

FSMC BOARD OF DIRECTORS MEETING

December 18, 2019

3:45 PM

NFE 2107

AGENDA

1. Call to order
2. Introduction of New Members
3. Approval of Minutes of December 4, 2019 Meeting
4. Finance Committee
 - Resolution No. 187 - Procurement Guidelines Policy Amendment
5. Resolution No. 188 - NY CREATES Organizational Matters
6. New Business
7. Public Comment
8. Next Board of Directors meeting: TBD
9. Adjournment



MINUTES

**Fort Schuyler Management Corporation
Meeting of the Board of Directors
December 4, 2019 – CNSE Nano Fab East 4th Floor East Boardroom**

Directors present: Robert Samson, Kristin Proud, Franklin Hecht, and Kenneth Tompkins (by video).

Staff: Douglas Grose – President, Scott Bateman – Treasurer, Cheryl Casey-Rose – Board Secretary, and Patricia Bucklin.

Guests: Keith Palmer – Research Foundation for SUNY

1. Call to Order

- Chair Samson called the meeting of the Board of Directors of Fort Schuyler Management Corporation (FSMC) to order at 2:36 PM.
- Chair Samson welcomed Keith Palmer of The Research Foundation.
- Chair Samson asked if any directors had a conflict of interest, and if so, that the conflict be disclosed. There were none.

2. Review/approval of September 12, 2019 meeting minutes

- Chair Samson asked for a motion to approve the minutes. A motion was made by Kristin Proud and seconded by Franklin Hecht. The minutes were approved as presented.

3. Finance Committee Report – Kristin Proud

- Lease Amendment - SUNY

Motion: Kenneth Tompkins

Second: Franklin Hecht

The State of New York, acting by and through the State University of New York (“SUNY”), and FSMC entered into an Amended and Restated Ground Lease dated as of May 1, 2010, whereby FSMC leases from SUNY certain real property located at the Marcy Nanocenter site in Marcy, New York. The initial term of the Ground Lease is 30 years. The Ground Lease provides that

upon FSMC's request, SUNY will use its best efforts to seek and obtain any and all approvals necessary for an amendment to the Ground Lease which would permit an extension of the term.

FSMC has previously entered into subleases for certain portions of the leased premises and anticipates entering into additional subleases for terms longer than the remaining term of the Ground Lease, including a sublease to facilitate the recently announced project with Cree, Inc. Thus, FSMC seeks to amend the Ground Lease to extend the term as to that portion of the leased premises which is described as Parcels A-E (the "Extension Premises") so as to permit FSMC to continue to develop and sublease the Extension Premises (or portions thereof) as contemplated by the Ground Lease. The amendment would extend the term from 2040 to 2080.

The Finance Committee approved a resolution (1) approving the amendment to the Ground Lease under the terms stated above, (2) authorizing the President and/or Treasurer to take any and all actions necessary and appropriate to effectuate such action, and (3) recommending that the Board approve the same actions.

Requested Action:

Approve a resolution approving the amendment to the Ground Lease under the terms stated above and authorizing the President and/or Treasurer to take any and all actions necessary and appropriate to effectuate such action.

Discussion: None.

Vote:

Ayes: 4 Nays: 0, Abstentions: 0.

The motion was approved as presented.

4. New Business: None.

5. Public Comment: None

6. Next Board of Directors meeting: TBD

7. Adjournment:

There being no further business to come before the Board, Chair Samson asked for a motion to adjourn. Kristin Proud moved to adjourn and Franklin Hecht seconded the motion. The meeting was adjourned at 2:42 PM.

Respectfully Submitted,

Cheryl Casey-Rose
Secretary of the Board

TO: Fort Schuyler Management Corporation Board of Directors

RE: Amendment to Procurement Guidelines Policy

Background:

Fort Schuyler Management Corporation (FSMC) approved Resolution No. 147 adopting a Procurement Guidelines Policy on February 22, 2017 and approved Resolution No.163 amending the policy on July 17, 2017 (the “Policy”). The amendment allowed the purchase of goods and services through use of centralized contracts held by the New York State Office of General Services, and deleted an unnecessary item in the standard form of procurement contracts.

FSMC now seeks to amend its Policy to provide that FSMC obtain review by the Office of the New York State Comptroller (OSC) of all contracts for construction and contracts for construction-related services of \$1 million or greater that are paid with New York State funds. On August 15, 2019, SUNY entered into a memorandum of understanding with OSC which required SUNY to work with The Research Foundation for the State of New York (RFSUNY) to grant such pre-audit review authority and recently RFSUNY adopted a similar provision. In the spirit of cooperation and additional transparency, FSMC is willing to adopt this provision. The amendment also clarifies the definition of construction to include both construction “and construction-related services” that consist of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services “engaged in the building of or the permanent alteration to real property”.

The Finance Committee approved Resolution No. 187 amending the Policy as stated above and recommended that the Board approve the same action.

Action Requested:

Approve Resolution No. 187 amending the Policy as stated above.

