

**PRELIMINARY RESOLUTION
(Rolling Frito-Lay Sales, LP 2021 Project)**

A special meeting of the Dutchess County Industrial Development Agency (the “Agency”) was convened in public session at 8:00 a.m., local time at Three Neptune Road, Poughkeepsie, New York (and, for those participating by videoconference, via Zoom) on the 15th day of September, 2021.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Timothy Dean, Chairman
Mark Doyle, Vice Chairman
Kathleen M. Bauer, Secretary/Treasurer
Alfred D. Torreggiani
Ronald J. Piccone, II
Amy L. Bombardieri

ABSENT: Donald R. Sagliano

ALSO PRESENT: Sarah Lee, Executive Director
Marilyn Yerks, Chief Financial Officer
Donald Cappillino, Counsel
Elizabeth A. Cappillino, Counsel

On motion duly made by Alfred D. Torreggiani and seconded by Ronald J. Piccone, II, the following resolution (the “**Resolution**”) was placed before the members of the Dutchess County Industrial Development Agency:

Resolution (i) Taking official action toward the issuance of financial assistance to Rolling Frito-Lay Sales, LP (Rolling Frito-Lay Sales, LP 2021 Project) in the form of potential exemption from sales and use taxes and exemption from real estate property taxes; and (ii) authorizing the execution and delivery of an agreement by and between the Agency and Rolling Frito-Lay Sales, LP with respect to such financial assistance.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the “**Act**”), the Dutchess County Industrial Development Agency (the “**Agency**”) was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, constructing renovating and equipping certain facilities as authorized by the Act; and

WHEREAS, Rolling Frito-Lay Sales, LP, a Delaware limited liability company authorized to transact business in New York, having offices at 7701 Legacy Drive, Plano, Texas 75024 (the “**Company**”), has submitted an application to the Agency requesting the Agency provide certain “financial assistance” (within the meaning of the Act) with respect to the Facility (hereinafter defined), including potential exemptions from certain sales and use taxes and real property taxes (collectively, the “**Financial Assistance**”) for the following project (the “**Project**”) in connection with the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing and equipping of a certain distribution and warehousing facility (the “**Facility**”) consisting of the following:

- (A) The construction of one approximately 150,000 square foot, multi-story structure to be used as a high-technology fulfillment center, one approximately 9,700 square foot, one-story structure to be used as a fleet center, and one approximately 320 square foot, one-story structure to be used as a guard house (collectively, the “**Improvements**”) located on approximately 28.42 acres of land located at 10-350 North Drive, Town of East Fishkill, County of Dutchess, State of New York, being portions of three parcels of land bearing Tax Map Grid Nos. 132800-6356-04-861300, 132800-6456-04-950353, 132800-6356-03-054349 (the “**Land**”); and
- (B) the acquisition and installation of new equipment, machinery and other personal property for use in the premises described above (collectively the “**Equipment**”) to be owned by the Agency and leased to the Company to be used as part of the Facility; and

WHEREAS, the Project includes the following, as they relate to the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing, equipping, and completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquisition, construction, improvement, reconstruction, repair, and renovation of the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with acquisition, construction, improvement, reconstruction, repair and renovation of the Facility and installation of the equipment; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “**SEQRA**”), the Agency is required to determine whether the Project may have a significant effect on the environment and therefore require the preparation of an Environmental Impact Statement; and

WHEREAS, the Agency has yet to make a determination of environmental significance on this application but will do so prior to its grant of any financial assistance; and

WHEREAS, the proposed Financial Assistance sought by the Company from the Agency includes exemption from real estate property taxes which deviates from the Agency's Uniform Tax Exemption and Criteria Policy (the "UTEP"); and

WHEREAS, the Agency has not yet held a hearing pursuant to §859-a of the Act (the "Hearing"); and

WHEREAS, although the resolution authorizing the Financial Assistance has not yet been presented for approval by the Agency, a Preliminary Agreement relative to the proposed Financial Assistance has been presented for approval by the Agency.

