

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the Ordinance set out below that:

- () Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the Ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- () No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated hereby by this reference.
- () Other - Grant Funds Available

[Handwritten signature: J. Brown]

Date: 11-3 2020 City Controller of the City of Houston

de 8500-2000-560010 FUND REF: AMOUNT: 732,840.00 ENCUMBRANCE NO: FL 3-1154
FMBB 3-22309

City of Houston, Texas, Ordinance No. 2020- 945

[Handwritten initials]

AN ORDINANCE AUTHORIZING A PURCHASE AND SALE AGREEMENT BETWEEN ROLLING FRITO-LAY SALES, L.P. (SELLER), AND THE CITY OF HOUSTON, TEXAS (CITY), IN THE AMOUNT OF \$732,840.00, FOR A PERMANENT WATERLINE EASEMENT, BEING A 0.982 ACRE TRACT OF LAND, CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the City Council, pursuant to Ordinance No. 2018-504, approved Houston Public Works' acquisition of necessary property interests for the 108-Inch Water Line Along City Easements Project (from Willis Street to Imperial Valley Drive) ("Project"), by gift, dedication, purchase, or if necessary, eminent domain, so that the City may construct and install certain transmission and distribution lines; and

WHEREAS, pursuant to Ordinance No. 2018-756, the City Council appropriated \$20,000,000.00 out of the Water and Storm Sewer Consolidated Construction Fund for payment of the costs of purchases associated with the acquisition of the property interests for the Project; and

WHEREAS, Houston Public Works has identified a necessary property interest in the form of a 0.982-acre tract of land for a permanent waterline easement ("Permanent Waterline Easement") and now desires to enter into a Purchase Sale Agreement to purchase the Permanent Waterline Easement; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That the City Council hereby approves and authorizes the **Purchase and Sale Agreement** between the City and Seller for the Permanent Waterline Easement in substantially the form shown in the document attached hereto as **EXHIBIT A**. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 3. That the Mayor is hereby authorized to take all actions, including but not limited to execution of the Purchase and Sale Agreement, as well as all other related documents, necessary to effectuate the City's intent and objectives in approving the undertaking described in the title of this ordinance.

Section 4. That the City Attorney is hereby authorized to take all action necessary to enforce all legal obligations created under this ordinance without further authorization from Council.

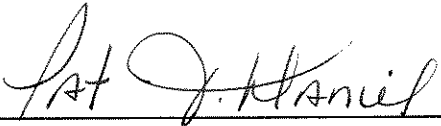
Section 5. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this the 4th day of November, 2020.

APPROVED this the ____ day of _____, 2020.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is NOV 10 2020.



 City Secretary

APPROVED AS TO FORM:



 Holland Samantha Banks
 Assistant City Attorney

Requested by:
 Carol Ellinger Haddock, P.E., Director, Houston Public Works
 Director, General Services Department

AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: **NOV 10 2020**

EXHIBIT "A"
PURCHASE SALE AGREEMENT

**PURCHASE AND SALE AGREEMENT FOR A PERMANENT WATERLINE
EASEMENT**

This Purchase and Sale Agreement for a Permanent Waterline Easement (this "Agreement") is made and entered into by and between **ROLLING FRITO-LAY SALES, LP**, a Delaware limited partnership ("Seller"), and the **CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas ("Purchaser"). Seller and Purchaser shall sometimes hereinafter collectively be referred to as the "Parties" and each as a "Party."

AGREEMENT:

Seller and Purchaser hereby agree as follows:

1. **Sale and Purchase.** Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase and accept from Seller, for the Purchase Price (as hereinafter defined) and subject to terms and conditions herein set forth, a permanent and perpetual waterline easement to construct, operate, remove and maintain waterlines and associated appurtenances, whether below or above ground, as necessary, (the "Permanent Waterline Easement") upon, along, over, under, and across:

a 0.982 acre tract or parcel of land, being out of the Christopher Walter Survey, Abstract No. 849, City of Houston, Harris County, Texas, said parcel being further described by metes and bounds on attached **Exhibit "A"** [Subject to change upon receipt of final survey] and being made a part of this Agreement (the "Property"), located at 16102 Spence Road, Houston, Texas 77060.

The Permanent Waterline Easement shall be conveyed to Purchaser at Closing (as hereinafter defined) free and clear of all liens, claims, easements and encumbrances whatsoever, except for the Permitted Encumbrances (as hereinafter defined).

2. **Purchase Price.** The price ("Purchase Price") for which Seller agrees to sell and convey the Permanent Waterline Easement to Purchaser, and which Purchaser agrees to pay to Seller, subject to the terms hereof, is SEVEN HUNDRED THIRTY TWO THOUSAND EIGHT HUNDRED AND FORTY DOLLARS AND NO/100 (\$732,840.00).

Purchaser shall pay the Purchase Price to Seller in immediately available funds on the Closing Date (as hereinafter defined), subject to any adjustments provided for in this Agreement.

3. **Seller's Representations, Warranties and Covenants.** Seller hereby represents and warrants to, and covenants with Purchaser that:

a. Seller will have as of the Closing Date good and indefeasible title in fee simple to the Property, subject only to the Permitted Encumbrances, and free and clear of all liens;

b. As of the Closing Date, there will be no lease, franchises, licenses, occupancy agreements, or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to the Property, or any prepaid rents or deposits, security or otherwise, made by tenants, other than those that have been disclosed in writing to Purchaser;

c. There are no and, as of the Closing Date, there will be no actions, suits, claims, assessments, or proceedings pending or, to the actual knowledge of

Seller, threatened that could adversely affect the ownership, operation, or maintenance of the Permanent Waterline Easement or Seller's ability to perform hereunder;

d. Seller shall use good faith efforts to promptly notify, in writing, Purchaser of any material change with respect to the Property or with respect to any information heretofore or hereafter provided to Seller respecting the Property;

e. From the date hereof until the Closing Date, Seller shall:

(i) maintain and operate the Property in a good and business-like manner in accordance with good and prudent business practices and not commit or consent to be committed any waste to the Property;

(ii) not enter into any agreement or instrument or take any action that would constitute an encumbrance of the Property, that would bind Purchaser or the Property after the Closing Date, or that would be outside the normal scope of maintaining and operating the Property, without the prior written consent of Purchaser (such consent not to be unreasonably withheld, conditioned or delayed); and

(iii) afford Purchaser and its representatives the continuing right to inspect and perform tests on the Property at reasonable hours and upon reasonable notice, and provide for inspection to Purchaser any and all records, contracts, and other documents or data pertaining to the ownership, insurance, operation, or maintenance of the Property;

f. All bills and other payments due from Seller with respect to the ownership, operation, and maintenance of the Property have been (or by the Closing Date will be) paid by Seller and no liens or other claims for the same have been (or by the Closing Date will be) filed or asserted against any part of the Property;

g. Seller has full right, power and authority to execute, deliver, and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to any third parties. This Agreement, when executed and delivered by Seller and Purchaser, will constitute the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms;

h. Seller is not a "foreign person" (as defined in Internal Revenue Code Section 1445(f) (3) and the regulations issued thereunder); and

i. Seller (i) is not in receivership or dissolution, (ii) has not made any assignment for the benefit of creditors, (iii) has not admitted in writing their inability to pay their debts as they mature, (iv) has not been adjudicated a bankrupt, (v) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (vi) does not have any such petition described in (v) filed against Seller.

4. Purchaser's Representations, Warranties, and Covenants. Purchaser hereby represents and warrants to, and covenants with, Seller that:

a. Purchaser has full right, power, and authority to execute, deliver, and perform this Agreement, subject to approval of this Agreement by the City Council of the City of Houston, Texas, the signature of the Mayor and the countersignature of the City Controller of the City of Houston, Texas, on this Agreement, but otherwise without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties (or if any such consents, approvals, or other actions are required, the same will be accomplished prior to the expiration of the Feasibility Period). This

Agreement, when executed and delivered by Seller and Purchaser, in the manner and subject to the approvals described above, will constitute the valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms.

b. Purchaser has knowledge that the Property is subject to the current lease in place on the Property and the adjacent land and buildings.