RESOLUTION OF THE BOARD OF DIRECTORS OF
FORT SCHUYLER MANAGEMENT CORPORATION

DECEMBER 18, 2019

RESOLUTION NO:187

AMENDMENT TO PROCUREMENT GUIDELINES POLICY

WHEREAS, the Board of Directors of the Fort Schuyler Management Corporation (the “Corporation”) is charged with directing the management of the operations, property, affairs and concerns of the Corporation in a manner consistent with the Corporation’s Bylaws; and

WHEREAS, in accordance with Article IX, Section 1 of the Corporation’s Bylaws and consistent with the responsible stewardship of the Corporation, on February 22, 2017, the Board of Directors approved Resolution No. 147 adopting a policy regarding the procurement and administration of contracts and on July 17, 2017 approved Resolution No. 163 amending the policy;

WHEREAS, the Board desires to amend the policy to provide that FSMC obtain review by the Office of the New York State Comptroller of all contracts for construction and construction-related services of \$1 million or greater that are paid with New York State funds, and to clarify the definition of construction;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CORPORATION, AS FOLLOWS:

SECTION 1: The Corporation’s Board of Directors hereby amends the Procurement Guidelines Policy in the form of the policy attached to this Resolution.

SECTION 2: EFFECTIVE DATE. The Procurement Guidelines Policy, as amended, attached to this Resolution is effective immediately.

FORT SCHUYLER MANAGEMENT CORPORATION

PROCUREMENT GUIDELINES POLICY

Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Contracts

1. PURPOSE

The following guidelines (the “Guidelines”) apply to the use, awarding, monitoring and reporting of Procurement Contracts, as defined herein, by the Fort Schuyler Management Corporation (“FSMC” or the “Corporation”).

In these Guidelines, a person, firm or corporation who wishes to provide goods and/or services to FSMC may be called a “vendor” or “offerer” or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming a FSMC vendor, a “respondent.”

2. DEFINITIONS

- A. “Procurement Contracts” are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the FSMC office, facilities, operations and maintenance and capital projects, including but not limited to goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2.C below. Loans and grants are not Procurement Contracts.
- B. “Non-Procurement Contracts” include direct placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which FSMC participates.
- C. “Services Contracts” are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships or firms who are not and do not employ officers or employees of FSMC) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by a consultant for FSMC) and construction management. Non-Personal Services include, but are not limited to: skilled or unskilled temporary personnel,

including clerical office staff, technicians or engineers working under FSMC supervision; maintenance, repairs, and printing services. Construction ~~consists~~and construction related services consist of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services engaged in the building of or the permanent alteration to real property.

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient FSMC staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of these factors.

- D. “Goods” include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as “Equipment,” where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies.
- E. “Evaluation of Proposals,” as further set forth in Section 4 below, includes as evaluating factors FSMC’s consideration of a bidder’s skill, judgment and business integrity.
- F. “Contact” is any oral, written or electronic communication with FSMC under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.
- G. “Relative” is any person living in the same household as the FSMC employee or any person who is a direct descendant of the FSMC’s employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines.
- H. “Minority and Women-owned Business Enterprise” (“M/WBE”) is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in N.Y. Executive Law Article 15-A, and pursuant to the definition found in N.Y. Executive Law § 310.
- I. “Small Business” is a business that is resident in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.
- J. “Single Source” is a procurement in which FSMC, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offerer over another that can supply the goods or services.
- K. “Sole Source” is a procurement in which only one offerer is capable of supplying the required goods or services.

3. SOLICITATION REQUIREMENTS

- A. Preparation of the solicitation of proposals for Procurement Contracts is the responsibility of the initiating department. Except as otherwise authorized by these Guidelines, quotes should be solicited from a minimum of three providers and/or firms (if available) for Procurement Contracts valued under \$25,000 and a minimum of five providers and/or firms (if available) for Procurement Contracts valued at \$25,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation. In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder's skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. FSMC may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to FSMC does so at its own cost or expense and will not be reimbursed by FSMC for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized FSMC representative.
- D. In order to promote the use of Minority and Women-owned Business Enterprises ("M/WBEs"), FSMC will endeavor to solicit offers from M/WBEs known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definition of a NYS-certified M/WBE is in Section 2.H.
- E. To foster increased use of M/WBEs, small businesses and recycled or remanufactured commodities, a single proposal may be sought, negotiated and accepted for purchases not exceeding \$200,000, in the aggregate including all amendments, of (i) goods and/or services from a NYS-certified M/WBE (as defined in Section 2.H) or Small Business (as defined in Section 2.I) or (ii) goods and/or technology that is recycled or remanufactured, where such vendors offer a reasonable price for such goods and/or services. The award of such proposal requires the written approval of the CFO's designee for procurement. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the CFO's designee for procurement. Furthermore, the award of such procurement contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.
- F. It is the policy of FSMC to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. In furtherance of this goal, the following definitions and actions apply:
 - 1. "New York State Business Enterprise" is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form

of exchange, goods sought by FSMC that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by FSMC that are substantially performed within New York State as further described in Public Authorities Law § 2879.