NOW, THEREFORE, BE IT RESOLVED by the Dutchess County Industrial Development Agency, as follows:

1. Based upon the representations made by the Company to the Agency, the Agency hereby finds and determines that for the Project:

- (a) the Project constitutes a "project" within the meaning of the Act;
- (b) The Financial Assistance will not result in the abandonment of a facility of the Company located elsewhere in the State of New York;
- (c) The Financial Assistance for the Project deviates from the Agency's Uniform Tax Exemption and Criteria Policy;
- (d) The Financial Assistance will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Dutchess County, New York, and improve their standard of living, and thereby serve the public purposes of the Act; and
- (e) It is desirable and in the public interest for the Agency to assist the Company by granting the Financial Assistance.

2. Subject to the conditions set forth in ¶3 of this Resolution, the Agency will:

- (a) acquire a leasehold interest in the Facility;
- (b) sublease the Facility to the Company pursuant to agreements by and between the Agency and the Company;

3. The provision of Financial Assistance herein, as contemplated by ¶2 of this Resolution, shall be subject to:

- (a) the execution and delivery by the Company of the Preliminary Agreement attached hereto as Exhibit "A" setting forth certain conditions for the provision of the Financial Assistance;
- (b) the agreement between the Agency and the Company on mutually acceptable terms regarding payments in lieu of taxes;
- (c) the Agency's determination that there is satisfactory support from the Town of East Fishkill and Wappingers Central School District for the Project;
- (d) compliance with SEQRA;
- (e) the holding of the Hearing pursuant to §859-a of Article 18-A of the General Municipal Law of the State of New York; and
- (f) the adoption of an authorizing resolution approving the Financial Assistance.

4. The form and substance of a proposed Preliminary Agreement (in substantially the form presented to this meeting) by and between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to the provision of Financial Assistance is hereby approved. The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Preliminary Agreement and the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency hereto and to attest to this meeting, with such changes in terms and conditions as the Executive Director shall constitute conclusive evidence of such approval.

5. Pursuant to §875(3) of the Act and under the Agency policy concerning Maintaining Performance Based Incentives (the "MPBI"), the Agency may recover, recapture or receive from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; and/or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project in the manner approved by the Agency in connection with the Project

(collectively, items (i) through (iv) hereby defined as a “**Recapture Event**”). The MPBI Policy provides for the return of other incentives as set forth therein.

6. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

7. The law firm of Nixon Peabody LLP, Rochester, New York, is hereby appointed Transaction Counsel to the Agency in relation to the provision of Financial Assistance.

8. Counsel to the Agency is hereby authorized to work with counsel to the Company and others to prepare for submission to the Agency all documents necessary to effect the authorization and provision of Financial Assistance. The Company shall be responsible for the fees of Agency, Agency’s Counsel and Transaction Counsel in relation to this Project and the provision of Financial Assistance.

9. The Agency hereby approves and authorizes the following actions by the Chairman of the Agency, prior to the granting of any Financial Assistance with respect to the Project, after consultation with Agency Counsel: (i) to establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project and the proposed Financial Assistance being contemplated by the Agency with respect to the Project, said public hearing to be held in the Town of East Fishkill, Dutchess County, New York; (ii) to cause notice of such public hearing to be given to the public by publishing a notice in accordance with the applicable provisions of the Act, as well as, at the same time, provide notice of the hearing to the chief executive officer of each affected tax jurisdiction; (iii) to conduct such public hearing or cause such hearing to be conducted by his designee; and (iv) to cause a stenographic transcript of said public hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency.

10. The Executive Director of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. The Agency hereby appoints each Member of the Agency and Agency Counsel to serve as an Assistant Secretary of the Agency for purposes of this project.

11. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was put to vote on roll call, which resulted as follows:

Timothy Dean, Chairman

VOTING

“Aye”

Mark Doyle, Vice Chairman	VOTING	“Aye”
Kathleen M. Bauer, Secretary/Treasurer	VOTING	“Aye”
Alfred D. Torreggiani	VOTING	“Aye”
Donald R. Sagliano	Being	ABSENT
Ronald J. Piccone, II	VOTING	“Aye”
Amy L. Bombardieri	VOTING	“Aye”

The Resolution was thereupon declared duly adopted.

Adopted: September 15, 2021