5. Feasibility Period.

a. The Effective Date of this Agreement shall be the date that this Agreement is countersigned by the City Controller of the City of Houston, Texas (the "Effective Date"). Within 30 days following the Effective Date, Purchaser shall deposit \$100.00 (the "Independent Consideration"), in escrow with Title Company (the "Title Company"). At Closing, the Independent Consideration shall be applied to the Purchase Price. In the event the Closing does not occur, for any reason, the Independent Consideration shall be nonrefundable to Purchaser and shall be paid to Seller.

b. Within 10 days following the Effective Date, Seller shall provide the following items to Purchaser: (1) copies of all tax bills and government assessments relating to the Property for the past 3 years, if any; (2) copies of all documents, if any, indicating compliance or noncompliance with all governmental entities with jurisdiction of any sort over the Property if same are in Seller's possession; (3) any soil, engineering and environmental reports in Seller's possession and copies of any contracts not cancelable in thirty (30) days, (Note: Purchaser will review the Seller's environmental reports, if any, and may choose to perform, at Purchaser's sole cost and expense, additional independent third party testing).

c. Commencing on the Effective Date and ending at the expiration of 120 days thereafter (which time period may be shortened by Purchaser at its option), Purchaser shall have a period (the "Feasibility Period") during which Purchaser may examine the Property and conduct any and all such tests and studies as Purchaser may desire, including but not limited to environmental and asbestos testing, in order to determine if the Property is suitable for Purchaser's purposes. During such period, Purchaser may obtain a survey (the "Survey"), a title commitment (the "Title Commitment"), and may obtain a Phase I and, with Seller's written consent which may not be unreasonably withheld, a Phase II environmental site assessment of the Property. If Purchaser obtains an environmental site assessment during the Feasibility Period and the assessment indicates that additional testing should be performed to determine the extent of contamination, Purchaser may extend the Feasibility Period for up to 30 days for such additional testing. At the end of the Feasibility Period, Purchaser shall notify Seller in writing if Purchaser desires to terminate this Agreement, whereupon all moneys deposited by Purchaser, save and except the Independent Consideration to be delivered to Seller, shall be refunded to Purchaser. If Purchaser does not so notify Seller, Purchaser shall be deemed to have elected to proceed to Closing, subject to the terms hereof.

d. In the event that Purchaser's environmental testing reveals the presence of any environmental contamination, including but not limited to the presence of asbestos, in levels requiring remediation, Purchaser shall notify Seller. Thereupon, either Seller or Purchaser may initiate good faith negotiations of the property value or terminate this Agreement, whereupon all moneys deposited by Purchaser, except the Independent Consideration, shall be refunded to Purchaser. Purchaser shall bear no liability for the environmental testing, other than to fulfill its obligation under its contract with the environmental consultant performing the test. In the event Seller and Purchaser enter into good faith negotiations, all deadlines in this agreement are

suspended by thirty (30) calendar days to allow Seller and Purchaser to finalize the transaction.

e. Purchaser shall have until the end of the Feasibility Period to examine the items delivered pursuant to Sections 5(b), the Title Commitment and the Survey, and to specify to Seller those items affecting the Property that Purchaser finds objectionable (the "Encumbrances"). Items shown in the Title Commitment or Survey and not objected to by Purchaser in its written objections within such period shall be deemed items that Purchaser will accept title subject to (the "Permitted Encumbrances"). The Title Company shall deliver on the Closing Date an amended Title Commitment reflecting the cure of the Encumbrances to the extent Seller has removed or cured such Encumbrances. Any liens affecting the Property shall be Encumbrances, whether or not so specified in any notice by Purchaser, and Seller shall cause the same to be released at or prior to Closing.

f. If Seller fails or is unwilling to cause all of the Encumbrances to be removed or cured by the Closing Date, or if the Title Commitment or Survey indicates that Seller does not own indefeasible fee simple title to the Land, Purchaser shall have the following rights, as its sole and exclusive remedies:

(i) to terminate this Agreement by giving Seller written notice thereof, in which event the Earnest Money (as hereinafter defined), save and except the Independent Consideration, shall be returned to Purchaser, and neither party shall have any further rights, duties, or obligations hereunder; or

(ii) to elect to waive the Encumbrances not so removed or cured and close the purchase and sale contemplated by this Agreement without any reduction in the Purchase Price in accordance with the remaining terms and provisions, whereupon the Encumbrances not so removed or cured shall become Permitted Encumbrances, to be treated in the manner provided herein for Permitted Encumbrances.

6. **As-Is, Where-Is.** Purchaser and its representatives, prior to the date of Closing, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as provided herein. Purchaser acknowledges and agrees that the Property is to be sold and accepted by Purchaser in an "as-is" condition, with all faults except for (a) Seller's representations, warranties and covenants set forth in Section 3, and (b) the warranty of title in the Easement and Right of Way Agreement referred to in Section 8(b)(i). Any election by Purchaser not to undertake certain studies or due diligence during the Feasibility Period shall not in any way limit or minimize the "as-is" nature of this transaction.

7. **Earnest Money.** Upon the execution of this Agreement, Purchaser shall deposit in escrow with the Title Company the amount of \$1,000.00 (the "Earnest Money"), which shall be held by the Title Company in an interest-bearing account as earnest money to bind the transaction contemplated hereby. Unless otherwise delivered to Seller or Purchaser pursuant to the terms hereof, the Earnest Money, together with all interest thereon, shall be credited to the Purchase Price at the Closing. The Title Company shall acknowledge receipt of the Earnest Money in writing.

8. **Closing.** The consummation by the parties of the transaction contemplated by this Agreement is herein called the "Closing." Closing shall take place on or before the expiration of 30 days after expiration of the Feasibility Period, with the exact time and date (the "Closing Date") of Closing to be specified in a written notice from Purchaser to Seller at least 7 days in advance of such date. The time, date or location of Closing may be modified by written agreement of the parties.

At the Closing, the following (which are mutually concurrent conditions) shall occur:

a. Purchaser, at its sole cost and expense, shall deliver or cause to be delivered to Seller, through the Title Company:

(i) The balance due for the Purchase Price, adjusted as provided for herein, such amount to be paid in immediately available funds;

(ii) Evidence satisfactory to Seller and the Title Company that the person executing the Closing documents on behalf of Purchaser has full right, power, and authority to do so; and

(iii) Such other instruments duly executed by Purchaser as are customarily executed in Harris County, Texas to effectuate the conveyance of property interests similar to the Permanent Waterline Easement, as may be reasonably required by the Title Company.

(iv) Purchaser shall pay, in addition to any other costs to be paid by Purchaser as provided elsewhere herein: (1) the Owner's Policy of Title Insurance premium for basic coverage; (2) the title insurance premium for area and boundary deletion, if required by Purchaser; (3) the Survey; (4) any costs of Purchaser's inspection, evaluation or remediation of the Property; (5) cost to record the Easement and Right of Way Agreement; and (6) Purchaser's own attorneys' fees.

(v) Purchaser and Seller acknowledge and agree that Purchaser shall take possession of the Property upon Closing; provided, however, Purchaser agrees that it shall not commence construction activities before February 1, 2021. Construction activities, for the purpose of this provision, are separate and distinct from pre-construction activities which are authorized pursuant to that "Right of Entry" further described in Section 9 of this Agreement and which shall be permitted to continue prior to February 1, 2021 pursuant to the grant of the Permanent Waterline Easement.

b. Seller, at its sole cost and expense, shall deliver or cause to be delivered to Purchaser, through the Title Company, the following:

(i) The Easement and Right of Way Agreement, substantially in the form of the document attached hereto as **Exhibit "B"**, fully executed and acknowledged by Seller, conveying to Purchaser all rights, privileges, and interests in and to the Permanent Waterline Easement, subject only to the Permitted Encumbrances;

(ii) Evidence satisfactory to Purchaser and the Title Company that the person executing the Closing documents on behalf of Seller has full right, power, and authority to do so;

(iii) An executed and acknowledged affidavit that Seller is not a "foreign person" as described in Section 3.h. herein;

(iv) A certificate, executed and sworn to by Seller, confirming that there are no unpaid bills, claims, debts, or liens relating to the Property as of the Closing Date except with respect to specified bills, claims, debts, or liens;

(v) Such other instruments duly executed by Seller as are customarily executed in Harris County, Texas to effectuate the conveyance of property interests similar to the Permanent Waterline Easement, as may be reasonably required

by the Title Company with the effect that, after the Closing, Purchaser will have succeeded to all of the rights, privileges, and interests related to the Permanent Waterline Easement and Seller's rights, titles or interests in and to the Property shall forever be subject to those of the Purchaser's Permanent Waterline Easement.