2. “New York State resident” is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
 3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by FSMC that are substantially produced outside New York State, or services other than construction services, sought by FSMC that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
 4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.
 5. FSMC shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by FSMC’s President and CEO if the CEO determines in writing that it is in the best interests of FSMC to do so.
- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; milestone dates; all other applicable FSMC requirements and any special methods or limitations that FSMC chooses to govern the work.
- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), FSMC will, prior to soliciting proposals, submit the following information for publication on the New York State *Contract Reporter* website, (www.nyscr.ny.gov) (unless such posting would serve no useful purpose): (1) FSMC’s name and address; (2) the solicitation number; (3) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (4) the address where bids or proposals are to be submitted; (5) the due date for bids or proposals; (6) a description of any eligibility or qualification requirements or preferences, as applicable; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture or coproduction

arrangement; (8) any other information deemed useful to potential contractors, as applicable; (9) the name, address, and phone number of the person to be contacted for additional information and (10) a statement as to whether the goods and/or services sought have, in the immediately preceding three-year period, been supplied by a Foreign Business Enterprise. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the Contract Reporter website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, FSMC will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on the Contract Reporter website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.K, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the above-described advertising requirements subject to the approval of the CFO's designee for procurement, and/or the head of the initiating department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by FSMC.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the Contract Reporter website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such contracts not exceeding \$200,000 awarded to Small Businesses or NYS-certified M/WBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured. Such notice shall specify the name of the awardee.

I. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an FSMC representative, a "competitive search" will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The initiating department will gather information from potential sources, that will include a description of the consultant/firm's qualifications, résumés of key personnel, past experience and proposed billing rates.

- J. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
 2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
 3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
 4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
 5. The contract is awarded to a Small Business or to a NYS-certified M/WBE firm for purchases not exceeding \$200,000, pursuant to Section 3.E.
 6. The contract is for the purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$200,000, subject to the approvals stated in Section 3.E.
 7. The goods and/or services are available through centralized contracts held by the New York State Office of General Services. Information about centralized contract offerings can be accessed at <https://www.ogs.state.ny.us/purchase/SearchBrowse.asp>.
- K. A Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:
1. A threat to the health or safety of the public or FSMC employees or workers.
 2. Proper functioning of FSMC facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- L. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the head of the department will provide a written statement for the procurement record explaining the reasons therefor. The award of such Procurement Contracts, regardless of value, requires the written approval of the Chief Compliance Officer, except as noted in Section 3.H.
- M. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the President and CEO or the COO prior to processing by the Procurement Department.
- N. When a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief

Executive Officer and Chief Financial Officer of FSMC stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for

property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the CFO's designee for procurement.

- O. It is the policy of FSMC to discourage improper communications intended to influence an FSMC procurement. To that end, FSMC shall designate a person or persons who may be contacted with respect to each FSMC procurement. The bidders/contractors or persons acting on their behalf, shall only contact FSMC's designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period. The "Restricted Period" is the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from bidders/contractors intending to result in a procurement contract with FSMC and ending with the final contract award.
- P. In furtherance of FSMC's commitment to ensure transparency and accountability of its operations, every member, officer or employee of FSMC who is contacted by a lobbyist is required to make a contemporaneous record of such contact.
- Q. FSMC shall record in a database certain appearances between FSMC and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal "Restricted Period." Covered individuals at FSMC means an individual at FSMC who has the power to exercise discretion or advises someone who exercises discretion. A covered individual outside of FSMC means both "external" (e.g., a lobbyist) and "internal" (e.g., sales representative) representatives of an entity, individuals appearing on behalf of him/herself, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to FSMC's Compliance Office for recording in the database.

4. EVALUATION OF PROPOSALS

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not limited to, the bidder's skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the CFO's designee for procurement. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the CFO's designee for procurement, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are, where applicable to the procurement: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the FSMC work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder's skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet M/WBE goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.
- C. For Services Contracts (as defined in Section 2.C of these Guidelines), cost, the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract.
- D. For Procurement Contracts other than Personal Services (as defined in Section 2.C of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents.
- E. FSMC shall not award a Procurement Contract (as defined in Subsection 2.A of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of FSMC's policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor.

More than one determination of non-responsibility in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management, and should be based on such a proposal providing a clear advantage to FSMC over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; and overall, the bidder's skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, FSMC may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, FSMC deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

5. RECOMMENDATION OF AWARD

A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:

1. Lump sum and/or unit prices for equipment and construction work.
2. Hourly or daily rates for personnel.
3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.

5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any.

6. AWARD OF CONTRACT

- A. Services Contracts to be performed for a period of more than 12 months are approved and reviewed annually by the FSMC Board. Services Contracts for a period of less than 12 months are approved by authorized designees. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Board at the request of the initiating department and will be reviewed by the Board annually. Extending a contract for services, that has previously been approved by the Board, for a cumulative term of more than 12 months requires further Board approval. Extending a contract, previously approved by the Board, for 12 months or less requires approval by an authorized designee and concurrence by the CFO's designee for procurement.
- B. For Services Contracts to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Board meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total value, such contract must be approved by the appropriate management. Such contract is subject to the Board's approval, at the next quarterly Board meeting. If such approval is not granted, the contract will be terminated immediately.
- C. A contract or contract task is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Board-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved.
- D. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions.
- E. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed \$100,000, the initiating department Head, with the prior

concurrence of the CFO's designee for procurement, may authorize extending such contract, subject to the Board ratifying such action as soon as practicable.

