Personal Property is less than the amounts described above, or if fewer full-time jobs than described above are created, the City and the County shall each have the right to amend the terms of this Agreement to reduce the tax abatements prospectively and require the repayment of a portion of any taxes previously abated; and

WHEREAS, the County has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the Corporation's public purposes as set forth within Chapter 53 of Title 7 of the Tennessee Code Annotated;

NOW, THEREFORE, BE IT RESOLVED BY THIS COUNTY LEGISLATIVE BODY IN SESSION ASSEMBLED:

That we do hereby find that the McKee Foods Corporation project described above is in the best interests of the County, and that payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Corporation's public purposes; and

That, having made such a finding in this instance, we do hereby delegate to the Corporation the authority to negotiate and accept payments in lieu of ad valorem taxes from the Company, it being further noted that this delegation is for this purpose and this project only; and

That the County Mayor is hereby authorized to enter into an Agreement for Payments In Lieu of Ad Valorem Taxes in substantially the form attached hereto, with such changes thereto as he shall approve.

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

MB: 311

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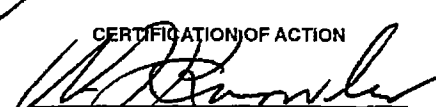
Approved:

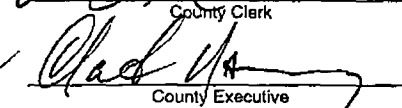
Rejected:

Approved:

Vetoed:

CERTIFICATION OF ACTION


County Clerk


County Executive

July 5, 2006

Date

**AGREEMENT FOR PAYMENTS IN LIEU
OF AD VALOREM TAXES**

THIS AGREEMENT is made and entered into as of July __, 2006, by and among THE INDUSTRIAL DEVELOPMENT BOARD OF HAMILTON COUNTY, TENNESSEE (the "Board"); the CITY OF COLLEGEDALE, TENNESSEE (the "City"); HAMILTON COUNTY, TENNESSEE (the "County"); and McKEE FOODS CORPORATION, a Tennessee corporation (the "Company"); and, for the purpose of evidencing their acceptance of the agency relationship established herein, is joined in by CARL E. LEVI and his successors, acting in the capacity of collector of ad valorem taxes for the city of Collegedale, Tennessee ("Trustee"), and by WILLIAM C. BENNETT and his successors, acting in the capacity of Hamilton County Assessor of Property ("Assessor").

WITNESSETH:

WHEREAS, the Company intends to construct and equip an addition to its manufacturing plant located at 10638 Apison Pike, in Collegedale, Hamilton County, Tennessee, and more particularly described in Exhibit A attached hereto; and

WHEREAS, the Company expects to invest approximately \$17 million on a new building and other improvements to real property (the "Facility") and \$58 million in new equipment and other personal property (the "Personal Property") by December 31, 2008, in a planned expansion; and

WHEREAS, the Company expects that when the new expansion is completed and operational, it will result in at least 175 full-time jobs with average annual wages, excluding benefits, of \$36,800;

WHEREAS, the Company has requested the Board's assistance in financing the construction of the Facility and equipping it with the Personal Property; and

WHEREAS, the Company has agreed that if its investment in the Facility and Personal Property is less than the amounts described above, or if fewer full-time jobs than described above are created, the City and the County shall each have the right to amend the terms of this Agreement to reduce the tax abatements prospectively and require the repayment of a portion of any taxes previously abated; and

WHEREAS, any tangible equipment or other personal property acquired by the Company for use in the Facility prior to December 31, 2008, shall be included within the definition of the Personal Property for purposes of this Agreement; and

WHEREAS, substantial public welfare benefits to the City and County will be derived from the Company's construction and operation of the Facility as a manufacturing facility; and

WHEREAS, the Board has determined that the Facility and Personal Property (collectively referred to hereafter as the "Property") constitutes part of a "project" for purposes of Tennessee Code Annotated §7-53-101; and

WHEREAS, the Board has agreed to take title to the Property and to lease the Property to the Company; and

WHEREAS, because the Board is a public corporation organized under the provisions of Tennessee Code Annotated §§7-53-101, et seq., the Property will be exempt from ad valorem property taxes ("property taxes") normally paid to the City and to the County, so long as the Property is owned by the Board, pursuant to the provisions of Tennessee Code Annotated, §7-53-305; and

WHEREAS, for the public benefit of the citizens of the City and the County, the Board has requested that the Company make certain payments to the Board in lieu of the payment of property taxes that would otherwise be payable on the Property; and

WHEREAS, the Company has agreed to make such payments to the Board in lieu of the property taxes otherwise payable on the Property (the "In Lieu Payments"), as more particularly set forth herein; and