(vi) Seller shall pay, in addition to any other costs to be paid by Seller as provided elsewhere herein: Seller's own attorneys' fees.

Any escrow fees and delivery fees charged by the Title Company, and any other routine closing fees, shall be allocated equally between Seller and Purchaser. All normal and customarily proratable items, including but not limited to real estate and personal property taxes, rents, and utility bills, if any, shall be prorated as of the Closing Date, Seller being charged and credited for all of the same up to such date and Purchaser being charged and credited for all of same on and after such date, where applicable. If the actual amounts to be prorated are not known at the Closing Date, the prorations shall be made on the basis of the best evidence available, and thereafter, when actual figures are received, a cash settlement will be made between Seller and Purchaser. Seller hereby acknowledges that Purchaser is not subject to ad valorem taxes.

9. **Advanced Payment.** The Parties acknowledge that they have entered into the "Right of Entry" attached hereto as an **EXHIBIT "C"** and incorporated herein for all purposes, which provides for the advanced payment of FORTY NINE THOUSAND AND NO/100 (\$49,000.00) (the "**Advanced Funds**") to the Seller (a) for the Seller's undertaking of preconstruction activities for and the construction of temporary parking, removal of a maintenance building from the "Land" (as defined therein), and construction of a new maintenance building, which shall be completed by January 31, 2021 to allow the Purchaser to proceed with the construction of the "Project" (as defined therein) on the Land not later than February 1, 2021 and (b) the Purchaser's right to enter upon and make use of the Land for pre-construction activities. The Parties acknowledge and agree that, upon closing, the Advanced Funds for above-referenced Seller modifications and Purchaser rights shall be credited towards the Purchase Price stated herein and according to the terms of the Right of Entry. The Purchaser will be entitled to take possession and make use of the Property as contemplated by the Right of Entry upon the Purchaser's tender of the Advanced Funds subject to the requirements laid out in Section 8(a)(v). In the event that the Parties are unable to close pursuant to the terms of this Agreement and/or the Seller terminates this Agreement, the Parties agree and stipulate the (i) Seller shall not be required to refund any portion of the Advanced Payment which has been spent in accordance with the Right of Entry; or (ii) in the event the Property is acquired by other means, that the Advanced Funds already tendered to the Seller will be deducted from any final settlement amount, Special Commissioner's Award, or court judgement. In any event, should the purchase price, final settlement, or court judgement for acquisition of the Property be less than the amount the Purchaser has paid for the possession and use of the Property, the Seller agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the Purchaser, the Seller will promptly refund the overpayment to the Purchaser. This Section 9 on Advanced Payment shall survive the expiration or earlier termination of this Agreement.

9. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same with the United States Postal Service, addressed to the party to be notified, postage prepaid and in registered or certified form, with return receipt requested, or by deposit with Federal Express for overnight delivery, or other reputable overnight courier, facsimile (with retained receipt) or email (with retained receipt). Notice given as aforesaid shall be effective on the date actually received at the address to which such notice was sent, or if delivery is refused or not accepted, such notice shall be effective on the date of such refusal or failure to accept delivery. Notice given in any other manner shall be effective

only upon receipt by the party to whom it is addressed. For purposes of notice, the addresses of the parties shall be as follows:

If to Seller, to: PepsiCo Global Real Estate
7701 Legacy Drive
Attention - Real Estate Department, MD 1B-207
Plano, TX, 75024
Fax: 972-334-6058
Email: Betsy.Power@pepsico.com

With copy to: Mike Rowan or Carson Trimble
STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.
2323 Bryan St, Ste 2200
Dallas, TX 75201
Facsimile: (214) 969-4999
Phone: (214) 969-4900
Email: rowan@sbep-law.com
trimble@sbep-law.com

If to Purchaser, to: Houston Public Works, City of Houston
Attention: Marjorie Cox, Assistant Director
611 Walker Street, 19th Floor
Houston, TX 77002

Either party may change its address to another location in the continental United States, upon five (5) days prior written notice to the other given in the manner provided above.

10. Seller and Purchaser have not engaged a broker or agent in connection with the negotiation or execution of this Agreement. In the event any agent or broker shall make a claim against Seller and Purchaser for a commission or fee, the party allegedly engaging, hiring or retaining such broker or agent shall be responsible for payment thereof.

11. **Assignment.** Neither Seller nor Purchaser may assign this Agreement or any right or interest hereunder without the prior written consent of the other party, which will not be unreasonably withheld. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

12. **Governing Law; Enforcement.**

a. This Agreement shall be governed and construed in accordance with the laws of the State of Texas and is further subject to all terms and provisions of the Charter and Code of Ordinances of the City of Houston, Texas. Any action brought to enforce or interpret this Agreement shall be brought in the court of appropriate jurisdiction in Houston, Harris County, Texas.

b. Should any provision of this Agreement require judicial interpretation, Seller and Purchaser hereby agree and stipulate that the court interpreting or considering the same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of any rule or conclusion that a document should be construed more strictly against the party who prepared the same, it being agreed that all parties hereto have participated in the

preparation of this Agreement and that each party had full opportunity to consult legal counsel of its choice before the execution of this Agreement.

c. Purchaser's Attorney or its designee (the "City Attorney") shall have the right to enforce all legal rights and obligations under this Agreement without further authorization from other City officials, and Seller covenants to provide the City Attorney with all documents and records that the City Attorney reasonably deems necessary to assist in determining Seller's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

13. Remedies.

a. If Purchaser fails or is unable to perform its obligations pursuant to this Agreement for any reason other than Purchaser's termination hereof pursuant to a right granted to Purchaser in this Agreement to do so, or breach by Seller of their representations, warranties or agreements hereunder, then Seller, as its sole and exclusive remedy, shall have the right to terminate this Agreement by giving Purchaser written notice thereof, in which event neither party hereto shall have any further rights, duties, or obligations hereunder, and the Title Company shall deliver the Earnest Money and Interest thereon to Seller as liquidated damages (and not as penalty) for the breach by Purchaser (Seller and Purchaser hereby acknowledging that the amount of damages resulting from a breach of this Agreement by Purchaser would be difficult or impossible to accurately ascertain).

b. If Seller fails or is unable to perform any of its obligations or agreements hereunder, either prior to or at Closing, or if any of Seller's representations or warranties made hereunder, or any of the information furnished by Seller pursuant hereto, should be either false or misleading in any material respect, Purchaser shall have the right to all statutory remedies available, and the option to:

(i) terminate this Agreement by giving Seller written notice thereof, in which event neither party hereto shall have any further rights, duties, or obligations hereunder, save and except any obligations with respect to the Advanced Funds pursuant to Section 9 of this Agreement which shall survive such termination, and the Title Company shall deliver the Earnest Money and all interest thereon, save and except the Independent Consideration to be delivered to Seller, to Purchaser; or

(ii) enforce specific performance of the obligations of Seller to convey the Permanent Waterline Easement to Purchaser pursuant to the terms hereof and to perform its other obligations hereunder, provided that, in the event that Purchaser seeks specific performance, an action seeking such remedy must be filed within six (6) months of Seller's default or alleged default, or the same shall be deemed barred and Purchaser's sole remedy shall be as set forth in (i) above.

14. Damage or Taking Prior to Closing. Prior to Closing, risk of loss with regard to the Property shall be borne by Seller. The Seller recognizes that such risk of loss includes loss to modifications to the Property paid for by the Advanced Funds referenced in the above Section 9. If, prior to Closing, the Property, or any portion thereof, is materially damaged or becomes subject to a taking (other than by the Purchaser) by virtue of eminent domain, Purchaser shall have the option, which must be exercised by it within 15 business days (and the Closing will be automatically extended, if necessary, to provide Purchaser with such 15 business day period) after its receipt of written notice from Seller advising of such damage or taking (which Seller hereby agrees to give), to terminate this Agreement or to proceed with the Closing. If Purchaser elects to terminate this Agreement, all rights, duties, obligations and liabilities created hereunder shall cease, save and except any obligations with respect to the Advanced Funds pursuant to Section 9 of this Agreement which shall survive such

termination, and the Earnest Money and any interest thereon, save and except the Independent Consideration to be delivered to Seller, shall be returned to Purchaser. If Purchaser elects to proceed with the Closing, all rights, duties, obligations and liabilities created hereunder shall continue, and (a) Purchaser shall be entitled to any and all insurance proceeds or condemnation awards payable as a result of such damage or taking, and (b) Sellers shall assign to Purchaser at Closing all of Seller's rights to such proceeds or awards.