- F. When the total estimated contract value or the value of the extension exceeds \$250,000, interim approval by the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Board ratifying such action as soon as practicable.
- G. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds \$250,000, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the CFO's designee for procurement, may authorize the commencement of such services. The initial compensation limitation may not exceed \$250,000. Such contracts will be subject to Board approval, which will be solicited at their next scheduled Board meeting.
- H. [All contracts for construction and construction related services of \\$1 million or greater to be paid with New York State funds are required to be reviewed by the Office of the New York State Controller \(OSC\).](#)
- I. ~~H.~~ No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts shall be maintained by the CFO's designee for procurement: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.

FSMC departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the CFO's designee for procurement, who is solely responsible for requesting proposals.
- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.

1. Schedule of Services or Specifications
2. Time of Completion
3. Compensation or Itemized Proposals
4. Relationship of Parties
5. Delays
6. Termination
7. Changes in the Work
8. Claims and Disputes
9. Warranty
10. Insurance
11. Records, Accounts, Inspection and Audit
12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications

C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services. The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal; or
3. The originating FSMC department determines in writing that the restrictions are not in the best interests of FSMC. Such originating department shall obtain the approval of the applicable Business Unit Head or equivalent(s), the CFO's designee for procurement, Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

8. CHANGE ORDERS

- A. Change Orders to existing contracts are justified in the following cases:
1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
 3. To accommodate emergency conditions, defined in Section 3.K herein, that require the immediate performance of work by a firm already under contract; and
 4. When rebidding would not be practical or in the best interests of FSMC's customers.
- B. All Change Orders must be approved by the contract initiator, and should include specific schedules for completion of work at the earliest possible time.

9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES

- A. Former FSMC officers and employees are eligible to be considered for employment as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines and as set forth in this Section 9.
- B. No FSMC officer or employee is eligible, within a period of two years after the termination of FSMC employment to appear or practice before FSMC or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before FSMC.
- C. No FSMC officer or employee is eligible, at any time after the termination of FSMC employment, to appear, practice, communicate or otherwise render services before FSMC or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of employment, or which was under his or her active consideration.
- D. No FSMC employee who is involved in the award of FSMC grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or

candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

- E. No FSMC employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- F. No FSMC employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which the FSMC employee or a Relative of such FSMC employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
- G. For purposes of this Section 9.E, the term "Relative" is defined in Section 2.G of these Guidelines ("Definitions").

10. PROCUREMENT RECORD AND REPORTING

A. Procurement Record

FSMC must maintain records of Procurement Contracts, including bidders' names, the selection processes used and the status of existing contracts, including goods provided and/or services performed and fees earned, billed and paid.

A statement describing the basis for a determination of a bidder's/contractor's non-responsibility and FSMC's decision not to award a bidder/contractor the Procurement Contract must be included in the procurement record. All forms entitled "Record of Contact" shall be included in the respective procurement record. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the procurement record.

B. Procurement Report

After the end of each calendar year, the CFO's designee for finance will prepare and submit an annual report to the Board for its approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A list of fees, commissions or other charges paid;
5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified M/WBE designation (if any) of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
6. The type of contract (equipment, services, personal services or construction);
7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
8. The reasons why any procurements with a value greater than \$50,000 were not noticed in the Contract Reporter; and
9. The number of bids received.

The annual procurement report shall be posted on FSMC's website and copies shall be made available to the public upon reasonable written request therefor.

11. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of FSMC only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

12. ADMINISTRATION OF CONTRACTS

FSMC staff shall implement procedures for the administration of all contracts of the Corporation. FSMC contract administration procedures must:

- A. Ensure funds are available to FSMC to cover the expected contract costs prior to FSMC entering into any contract.
- B. Ensure contractor's compliance with contract provisions.
- C. Ensure services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract.
- D. Ensure that all work is completed and accepted by FSMC before the contract expires.
- E. Assess and request amendments, renewals, or new contracts as required allowing sufficient time to process, and execute such changes before the contract expires to prevent a lapse in service.
- F. Ensure that contracts are amended subsequent to any grant agreement revisions that affects the contract terms.
- G. Review and approve invoices for payment in order to ensure that payments are made in accordance with contract terms, costs are budgeted and allowable, and work has been performed.
- H. For contracts funded by New York State or its agencies, authorities or related entities, ensure that invoices are reviewed, approved and submitted for payment in accordance with protocols approved by Empire State Development.
- I. Monitor contract expenditures to ensure that there are sufficient funds to pay for all services rendered as required by the contract.
- J. Verify all requirements of the contract are fulfilled before the final invoice is paid, in accordance with the terms of the contract, and the contract is closed.