WHEREAS, the Board has been authorized to receive the In Lieu Payments in lieu of property taxes by resolutions adopted by the City and the County, acting through their duly elected Commissions, which resolutions delegate to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions; and

WHEREAS, the Company and the Board have agreed that all In Lieu Payments made to the Board shall be paid to the Trustee, who shall disburse such amounts to the general funds of the City and the County in accordance with the requirements specified herein; and

WHEREAS, the Board wishes to designate the Assessor as its agent to appraise the Property and assess a percentage of its value in the manner specified herein; and

WHEREAS, the Board wishes to designate the Trustee as its agent to receive the In Lieu Payments in accordance with the terms of this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. Designation of Assessor; Appraisal and Assessment of Property. The Board hereby designates the Assessor as its agent to appraise and assess the Property. The Assessor shall appraise and assess the Property in accordance with the Constitution and laws of Tennessee as though the Property were subject to property taxes. The Assessor shall give the Trustee, the

Treasurer, the Board, and the Company written notice of any changes in appraisals of the Property in the same manner that notices are given to owners of taxable property. The Assessor shall make available to the Board and the Company all records relating to the appraisal and assessment of the Property.

2. Designation of Trustee; Computation and Billing of In Lieu Payments. The Board hereby designates the Trustee as its agent to compute the amounts of the In Lieu Payments, to receive such payments from the Company, and to disburse such payments to the City and the County. Beginning in 2006, and each year thereafter during the term of this Agreement, the Trustee shall compute the taxes which would be payable on the Property if it were subject to property taxes, in accordance with the Constitution and laws of Tennessee and in accordance with the appraisal and assessment of the Assessor. Each year during the term of this Agreement, beginning in October 2006, the Trustee shall send the Board and the Company a bill for appropriate amounts of In Lieu Payments (the "Tax Bill").

3. Payments in Lieu of Taxes. After receipt of the Tax Bill, the Company shall pay to the Trustee the amounts indicated on the Tax Bill in accordance with the provisions of this Paragraph 3. The In Lieu Payments shall be made by the Company in lieu of the property taxes that would otherwise be payable on the Property if it were subject to property taxes. The amount of the In Lieu Payments shall be determined as follows: Upon receipt of the Tax Bills for the years 2006-2008, the Company shall make In Lieu Payments with respect to the Property in an amount, as determined by the Assessor and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would be payable on the Property if it were subject to property taxes.

The property taxes otherwise payable with respect to the Property shall be abated in full for tax year 2009, and the Company shall pay no property taxes on the Property (which would be

due by February 28, 2010) for such year. Upon receipt of the Tax Bill for the year 2010, payment of which is due by February 28, 2011, the Company shall make In Lieu Payments with respect to the Property in an amount, as determined by the Assessor and the Trustee, equal to twenty-five percent (25%) of the amount of taxes that would be payable on the Property if it were subject to property taxes. Upon receipt of the Tax Bill for the year 2011, the Company shall make In Lieu Payments with respect to the Property in an amount, as determined by the Assessor and the Trustee, equal to forty percent (40%) of the amount of taxes that would be payable on the Property if it were subject to property taxes.

Beginning with receipt of the Tax Bill for the year 2012, and each year thereafter, the Company shall make In Lieu Payments on the Property in an amount, as determined by the Assessor and the Trustee, equal to fifty percent (50%) of the amount of taxes that would be payable on the Property if it were subject to property taxes. After December 31, 2019, the Company shall make In Lieu Payments on the Property in an amount, as determined by the Assessor and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would be payable on the Property if it were subject to property taxes.

4. Penalties and Late Charges. The Company shall make the In Lieu Payments for each year before March 1 of the following year. All In Lieu Payments shall be subject to penalties, late charges, fees, and interest charges as follows:

(a) If the Company fails to make any In Lieu Payment when due, and such failure to pay shall continue and not be fully paid within thirty (30) days after written notice of such nonpayment has been provided, then a late charge shall also be immediately due and payable. The late charge shall be in the amount of one and one-half percent (1.5%) of the amount owed, for each month that each payment has been unpaid. Such one and one-half percent (1.5%) per

month late charge amount shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If the Company should fail to pay all amounts and late charges due as provided herein, then the Board, the City, or the County may bring suit in the Chancery Court of Hamilton County to seek to recover all unpaid In Lieu Payments, late charges, expenses, costs of collection, and reasonable attorneys' fees.

5. Disbursements by Trustee. All In Lieu Payments and other amounts received by the Trustee pursuant to Paragraphs 3 and 4 shall be disbursed to the general funds of the City and the County in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All sums received shall be divided between the City and the County, with the City to receive the amount of the In Lieu Payments that are attributable to property taxes which would otherwise be owed to the City, and the County to receive the amount of the In Lieu Payments that are attributable to property taxes which would otherwise be owed to the County.