15. **Entire Agreement.** This Agreement is the entire agreement between Seller and Purchaser concerning the sale of the Permanent Waterline Easement and no modification thereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless in writing and signed by both parties.

16. **Exhibits.** Attached hereto and incorporated herein by this reference for all purposes is the following exhibits:

Exhibit "A"	THE PROPERTY
Exhibit "B"	EASEMENT AND RIGHT OF WAY AGREEMENT
Exhibit "C"	THE RIGHT OF ENTRY AGREEMENT

17. **Confidentiality.** Seller and Purchaser agree to use their best efforts to keep confidential price, terms, condition, and all other information that is a part of this transaction. Seller and Purchaser agree that they will disclose such matters only to such third parties as may be necessary to carry out usual and customary activities related to the transaction. Notwithstanding the foregoing, both parties acknowledge that the terms of this transaction may become known to the public when the matter is considered by the Houston City Council, or pursuant to a request under the Texas Public Information Act.

18. **Miscellaneous.**

a. The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

b. Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

c. The obligations of the Agreement that cannot be performed before termination of this Agreement, or before Closing, will survive termination of this Agreement or Closing, and the legal doctrine of merger will not apply to these matters. However, if there is any express conflict between the closing documents provided pursuant to Section 8 hereinabove and this Agreement, the closing documents will control.

d. Time is of the essence in this Agreement.

e. If this Agreement is executed in multiple counterparts, all counterparts taken together will constitute this Agreement.

f. Following the execution of this Agreement by Purchaser through its Mayor and countersigned by the City of Houston Controller, the Director, Houston Public Works, City of Houston, Texas or his designee, shall have the authority to act on the behalf of Purchaser in making extensions to the Closing Date or to make other modifications to this Agreement for the purposes of enabling the achievement of the Purchaser's objectives to acquire the Permanent Waterline Easement from Seller.

19. **Signature Authority.** The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

20. **Petition in Condemnation.** Purchaser shall cause to be dismissed the condemnation action previously initiated by Purchaser in connection with the Permanent Waterline Easement upon completion of the Closing.

[Execution pages follow]

EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS, each of which shall be an original, which together shall constitute but one and the same instrument, effective as of the date of countersignature by Purchaser's City Controller.

SELLER:

ROLLING FRITO-LAY SALES, LP., a Delaware limited partnership

BY: FRITO-LAY SALES, INC., its General Partner

DocuSigned by:
Betsy Power
FDE189858F7EAD...

BY: _____

9/21/2020

Date: _____

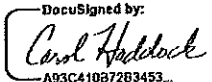
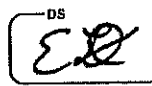
Tax ID No.: _____

PURCHASER:

CITY OF HOUSTON

APPROVED:

By: _____
SYLVESTER TURNER
Mayor

By:  
A93C41087263453...
CAROL E. HADDOCK
Director, Houston Public Works

ATTEST/SEAL:

COUNTERSIGNED BY:

By: _____
PAT J. DANIEL
Interim City Secretary

By: _____
CHRIS B. BROWN
City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

By: _____
Assistant City Attorney

_____, 2020

An original, fully executed copy of this Agreement has been received by the Title Company, and by execution hereof the Title Company hereby covenants and agrees to be bound by the terms of this Agreement to the extent permissible, without violation of Procedural Rule 35, as promulgated by the Texas State Board of Insurance.

STEWART TITLE COMPANY

By:
Name:
Title:

EXHIBIT A
THE PROPERTY

Christopher Walter Survey
Abstract No. 849
Harris County, Texas

Parcel No. KY17-208
0.982 Acre (42,797 Sq. Ft.)
Proposed 50.00-foot waterline easement

A 0.982 acre (42,797 Sq. Ft.) waterline easement tract or parcel of land out of the Christopher Walter Survey, Abstract No. 849, in Harris County, Texas, being out of a certain 12.384-acre tract of land described in a deed from Frito-Lay, Inc. to Rolling Frito-Lay Sales, LP, dated October 4th, 2004, and filed of record under Harris County Clerk's File (H.C.C.F.) Number Y313987 in the Official Public Records of Harris County, Texas, also being out of Unrestricted Reserve "B" of Beltway North Industrial Park Amending Plat, a subdivision recorded in Volume 444, Page 2 of the Harris County Map Records, Texas (H.C.M.R.).

All coordinates and bearings stated herein are referred to the Texas Coordinate System of 1983, South Central Zone, as defined in the Texas Natural Resources Code, Sec. 21.071, et. Seq. and are based on a survey performed in February of 2017. All coordinates and distances recited are grid, to convert to surface, use a combined scale factor of 1.00013. Said 0.982 -acre tract is described as follows:

COMMENCING at a found 5/8-inch iron rod with grid coordinates of Y = 13,905,147.10, X = 3,110,750.94 at the southwest corner of said 12.384-acre tract and being on the easterly right of way of Spence Road (60' R.O.W) as recorded in Volume 7715, Page 94 of the Harris County Deed Records;

THENCE, North 02° 33' 17" West, along said right of way, a distance of 423.95 feet to a set 3/4-inch iron rod with a cap stamped "MBCO Engineering" for the POINT OF BEGINNING of said 0.982-acre tract and having grid coordinates of Y = 13,905,570.63, X = 3,110,732.04;

THENCE, North 02° 33' 17" West, continuing along said right of way, a distance of 50.00 feet to a set 3/4-inch iron rod with a cap stamped "MBCO Engineering" at the northwest corner of said 12.384-acre tract and being the northwest corner of said 0.982-acre tract;

THENCE, North 87° 26' 18" East, along the north line of said 12.384-acre tract, a distance of 855.94 feet to a set 3/4-inch iron rod with a cap stamped "MBCO Engineering" at the northeast corner of said 12.384-acre tract and the northwest corner of the Residue of a 29.832-acre tract, filed for record under H.C.C.F. No. T253090 dated August 31st, 1998, also being northeast corner of said 0.982-acre tract;

THENCE, South 02° 32' 50" East, along the common line of said 12.384-acre tract and said Residual 29.832-acre tract, a distance of 50.00 feet to a set 3/4-inch iron rod with a cap stamped "MBCO Engineering" at the southeast corner of said 0.982-acre tract;

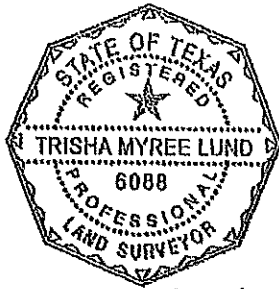
PARCEL NO	KY17-208
PROJ NO	5000900-01673
DWG NO	58917

Christopher Walter Survey
Abstract No. 849
Harris County, Texas

Parcel No. KY17-208
0.982 Acre (42,797 Sq. Ft.)
Proposed 50.00-foot waterline easement

THENCE, South 87° 26' 18" West, a distance of 855.93 feet, to the POINT OF BEGINNING of the herein described tract and containing 0.982-acres of land.

This description is based on a survey performed by MBCO Engineering in February of 2017 as shown on Sketch No. KY17-208 (attached). The boundary and survey was performed under the supervision of former MBCO employee Jeremy J. Kowls, R.P.L.S. # 6361. Subsequent revisions were addressed by Trisha Myree Lund, R.P.L.S. # 6088.