Document comparison by Workshare Compare on Friday, December 13, 2019
2:08:56 PM

Input:	
Document 1 ID	netdocuments://4826-0493-8670/1
Description	FSMC+Procurement+Guidelines+Policy++Final (December 2019)
Document 2 ID	netdocuments://4819-0075-4350/1
Description	FSMC+Procurement+Guidelines+Policy++Final (with OSC)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	5
Deletions	2
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	7

TO: Fort Schuyler Management Corporation Board of Directors
RE: New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (“NY CREATES”)

Background:

On May 5, 2018, the State of New York, State University of New York (“SUNY”), and Empire State Development (“ESD”) announced the creation of New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES) to serve as a resource for public-private academic research within New York State and SUNY to create and lead industry-connected research, economic development and commercialization that attracts investment and creates high-tech jobs.

NY CREATES was established as a New York not-for-profit corporation on May 8, 2018 with the filing of a certificate of incorporation with the New York State Department of State. The Research Foundation for the State University of New York (“RF”) by Resolution BD2019-10 dated May 15, 2019 approved the creation of NY CREATES and authorized its management to take all steps necessary and appropriate for the establishment of NY CREATES. Pursuant to and in accordance with authorization provided by Resolution BD2019-10, membership into NY CREATES by RF was accepted and directors were appointed on December 16, 2019 by an act of its management. SUNY Polytechnic Institute Foundation, Inc. (“SPF”) by resolutions dated September 27, 2019 and November 21, 2019 (collectively the “Resolutions”) approved the reorganization of Fuller Road Management Corporation (“FRMC”) and Fort Schuyler Management Corporation (“FSMC”), including the creation of NY CREATES, accepted membership in NY CREATES, authorized its Chief Executive Officer to execute member unanimous written consents for NY CREATES, FRMC and FSMC, and authorized its Chief Executive Officer to take any such actions as are necessary and appropriate to effectuate the reorganization. Pursuant to and in accordance with the authorization provided by the SPF Resolutions, directors were appointed on December 16, 2019 by an act of its Chief Executive Officer.

The members of NY CREATES by unanimous written consent dated December 17, 2019, designated At-Large Directors, the Chair and the Vice Chair of the board of directors of NY CREATES.

FSMC members by a resolution adopted by unanimous written consent dated December 17, 2019, approved an amendment to the Corporation’s Certificate of Incorporation and By-Laws.

On December 18, 2019 NY CREATES held its organizational meeting (i) approving and accepting the certificate of incorporation of NY CREATES as filed with the Department of State on May 8, 2018, (ii) approving and accepting the NY CREATES by-laws as adopted by the initial directors, (iii) appointing officers of NY CREATES, (iv) establishing audit and finance committees, and (v) adopting various policies and guidelines for its governance. Additionally, NY CREATES approved assuming control of FRMC and FSMC by (i) accepting membership in FRMC and FSMC whereby NY CREATES will become the sole member of FRMC and FSMC replacing the existing members of each, the RF and SPF, and (ii) approving the amendment and restatement of FRMC’s and FSMC’s by-laws to allow (a) each director of NY CREATES to be

deemed to have been appointed a director of FRMC and FSMC by virtue of being a director of NY CREATES, (b) the officers of NY CREATES to serve ex-officio as the officers of FRMC and FSMC in the same office that such individuals hold with NY CREATES, (c) each director of NY CREATES serving on a committee of NY CREATES to be deemed to have been appointed as a member of the corresponding committee of FRMC and FSMC, and (d) all ex-officio non-voting advisory representatives to the NY CREATES board to be deemed to be ex-officio non-voting advisory representatives to the boards of FRMC and FSMC.

NY CREATES management team will manage all projects in the FRMC and FSMC economic development portfolio as well as RF sponsored industry partner programs through coordination with RF and SUNY (the “NY CREATES Enterprise”). Consistent with the SUNY Chancellor’s May 5, 2018 statement, NY CREATES will also connect with SUNY Polytechnic Institute and other SUNY Institutions to support academic/industry related programs and educational opportunities, and provide the ability to expose students to cutting-edge research opportunities and internships.

A single management team across the NY CREATES Enterprise will streamline the management and improve the effectiveness of the current FRMC, FSMC and RF economic development portfolio.

Proposal:

1. To amend FSMC’s certificate of incorporation to replace its existing members, RF and SPF, with NY CREATES whereby NY CREATES will be the sole member of FSMC.
2. To amend and restate FSMC’s by-laws to allow individuals serving as NY CREATES directors, officers, advisory representatives and committee members to serve ex-officio as the directors, officers, advisory representatives and committee members of FSMC.

Action Requested:

Adopt Resolution No. 188 approving the certificate of amendment to the certificate of incorporation of FSMC and approving the amended and restated by-laws of FSMC, and authorizing the President, the Chief Executive Officer and the Treasurer, each of them without the other, to execute, acknowledge and deliver any documents as such officer may deem necessary or appropriate to effectuate the purposes and intents of the foregoing resolution.