6. Contest by the Company. The Company shall have the right to contest the appraisal or assessment of the Property by the Assessor and the computation by the Trustee of the amount of the In Lieu Payment. If the Company contests any such appraisal or assessment, then it shall present evidence to the Assessor supporting its position. Likewise, if the Company contests any such computation, it shall present evidence to the Trustee supporting its position. If the In Lieu Payments being contested shall be or become due and payable, the Company shall make such payments under protest. The Company and the Assessor or the Trustee, as the case may be, shall negotiate in good faith to resolve any disputes as to appraisal, assessment, or computation. If the Company and the Assessor or the Trustee are unable to resolve a dispute, the

Company may file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement, including those covering appraisal, assessment, and computation, be construed and applied to the relevant facts in order to resolve such dispute.

7. Lien on Property. Any amounts which remain payable under this Agreement shall become a lien on the Property, and such lien shall be enforceable against the Property in the event that any payment owing hereunder is not timely made in accordance with this Agreement.

8. Term. This Agreement shall become effective on the date that the Board obtains title to the Property and shall continue for so long as the Board holds title to any of the Property.

9. Leasehold Taxation. If the leasehold interest of the Company should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder. The Company agrees to cooperate fully with the Assessor in supplying information for completion of leasehold taxation questionnaires with respect to the Property.

10. Stormwater Fees. The Company shall be responsible for all stormwater fees assessed by the City of Collegedale against the real property on which the Facility is located.

11. Option to Purchase. At any time during the term of this Agreement, the Company shall have the continuing option to purchase the Property it has conveyed to the Board for a purchase price of Ten Dollars (\$10.00). Upon receipt of the purchase price, the Board agrees to convey the Property to the Company, upon which event the tax abatements provided hereunder will automatically terminate. The Company shall pay for preparation of documents of conveyance and for the payment of any privilege taxes or other fees associated with the recordation of any instrument of conveyance in the appropriate governmental records.

12. Notices, etc. All notices and other communications provided for hereunder shall be mailed or delivered (including facsimile transmission), if to the Board, c/o Mr. Ross I. Schram, III, Suite 600, Pioneer Bank Building, Chattanooga, Tennessee 37402; if to the City, c/o Mr. Sam D. Elliott, 320 McCallie Avenue 37402; if to the County, c/o Mr. Rheubin M. Taylor, County Attorney, Hamilton County Government, Room 204, County Courthouse, Chattanooga, Tennessee 37402-1956; if to the Company, c/o Mr. Joe W. Davis, Jr., 10260 McKee Road, Collegedale, Tennessee 37315; if to the Trustee, at his address at the Hamilton County Courthouse, Chattanooga, Tennessee 37402; and if to the Assessor, at his address at the Hamilton County Courthouse, Chattanooga, Tennessee 37402; or, as to each party, at such other address as shall be designated by such party in a written notice to the other party. All notices under this Agreement must be in writing and shall be deemed given when delivered (i) by certified mail, return receipt requested, or (ii) by facsimile transmission, to the persons and at the addresses set out above.

13. No Waiver; Remedies. No failure on the part of any party hereto, and no delay in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

14. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions of this Agreement.

15. No Liability of Board's Officers. No recourse under or upon any obligation, covenant, or agreement contained in this Agreement shall be had against any incorporator,

member, director, or officer, as such, of the Board, whether past, present, or future, either directly or through the Board. Any and all personal liability of every nature, whether at common law or in equity, or by statute, constitution, or otherwise, of any such incorporator, member, director or officer, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective successors and assigns.

17. Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the state of Tennessee.

18. Amendments. No amendment to this Agreement shall be effective unless in writing and signed by each of the parties hereto, except that the Trustee and the Assessor shall not be required to join in amendments unless such amendments affect their respective duties hereunder.

(Signature Page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

ATTEST:

THE INDUSTRIAL DEVELOPMENT
BOARD OF HAMILTON COUNTY,
TENNESSEE

By: _____
Secretary

By: _____
Chairman

McKEE FOODS CORPORATION

By: _____
Barry S. Patterson, VP and CFO

CITY OF COLLEGEDALE, TENNESSEE

By: _____
John Turner, Mayor

HAMILTON COUNTY, TENNESSEE

By: _____
Claude Ramsey, County Mayor

CARL E. LEVI

By: _____
Hamilton County Trustee

WILLIAM C. BENNETT

By: _____
Hamilton County Assessor of Property

EXHIBIT "A"
TO PILOT AGREEMENT

REAL PROPERTY