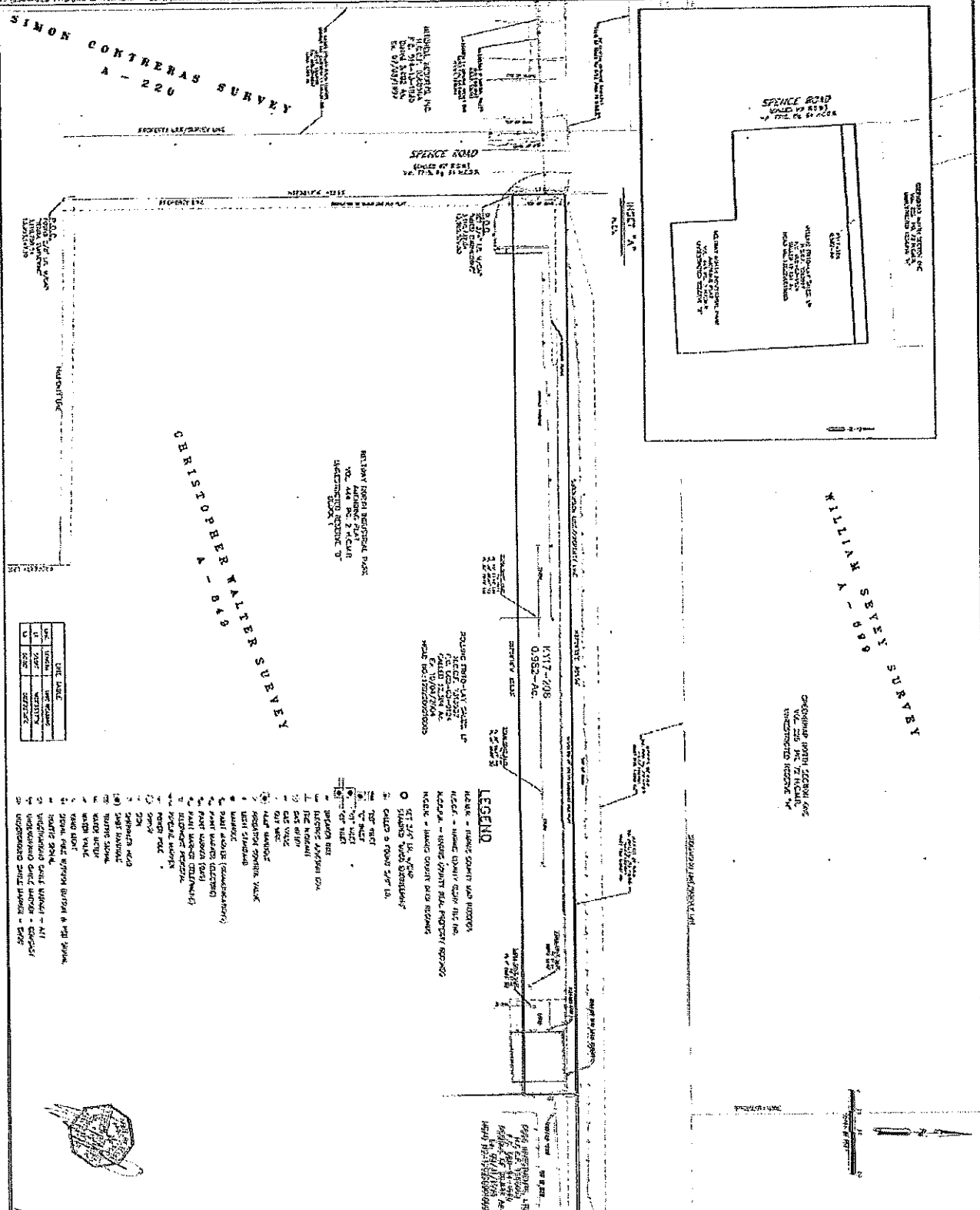


A handwritten signature in black ink, appearing to read "Trisha Myree Lund", written over a horizontal line.

Trisha Myree Lund, R.P.L.S. #6088

PARCEL NO	<u>KY17-208</u>
PROJ NO	<u>S-000900-0167-3</u>
DWG NO	<u>58917</u>

CHECKED [Signature]
DATE 8/18/17
APPROVED [Signature]



DATE	DESCRIPTION
12/11/06	PROPOSED
12/11/06	REVISION
12/11/06	REVISED

LEGEND

- ROADS - IMPROVED AND UNIMPROVED
- UTILITIES - POWER, GAS, WATER, SEWER, TELEPHONE
- BOUNDARIES - SURVEYED AND UNSURVEYED
- SPURCE ROAD - 20' WIDE
- CHRISTOPHER KALTER SURVEY B-499
- SINOR CONTRERAS SURVEY A-220
- WILLIAM SESSI SURVEY

PROPOSED BY VICTOR LUIS ESPERANZA

PREPARED BY VICTOR LUIS ESPERANZA

DATE 12/11/06

SCALE AS SHOWN

PROJECT NO. 06011800000000000000

REVISIONS

NO.	DATE	DESCRIPTION
1	12/11/06	PROPOSED
2	12/11/06	REVISION
3	12/11/06	REVISED

EXHIBIT B
EASEMENT AND RIGHT OF WAY AGREEMENT

PARCEL KY17-208

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

EASEMENT AND RIGHT OF WAY AGREEMENT

THAT FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ROLLING FRITO-LAY SALES, LP, a Delaware limited partnership (being referred to herein as "Grantor," whether one or more) does hereby grant, sell, and convey unto City of Houston (the "City"), a municipal corporation and home-rule city of the State of Texas, situated in Harris County, Texas, and having a mailing address of P.O. Box 1562 Houston, Texas 77251, Attention: Director, Houston Public Works, its successors and assigns, a perpetual, unobstructed right of way and easement (hereinafter, together with the rights and privileges herein granted, referred to as the "Easement") to lay, construct, alter, maintain, inspect, operate, service, repair, replace, relocate, change the size of, protect, patrol, and remove an underground pipeline for the transportation of water, together with associated appurtenances, whether below or above ground as necessary (such pipeline, appurtenances, and equipment being referred to herein collectively as the "Line"), on, upon, over, through, under, within, along and across a strip of land as more particularly described and depicted in Exhibit A (the "Easement Area") attached hereto and made a part hereof, lying upon the Grantor's fee property (the "Property") as more particularly described and depicted in Exhibit B, attached hereto and made a part hereof, together with the right of (i) unimpaired ingress and egress to and from said Easement Area on public and private roads and (ii) unimpaired access on, upon, over, through, under, within, along and across said Easement Area for any and all purposes necessary and incident to the exercise of the aforesaid rights.

TO HAVE AND TO HOLD the above-described right of way and easement unto the City, its successors and assigns, all upon and subject to the following conditions, covenants, and agreements:

1. This conveyance is made subject to all restrictions, covenants, conditions, rights of way, easements, mineral reservations, and royalty reservations of record, if any, in the office of the County Clerk of Harris County, Texas, but only to the extent that the same are valid, subsisting, and affect the Easement Area.

2. The City, its successors and assigns, shall have all rights and benefits necessary or convenient for the full enjoyment and use of the rights herein granted, including but not limited to the right to access on, upon, over, through, under, within, along and across the Easement Area, and the right to enter upon and within the Easement Area to engage in such activities as may be necessary, requisite, convenient, or appropriate in connection therewith at any time. The City's rights in and to the Easement Area shall also include, without limitation, the right to clear and

remove trees, growth, and shrubbery from within the Easement Area, install a gate or fence that crosses or bisects the Easement Area on the eastern property line. In the event that the already-existing controlled gate on the Property ceases to exist the City reserves the right to place a fence or gate on the western edge of the Easement Area. The City has the right to bring and operate such equipment thereupon as may be necessary or appropriate to effectuate the purposes for which the Easement is granted at all times and through either gate. Grantor hereby grants to the City the perpetual right to enter upon the Property to the extent necessary to access the Easement Area. Such right shall include the right to enter through the existing controlled access gate or, in the event that such gate no longer exists, then through other similar and available access points through the Property to the Easement Area.

3. Except for the Permitted Encroachments defined below, Grantor shall not be permitted, under any circumstances, to conduct any of the following activities on the Easement Area: (i) construct any temporary or permanent building or related site improvements, including but not limited to houses, barns, garages, patios, swimming pools, reinforced concrete slabs (except for roads and parking lots which are designed for the specific use and meet or exceed the City of Houston's requirements for such purpose), utility or flag poles, retaining walls or store large debris (such as old cars, trailers, scrap metal, and boulders); (ii) remove soil or change the grade or slope of the Easement Area; (iii) impound surface water; (iv) plant trees or large, deep-rooted shrubs; (v) allow parking or crossing by any vehicle exceeding American Association of State and Highway Transportation Officials ("AASHTO") designation HS-20 and/or H-20 loading; or (vi) place, erect, install, or permit any above or below ground obstruction that may (in the City's reasonable determination) interfere with the purposes for which the Easement is granted.