RESOLUTION OF THE BOARD OF DIRECTORS OF
FORT SCHUYLER MANAGEMENT CORPORATION

DECEMBER 18, 2019

RESOLUTION NO: 188

APPROVING AN AMENDMENT TO THE CERTIFICATE OF INCORPORATION AND ADOPTION
OF RESTATED BY-LAWS

WHEREAS, the Research Foundation for the State University of New York (the “Research Foundation”) and SUNY Polytechnic Institute Foundation, Inc. (the “SUNY Poly Foundation”) are the Members (the “Members”) of the Fort Schuyler Management Corporation (the “Corporation”); and

WHEREAS, the Research Foundation by resolution dated May 15, 2019 and SUNY Poly Foundation by resolutions dated September 27, 2019 and November 21, 2019 (collectively the “Resolutions”), and by officer certifications dated December 16, 2019, each authorized actions to accept membership into New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a “NY CREATES”), a newly formed not-for-profit corporation; and

WHEREAS, the Members desire to substitute and replace their membership in the Corporation with NY CREATES to be the sole member of the Corporation; and

WHEREAS, the Members by a resolution adopted by unanimous written consent dated December 17, 2019, approved an amendment to the Corporation’s Certificate of Incorporation and By-Laws, attached hereto as Exhibit A; and

WHEREAS, the Corporation now desires to effectuate the substitution and replacement of the Members’ interest in the Corporation with NY CREATES as the sole member by approving amendments to the Corporation’s Certificate of Incorporation and By-Laws as approved by the Members;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CORPORATION, AS FOLLOWS:

SECTION 1: The Corporation’s Board of Directors hereby approves the Certificate of Amendment to the Certificate of Incorporation of the Corporation, attached hereto as Exhibit B.

SECTION 2: The Corporation’s Board of Directors hereby approves the Restated By-Laws of the Corporation, attached hereto as Exhibit C.

SECTION 3: The President, the Chief Financial Officer and the Treasurer, each of them without the other, are hereby authorized, on behalf of the Corporation, to execute, acknowledge and deliver any and all documents as such officer may deem necessary or appropriate in order to effectuate the purposes and intents of the foregoing resolution.

SECTION 4: The President, the Chief Financial Officer and the Treasurer, each of them without the other, are hereby authorized and directed to take such actions as are necessary and appropriate to effectuate the foregoing resolutions.

SECTION 5: This Resolution shall take effect immediately.

CERTIFICATION

FORT SCHUYLER MANAGEMENT CORPORATION

RESOLUTION NO: 188

The undersigned, being the duly elected and qualifying officer of FORT SCHUYLER MANAGEMENT CORPORATION (the "Corporation"), certifies that the following constitutes a true and correct copy of a resolution adopted by the Board of Directors of the Corporation on December 18, 2019, as it appears in the records of the Corporation in my possession as of the date I have signed this Certification.

I further certify that, as of the date I have signed this Certification, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

Signed on this 18th day of December 2019.

EXHIBIT A

UNANIMOUS WRITTEN CONSENT OF THE MEMBERS OF FORT SCHUYLER MANAGEMENT
CORPORATION

FORT SCHUYLER MANAGEMENT CORPORATION

MEETING

of the

MEMBERS

by

UNANIMOUS WRITTEN CONSENT

December 17, 2019

The Members of Fort Schuyler Management Corporation (the “Corporation”), a not-for-profit corporation organized pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby take the following actions which the Members are permitted to take without a meeting pursuant to Section 614 of the New York Not-for-Profit Corporation Law:

1. Approval of a Certificate of Amendment of the Certificate of Incorporation.

RESOLVED, that the Certificate of Amendment of the Certificate of Incorporation of the Corporation as attached hereto as Exhibit A, is hereby approved.

2. Approval of Amended and Restated By-Laws.

RESOLVED, that the Amended and Restated By-Laws of the Corporation as attached hereto as Exhibit B, is hereby approved.

3. Effective Date.

RESOLVED, that these resolutions shall take effect immediately.

This consent in writing may be signed in one or more counterparts, each of which shall be deemed and original and constitute one and the same instrument.

Dated: December 17, 2019

Research Foundation for the State University of New York

By: _____

Title: _____

SUNY Polytechnic Institute Foundation, Inc.

By: _____

Title: Chief Executive Officer

EXHIBIT A

FORT SCHUYLER MANAGEMENT CORPORATION
CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
FORT SCHUYLER MANAGEMENT CORPORATION**

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the President of Fort Schuyler Management Corporation (the "Corporation"), hereby certifies:

- 1.** The name of the Corporation is Fort Schuyler Management Corporation.
- 2.** The original Certificate of Incorporation was filed by the Department of State on October 20, 2009. A Restated Certificate of Incorporation was filed by the Department of State on April 12, 2017.
- 3.** The Corporation was formed under Section 402 of the Not-for-Profit Corporation Law.
- 4.** The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
- 5.** The Certificate of Incorporation is amended as follows:
 - A.** Paragraph 2 of the Certificate of Incorporation regarding membership is hereby amended to read in its entirety as follows:
 - 2.** The sole member of the Corporation is the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES) having an address at 257 Fuller Road, Albany, New York 12203.
 - B.** Paragraph 7 of the Certificate of Incorporation regarding dissolution is hereby amended to read in its entirety as follows:

7. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more organizations that are organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, as amended, subject to the approval of the Attorney General of the State of New York or a Justice of the Supreme Court of the State of New York.