4. Subject to the conditions and limitations contained in this Easement and Right of Way Agreement, Grantor reserves the right, upon prior written notice to and written consent of the City, its successors, and assigns (such consent shall not be unreasonably withheld), to (i) construct, reconstruct, or maintain electrified fence(s); (ii) construct, reconstruct, or maintain concrete or asphalt paving for parking and/or drives in accordance with the City of Houston's Infrastructure Design Manual's requirements for residential streets; and (iii) construct, reconstruct, or maintain sidewalks or drives, and utilities, at any angle of not less than forty-five (45) degrees to the Line over and across the Easement Area, provided that all of the City's required and applicable spacing and crossing guidelines (including, without limitation, depth separation limits, and other protective requirements) are met by Grantor. The uses and improvements permitted on the Easement Area, as specified in this paragraph or as otherwise approved by the City pursuant to the terms of this Easement and Right of Way Agreement, are referred to herein as the "Permitted Encroachments." The City agrees that the City's written consent to encroachment provided for Permitted Encroachments shall be in a form sufficient for recording in the real property records of Harris County when provided to Grantor.

5. Grantor additionally reserves all rights, if any, in and to oil, gas, sulphur, uranium, fissional materials, and other minerals under the surface of the Easement Area; provided, however, that Grantor shall not be permitted to explore, drill, mine, produce, or operate for oil, gas, sulphur, uranium, fissional materials, or other minerals on the surface of the Easement Area, but will be permitted to extract such minerals and materials from under the Easement Area by directional drilling or other means from land located outside the boundaries of the Easement Area so long as the equipment (and any wells) used in connection therewith are no closer than three hundred feet

(300') to the bottom of the Line and so long as the use of the Easement Area is not disturbed and the Line is left with proper, sufficient, and permanent support and is not endangered, obstructed, damaged, or interfered with.

6. Except as provided in the paragraphs above, Grantor reserves the right to use the Easement Area for any and all purposes or uses not unreasonably inconsistent with the purposes for which this Easement and Right of Way Agreement is granted, including but not limited to (i) the crossing and parking of personal vehicles and (ii) the crossing and parking of commercial vehicles not to exceed AASHTO designation HS-20 and/or H-20 loading and as long as the Easement Area is paved with adequately maintained concrete or asphalt according to the City of Houston's Infrastructure Design Manual's requirements for residential streets. However, Grantor may not use any part of the Easement Area if such use may damage, destroy, injure, and/or interfere with the City's use of the Easement Area for the purposes for which the Easement is being granted.

7. Grantee acknowledges that at the time of the execution of this Easement, Grantor uses certain areas certain areas of the Property, including the Easement Area, for its commercial operations and facilities (the "Site"), reflected on the Exhibit "C". Grantee shall not install above-ground appurtenances in a manner that would impede crossing or parking of personal and commercial vehicles, not to exceed AASHTO designation HS20 and/or HS 20 loading and consents to the continued existence of concrete or asphalt paving within the Easement Area. In the event the Easement is no longer utilized for same or similar commercial purposes (excluding temporary cessations of use during periods when the Site is not occupied) or if the Site is removed or configured in a manner where the Easement is not used for commercial purposes other than parking, this provision of the Agreement shall automatically expire, unless otherwise agreed to by the Parties in writing.

8. In the event the terms of this Easement and Right of Way Agreement are violated, such violation shall either (i) be eliminated by Grantor immediately upon receipt of written notice from the City or (ii) the City shall have the right to immediately correct or eliminate such violation at the sole risk and expense of Grantor and Grantor shall promptly reimburse the City, its successors and assigns, for any expenses or costs related thereto. The City, its successors and assigns, shall have the right to remove any improvement, facility, or structure that interferes with the purposes for which the Easement is granted and which is installed by Grantor, its successors, assigns, invitees, or agents subsequent to the date hereof, without liability to Grantor for damages. The Grantor explicitly acknowledges that in the event that (i) the written consent to a Permitted Encroachment referenced in Section 4 of this Easement is not recorded or (ii) should Grantor be unable to furnish, upon reasonable request, the City's written consent to the encroachment, then that improvement shall be deemed unpermitted and will not be afforded the protections granted for Permitted Encroachments. Grantor acknowledges and agrees that responsibility for the recordation of the City's written consent and preserving the City's written consent shall lie with the Grantor.

9. Within a reasonable time following completion of the construction of the Line, and thereafter following each entry upon the Easement Area for purposes authorized herein, the City, its successors and assigns, shall, to the fullest extent reasonably practicable, clean up and restore

all damage directly caused by its activities to the Easement Area, including any perimeter lighting, entry gate, driveways and parking areas located on and within the Easement Area, to the condition that existed immediately prior to such entry and activities on the Easement Area and the Temporary Construction Easement Area by the City. The City shall at all times have the right, but not the obligation, to keep the Easement Area clear of trees, overhanging limbs, undergrowth, and brush.

10. Should Grantor, its contractors, and subcontractors, assignees, heirs and/or invitees, cause to occur at any time a spill, leak, or discharge ("Discharge") upon the Easement Area, of any substance, which any law or regulation requires reporting to a governmental agency, Grantor shall have an affirmative obligation to report said Discharge to the City, within twenty-four (24) hours but not later than three (3) days of the discovery of such Discharge. Grantor shall be solely responsible for all costs and expenses associated whether directly or indirectly with the spill, leak, or discharge affecting the Line including, but not limited to, obtaining any and all required environmental studies, permits, clean-up of any spills, leaks, and discharges (caused by Grantor, its contractors, subcontractors, or lessees after the Effective Date, such term being defined below) of any products or substances, remediation of the surface and subsurface (to address contamination caused by Grantor, its contractors, subcontractors, or lessees after the Effective Date) in compliance with local, state and federal ordinances, laws and statutes including recommendations and orders of regulatory agencies and pay any and all governmental fees, assessments, taxes, permits, and similar fees required as a result of the discharge, including remediation fees and costs required by regulatory agencies.

11. If any provision contained in this Easement and Right of Way Agreement shall, for any reason, be adjudicated to be unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and the Easement will be construed as if the unenforceable provision had never been a part hereof. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Section and paragraph headings as used herein are for reference only and are not intended to restrict or define the text of any such section or paragraph.

12. Nothing contained herein, nor any prior act of Grantor or the City, shall be deemed or construed by Grantor or the City, or by any other party to create a relationship of principal and agent, partnership, joint venture, or of any association by or among Grantor and the City.

13. Grantor shall neither permit nor suffer any involuntary mechanic's or materialmen's lien to be filed or affixed against the Easement Area. In the event any such involuntary mechanic's or materialman's lien is filed, Grantor agrees to cause the same to be released and discharged of record or bonded around within sixty (60) days after written notice from the City. Grantor is not and shall not be construed as the City's agent in contracting for any improvements to the Easement Area. No default hereunder by Grantor shall result in a termination of this Easement and Right of Way Agreement. Nothing contained in this Easement and Right of Way Agreement shall constitute or be construed as a dedication of any portion of the Easement Area to the public or give any member of the public any rights whatsoever, it being the express intention of the parties hereto that the Easement shall be for the exclusive benefit of the City and its successors and assigns.

14. The consideration that the City has paid to Grantor concurrent with the granting of the easement rights contained in this Easement and Right of Way Agreement includes payment for all reasonably anticipated damages and injuries to Grantor's property and improvements necessarily caused by the laying, construction, alteration, maintenance, inspection, operation, service, repair, replacement, relocation, change in the size of, protection, patrol of, or removal of the Line within the Easement Area, including any damages or injuries to any property and improvements of Grantor located outside the boundaries of the Easement Area and the Temporary Construction Easement Area resulting from the grant and conveyance of this Easement and Right of Way Agreement and the proper exercise of the rights granted herein; provided, however, that after the completion of the initial construction the City will repair or replace damaged improvements to as good or better condition as existed prior to the commencement of the City's activities within the Easement Area for which the Grantor is able to furnish the prior written consent of the City pursuant to and in accordance with the requirements laid out in Sections 4 and 7 of this Easement and Right of Way Agreement. The City agrees to pay or reimburse Grantor for all extraordinary damages which were not included in the initial consideration, to the extent caused solely by the City or any third party conducting activities on behalf of, in contract with or under the direction of The City, to any existing improvements within the easement area which have not been previously repaired or replaced in accordance with the terms hereof. Extraordinary damages shall be damages caused by activities that are not considered to be reasonable pursuant to the terms of this Easement and Right of Way Agreement and the rights granted herein.

15. All notices, correspondence, and requests to the City shall be in writing and shall be considered sufficiently given if delivered to the specified addresses by (a) hand, courier, or overnight delivery service; (b) certified or registered mail, return receipt requested; or (c) first class mail:

If to Grantor:

PepsiCo Global Real Estate
7701 Legacy Drive
Attention - Real Estate Department, MD 1B-207
Plano, TX, 75024

If to the City:

City of Houston, Houston Public Works
c/o Marjorie Cox, Assistant Director-Real Estate Services
611 Walker Street, 19th Floor
Houston, Texas 77002

A notice shall be effective upon the other party's receipt of the notice. Either party may specify a different address for delivery of notices by written notice to the other party as provided herein.

The foregoing terms, conditions, and provisions shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns, as applicable, of Grantor and the City. The rights granted to the City (and the obligations of the City hereunder) may be assigned in whole or in part by the City.

Grantor warrants that Grantor owns the land subject to the easement rights contained in this Easement and Right of Way Agreement in fee simple, that Grantor has the right, title, and power to convey the rights granted herein, and that Grantor shall execute any further assurance of title reasonably requested by the City, its successors or assigns.

This Easement and Right of Way Agreement may be signed in counterparts with the same effect as if each named Grantor signed one instrument. Each counterpart shall constitute a separate agreement between the parties thereto, subject to prorating any payments due hereunder in accordance with each Grantor's ownership share.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Grantor has hereunto set his/her hand this ____ day of _____, 2020 (the "Effective Date").

GRANTOR:

ROLLING FRITO-LAY SALES, LP,
a Delaware limited partnership

By: Frito-Lay Sales, Inc.,
its general partner

By: _____

Name: Betsy K. Power

Its: Authorized Signatory

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned Notary Public, on this ____ day of _____, 2020, personally appeared Betsy K. Power, Authorized Signatory of Frito-Lay Sales, Inc., a Delaware corporation, general partner of Rolling Frito-Lay Sales, LP, a Delaware limited partnership, to me known to be the identical person(s) who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes as herein set forth on behalf of said limited partnership.

Witness my hand and official seal.

Notary Public

EXHIBIT "A"
EASEMENT AREA

EXHIBIT "B"
PROPERTY

TRACT 1:

Being a tract or parcel containing 14.40 acres (627,453 square feet) of land situated in the Christopher Walter Survey, Abstract Number 849, Harris County, Texas, being out of and a portion of Restricted Reserve "B", Block 1 of Beltway North Industrial Park, Amending Plat No. 1, a subdivision of record at Film Code Number 444002 of the Map Records of Harris County, Texas, being all of a called 14.40 acre tract as described in deed to Fuller Spence, Ltd., recorded under Harris County Clerk's File Number RP-2018-54081; said 14.40 acre tract being more particularly described by metes and bounds as follows (bearings shown hereon are based on the recorded plat of said Beltway North Industrial Park, Amending Plat No. 1);

COMMENCING at a Texas Department of Transportation monument found marking the north end of a cutback line in the east right-of-way line of Spence Road (60 feet wide) at the intersection of the north right-of-way line of Aldine Bender Road (Farm to Market Road 525) (100 feet wide), same being the most northerly southwest corner of a called 1.06 acre tract, as described in deed to West Greens Management, LLC under Harris County Clerk's File Number 20070344229;

THENCE North 00°40'59" West, along the east right-of-way line of said Spence Road, at a distance of 128.36 feet, pass a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the northwest corner of said called 1.06 acre tract and the southwest corner of a called 3.989 acre tract, as described in deed to Proserve Crane and Equipment, Inc. under Harris County Clerk's File Number 20120016701, continuing in all a total distance of 797.14 feet to a 5/8-inch iron rod with cap found marking the northwest corner of a called 1.0596 acre tract, as described in deed to NLBC Investments, LLC under Harris County Clerk's File Number 20070750983, the southwest corner of said called 14.40 acre tract the POINT OF BEGINNING and the southwest corner of the herein described tract;

THENCE North 00°40'59" West, continuing along the east right-of-way line of said Spence Road, a distance of 731.18 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the southwest corner of a tract of land conveyed to Harris County Flood Control District (Unit P-142-00-00) in Volume 7572, Page 353 of the Deed Records of Harris County, Texas and under Harris County Clerk's File Number C833665, same being the northwest corner of the herein described tract;

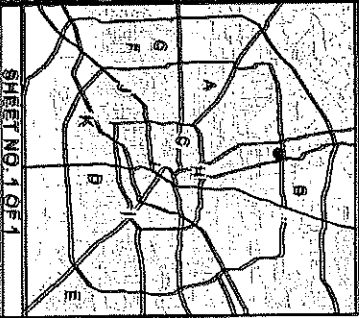
THENCE North 89°19'04" East, along the south line of said Harris County Flood Control District, a distance of 856.00 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the northwest corner of a called 2.829 acre tract as described in deed to Sealy IDV Aldine Bender, LLC, recorded under Harris County Clerk's File Number RP-2020-47282, same being the northeast corner of the herein described tract, from which a 1-inch iron pipe found marking the northeast corner of said called 2.829 acre tract bears North 89°19'04" East, 170.01 feet;

THENCE South 00°40'12" East, along the west line of said called 2.829 acre, a distance of 734.97 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in a north line of called 37.892 acre tract, as described in deed to Sealy IDV Aldine Bender, LLC, recorded under Harris County Clerk's File Number RP-2020-47281, same being the southwest corner of said called 2.829 acre tract and the southeast corner of the herein described tract;

THENCE South 89°34'17" West, along the north lines of said called 37.892 acre tract, the residue of a called 29.832 acre tract as described in deed to GBDS Investments, Ltd., recorded under Harris County Clerk's File Number T253090 and said 1.0596 acre tract a distance of 855.84 feet to the POINT OF BEGINNING and containing 14.40 acres (627,453 square feet) of land.

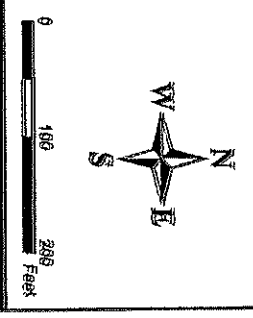
RP-2020-406082

EXHIBIT "C"
SITE



Vicinity View

EXHIBIT - C



CITY OF HOUSTON
 WBS No. S408998-9157-3
 108" Waterline from
 Willis St. to Imperial Valley Dr.