C. Paragraph 9 of the Certificate of Incorporation regarding the location of the office of the Corporation is hereby amended to read in its entirety as follows:

9. The office of the Corporation shall be located in the County of Albany, State of New York.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: c/o General Counsel, Fort Schuyler Management Corporation, 257 Fuller Road, Albany, New York 12203.

7. This Amendment to the Certificate of Incorporation was authorized by the unanimous written consent of the members entitled to vote thereon.

IN WITNESS WHEREOF, I have signed this Certificate of Amendment this 18th day of December, 2019.

By: Douglas A. Grose

Title: President

CERTIFICATE OF AMEDNMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
FORT SCHUYLER MANAGEMENT CORPORATION

Under Section 803 of the Not-for-Profit Corporation Law

Filed By:

Robert J. Ryan, Esq.
Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207

EXHIBIT B

FORT SCHUYLER MANAGEMENT CORPORATION
AMENDED AND RESTATED BY-LAWS

**RESTATED BY-LAWS
OF
FORT SCHUYLER MANAGEMENT CORPORATION**

(Adopted December 18, 2019)

**ARTICLE I
Organization**

Section 1. Type. Fort Schuyler Management Corporation (hereinafter referred to as the “Corporation”), is a charitable, Not-for-Profit Corporation.

Section 2. Principal Office. The principal office of the Corporation in the State of New York shall be located at 257 Fuller Road, Albany, New York 12203.

Section 3. Other Offices. The Corporation may have such other offices, either within or without the County of Albany, State of New York, as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

**ARTICLE II
Membership**

Section 1. Member. The sole Member of the Corporation shall be the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES).

Section 2. Dues. No dues shall be required from the Member of the Corporation.

Section 3. Power and Duties. The Member shall make possible the orderly and sound existence of the Corporation, and shall establish, and amend as necessary, these By-Laws of the Corporation. The Member shall have all the voting rights provided to members under the New York Not-for-Profit Corporation Law (the “NFPCL”) and common law.

**ARTICLE III
Meetings of the Member**

Section 1. Annual Meeting. The Member of the Corporation shall hold a meeting at least annually in June of each year, or as soon thereafter as practicable, for the transaction of such other business as may properly come before the meeting. Membership meetings shall be held at the principal office of the Corporation or at such other place and by such other means as the Member may determine.

The President and/or Chief Financial Officer shall present at a meeting within six (6) months after the close of the Fiscal Year, or as soon as practicable thereafter, financial statements in accordance with generally accepted accounting principles that have been certified by a firm of

independent public accountants selected by the Audit Committee showing in appropriate detail, at least the following:

- (a) The assets and liabilities, direct or contingent, of the Corporation;
- (b) The principal changes in assets and liabilities since the last report;
- (c) The revenue and/or receipts of the Corporation, restricted and unrestricted; and
- (d) The expenses and/or disbursements of the Corporation for both general and restricted purposes.

Section 2. Special Meetings. Special meetings of the Member, except as otherwise provided by law, may be called to be held at the principal office of the Corporation or elsewhere at any time at the request in writing of the Member directed to the President or the Secretary of the Corporation. Special meetings shall also be called, with the consent of the Member, by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors to the President or Secretary of the Corporation. Any such request shall specify the date of the meeting, which shall not be less than two nor more than three months from the date of such written request, and shall detail the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the subjects stated in the call and matters germane thereto.

Section 3. Notice of Meetings. Written notice of the place, date, and hour of each meeting of the Member shall be given, personally, by first class mail or by electronic means, to the Member by the President or Secretary of the Corporation, and, unless it is an annual meeting, indicate that it is being issued by, or at the direction of, the Member, Directors, the Chair of the Board of Directors, or by the President or Secretary of the Corporation calling the special meeting. Notice shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting directed to the Member at its (physical or electronic) address as appears on the list of Members, or, if the Member shall have filed with the Secretary of the Corporation a written request that notices to it be mailed to some other address, then directed to it at such other address. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at the address the Member provides to the Corporation. If sent by fax or e-mail, such notice is given when directed to the Member's fax number or e-mail address the Member provides to the Corporation; provided, that notice shall not be deemed delivered if: (a) the Corporation is unable to deliver two (2) consecutive notices to the individual by e-mail or fax; or (b) the Corporation otherwise becomes aware that notice cannot be delivered to the individual by e-mail or fax.

Notice of any meeting of the Member need not be given to the Member provided the Member submits a signed waiver of notice whether before or after the meeting. The attendance by the Member at a meeting without protesting the lack of notice prior to or at the start of the meeting shall constitute a waiver of notice by it. Waivers may be provided: (i) in writing signed by a Member or the Members' proxy either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient

can reasonably determine that the transmission was authorized by the individual submitting the waiver.

Section 4. Procedure. The order of business and all other matters of procedure at every meeting of the Member will be determined by the Member.