After Recording Return to:
City of Houston, Houston Public Works
c/o Marjorie Cox, Assistant Director-Real Estate Services
611 Walker Street, 19th Floor
Houston, Texas 77002

EXHIBIT C
RIGHT OF ENTRY AGREEMENT

RIGHT OF ENTRY AGREEMENT

THE STATE OF TEXAS §

COUNTY OF HARRIS §

WHEREAS the City of Houston, Texas, a municipal corporation located in Harris, Fort Bend and Montgomery Counties, Texas (the "City") desires to acquire from between FULLER SPENCE, LTD., a Texas limited partnership ("Owner"), a parcel of land containing a total of 42,797 square feet, more or less, said parcel being situated in the Christopher Walter Survey, Abstract Number 849, in Harris County, Texas, and being more particularly described by metes and bounds in **EXHIBIT "A"** (the "Land") attached hereto and incorporated herein for all purposes; and,

WHEREAS, the City has entered into negotiations with the Owner to acquire the Land in easement interest for the City's 108-Inch Water Line Construction Project (the "Project"); and,

WHEREAS, the City desires at this time to proceed with the final Project engineering and preconstruction activities on the Land, some of which activities shall be undertaken by the Owner, while the negotiations to acquire the Land in easement interest continue; and,

WHEREAS, the Owner is willing to (i) issue to the City a Right of Entry, (ii) undertake removal of a maintenance building from the Land, and (iii) undertake the preconstruction activities for (a) the construction of temporary parking and (b) construction of a new maintenance building to allow the City to proceed with the construction of the Project on the Land not later than February 1, 2021;

THEREFORE, in consideration for this Right of Entry Agreement ("Agreement"), the City will tender to the Owner the sum of Forty-Nine Thousand and no/100 Dollars (\$49,000.00). The City will be entitled to take possession and use of the Land for its pre-construction activities (which shall not interfere with Owner's tenant's business operations) and the Owner shall undertake its obligations toward the construction of a temporary parking area, removal of the maintenance building from the Land and construction of a new maintenance building under the terms of this Agreement upon tender of payment. The parties agree that the sum tendered to Owner will be deducted from any final purchase price, settlement amount, Special Commissioners' award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Land is less than the amount the City has paid for the possession and use of the Land, then the Owner agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the City, the Owner will promptly refund the overpayment to the City; provided, however, in the event the City elects not to move forward with the acquisition of the easement interest in the Land, only that portion of the funds paid to Owner hereunder which have not been spent by Owner toward Owner's obligation under this Agreement shall be refundable.

FURTHER, THEREFORE, in consideration of the foregoing, Owner, in the interest of allowing the City to proceed with the pre-construction activities of the Project in a timely fashion, hereby grants to the City a Right of Entry, including all necessary rights of ingress and egress, to allow the City and its contractors, agents and employees to enter into and upon the Land to affect its pre-construction activities. City agrees to provide the Owner forty-eight (48) hour notice prior to accessing the Land for its preconstruction activities. Owner further covenants and agrees that, Owner shall (i) begin removal of the maintenance building from the Land, and (ii) undertake the preconstruction activities related to (a) construction of the temporary parking and (b) construction of the new maintenance building which is to be completed prior to February 1, 2021. Owner further covenants and agrees that to the extent the temporary parking is not finished by February 1, 2021, City will nevertheless be allowed the full use of the Land for the construction of the Project on February 1, 2021.

This Agreement is made with the understanding that the City will continue to proceed with acquisition of a real Land interest in the Land. The Owner reserves all rights of compensation for the title and interest in and to the Land which the Owner holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Owner's rights to receive full and just compensation as allowed by law for all of the Owner's interests in and to the Land to be acquired by the City, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Owner's interest in any larger tract of which the Land is a part (the "Remainder"), if any; all as the Land exists on the Effective Date of this Agreement. This grant will not prejudice the Owner's rights to any relocation benefits for which Owner may be eligible.

The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the City in the Land, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.

The sole purpose of this agreement is to allow the City and the Owner to proceed with their obligations under this Agreement without delay.

This Right of Entry shall be effective upon execution of this agreement by both parties and shall continue thereafter until the completion of construction and installation of the Project on the Land, or until the Owner's conveyance of the easement interest in the Land to the City, whichever occurs first.

This agreement shall extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the Owners.

IN WITNESS WHEREOF, this instrument has been duly executed by Owner on the 17th day of June, 2020.

FULLER SPENCE, LTD., a Texas limited partnership
BY: FULLER SPENCE GP, LLC, a Texas Limited Liability Company,
its General Partner

By: [Signature]
STEPHEN G. DARNALL, MANAGER

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared STEPHEN G. DARNALL, manager of Fuller Spence GP, LLC, a Texas limited liability company, the general partner of FULLER SPENCE, LTD., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument of writing, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed in such capacity and on behalf of said limited partnership.



(Notary Seal)

[Signature]
Notary Public, State of Texas

Print Name: Maria Anaya

MY COMMISSION EXPIRES: 5-9-2022

Agreed and Accepted:

HOUSTON PUBLIC WORKS

[Signature]
By:

Print Name: J. MICHAEL Y. ERETI

Title: DIRECTOR OF CAPITAL PROJECTS

EXHIBIT A

Christopher Walter Survey
Abstract No. 849
Harris County, Texas

Parcel No. KY17-208
0.982 Acre (42,797 Sq. Ft.)
Proposed 50.00-foot waterline easement

A 0.982 acre (42,797 Sq. Ft.) waterline easement tract or parcel of land out of the Christopher Walter Survey, Abstract No. 849, in Harris County, Texas, being out of a certain 12,384-acre tract of land described in a deed from Frito-Lay, Inc. to Rolling Frito-Lay Sales, LP, dated October 4th, 2004, and filed of record under Harris County Clerk's File (H.C.C.F.) Number Y313987 in the Official Public Records of Harris County, Texas, also being out of Unrestricted Reserve "B" of Beltway North Industrial Park Amending Plat, a subdivision recorded in Volume 444, Page 2 of the Harris County Map Records, Texas (H.C.M.R.).

All coordinates and bearings stated herein are referred to the Texas Coordinate System of 1983, South Central Zone, as defined in the Texas Natural Resources Code, Sec. 21.071, et. Seq. and are based on a survey performed in February of 2017. All coordinates and distances recited are grid, to convert to surface, use a combined scale factor of 1.00013. Said 0.982 -acre tract is described as follows:

COMMENCING at a found 5/8-inch Iron rod with grid coordinates of Y = 13,905,147.10, X = 3,110,750.94 at the southwest corner of said 12.384-acre tract and being on the easterly right of way of Spence Road (60' R.O.W) as recorded in Volume 7715, Page 94 of the Harris County Deed Records;

THENCE, North 02° 33' 17" West, along said right of way, a distance of 423.95 feet to a set 3/4-inch iron rod with a cap stamped "MBCO Engineering" for the POINT OF BEGINNING of said 0.982-acre tract and having grid coordinates of Y = 13,905,570.63, X = 3,110,732.04;

THENCE, North 02° 33' 17" West, continuing along said right of way, a distance of 50.00 feet to a set 3/4-inch iron rod with a cap stamped "MBCO Engineering" at the northwest corner of said 12.384-acre tract and being the northwest corner of said 0.982-acre tract;

THENCE, North 87° 26' 18" East, along the north line of said 12.384-acre tract, a distance of 855.94 feet to a set 3/4-inch iron rod with a cap stamped "MBCO Engineering" at the northeast corner of said 12.384-acre tract and the northwest corner of the Residue of a 29.832-acre tract, filed for record under H.C.C.F. No. Y253090 dated August 31st, 1998, also being northeast corner of said 0.982-acre tract;

THENCE, South 02° 32' 50" East, along the common line of said 12.384-acre tract and said Residual 29.832-acre tract, a distance of 50.00 feet to a set 3/4-inch iron rod with a cap stamped "MBCO Engineering" at the southeast corner of said 0.982-acre tract;

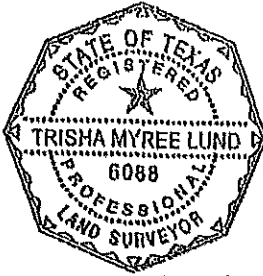
PARCEL NO	KY17-208
PROJ NO	S-000900-01673
DWG NO	58917

Christopher Walter Survey
Abstract No. 849
Harris County, Texas

Parcel No. KY17-208
0.982 Acre (42,797 Sq. Ft.)
Proposed 50.00-foot waterline easement

THENCE, South 87° 26' 18" West, a distance of 855.93 feet, to the POINT OF BEGINNING of the herein described tract and containing 0.982-acres of land.

This description is based on a survey performed by MBCO Engineering in February of 2017 as shown on Sketch No. KY17-208 (attached). The boundary and survey was performed under the supervision of former MBCO employee Jeremy J. Kowls, R.P.L.S. # 6361. Subsequent revisions were addressed by Trisha Myree Lund, R.P.L.S. # 6088.



A handwritten signature in black ink, appearing to read "Trisha Myree Lund", written over a horizontal line.

Trisha Myree Lund, R.P.L.S. #6088

PARCEL NO	<u>KY17-208</u>
PROJ NO	<u>S-000900-01673</u>
DWG NO	<u>58917</u>

CHECKED [Signature]
DATE 8/18/17
APPROVED [Signature]