Section 5. Quorum. At every meeting of the Member, except as otherwise provided by law or these By-Laws, the Member must be present for the transaction of any business. The Member shall be represented by its President or his or her designee.

Section 6. Adjournments. The Member shall have the power to adjourn the meeting from time to time. Subject to any notice required by law, at any adjourned meeting at which the Member is present, any business may be transacted which might have been transacted on the original date of the meeting.

Section 7. Voting. Any action required or permitted to be taken by the Member in its capacity as the member of the Corporation under applicable law, the Certificate of Incorporation or these Bylaws shall be taken by the Member through resolution.

Section 8. Account and Minutes. Account and minutes shall be taken at every proceeding of Members and a copy shall be kept at the office of the Corporation for inspection by the Members.

Section 9. Action Without a Meeting. Whenever the Member is required or permitted to take any action by vote, such action may be taken without a meeting, on written consent, setting forth the action so taken, signed by the Member. Consent may be provided: (i) in a writing signed by a duly authorized representative of the Member either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by a duly authorized representative of the Member.

ARTICLE IV **Directors**

Section 1. Number. The size of the Board of Directors shall equal in number to the size of the board of the Member.

Section 2. Composition of the Board. Each director of the Member, including all ex-officio non-voting advisory representatives, shall be deemed to have been appointed a Director of the Corporation by virtue of being a director of the Member.

Section 3. Powers and Duties. The Board of Directors shall direct the management of the operations, property, affairs and concerns of the Corporation consistent with the provisions of these By-Laws, as written or amended, all policies and procedures adopted by the Board, and the Certificate of Incorporation.

Section 4. Term. Each director of the Member shall serve as a Director of the Corporation for the term co-terminus with his/her term as a director of the Member.

Section 6. Resignation. A Director shall be deemed to have resigned from the Board at the same time he/she resigns from the board of directors of the Member and such resignation shall take effect at the same time his/her resignation from the board of directors of the Member takes effect.

Section 7. Removal. A Director shall be automatically removed from the Board simultaneous with the Director's removal from the board of directors of the Member.

Section 8. Vacancies. Whenever a vacancy shall occur in the Board of Directors it shall be filled by the individual(s) appointed to fill the corresponding vacancy on the board of directors of the Member.

Section 9. Compensation. No Director as such shall receive any compensation, either by way of salary, fees for attendance at meetings, or otherwise. Directors may be reimbursed for reasonable expenses incurred by them in the performance of their duties as Directors.

Section 10. Meetings of Directors.

(a) Regular meetings of the Board of Directors shall be held at least quarterly and at such times and at such places as may be determined by action of the Board of Directors, or in the absence of such action, by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors directed to the President or Secretary of the Corporation. The first meeting on or after July 1 of each year shall be the annual meeting.

(b) Special meetings of the Board of Directors may be called by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors directed to the President or Secretary of the Corporation. Such request shall state the purpose or purposes of the proposed meeting. The person or persons authorized to call special meetings of the Board may select any place within the State, as the place for holding any special meeting of the Board called by them. Business transacted at a special meeting shall be confined to the subject(s) stated in the call and matters germane thereto.

(c) Each Director shall have one (1) vote. No Director may vote by proxy.

(d) Except as provided in Section 13(c) of this Article IV and Section 108 of Article 7 of the New York Public Officers Law, every duly convened meeting of the Corporation's Board of Directors at which a quorum is present shall be open to the general public. All reasonable efforts shall be made to ensure that Board meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision 5 of Section 50 of the Public Buildings Law and can adequately accommodate members of the public who wish to attend such meetings.

(e) Directors must participate in meetings of the Board in person or via videoconference. Directors participating via videoconference shall be counted toward the quorum and may vote.

Section 11. Notice of Meetings of the Board of Directors.

(a) Notice of the time and place of each meeting of the Board of Directors shall be given by the Chair of the Board, or the Secretary, or by the three (3) Directors of the Board calling the same, to each Director on the Board, copies of such notice to each Member of the Corporation and to the ESD and SUNY representatives, not less than seven (7) business days before the meeting by mailing the notice, postage prepaid, addressed to each Director on the Board at the address on file with the Secretary, and to the two (2) Members and the ESD and SUNY representatives at their respective principal offices, or not less than one (1) business day before the meeting by delivering the notice to each Director on the Board, and to the two (2) Members and the ESD and SUNY representatives, personally or electronically.

(b) Notice of a meeting of the Board of Directors or a committee thereof need not be given to any Director who submits a signed waiver of notice, whether before or after the meeting. The attendance of any Director at a meeting of the Board or a committee thereof without protesting prior thereto or at its commencement the lack of notice to him or her shall constitute a waiver of notice by the Director. The meeting shall be duly called and held if notice is given to, or is waived by, all absent Directors. Waivers may be provided: (i) in a writing signed by the Director either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by the individual submitting the waiver.

(c) Public notice of the date, time and place of a Board meeting shall be given to the news media and shall be conspicuously posted on the Corporation's website, along with the meeting's agenda, at least seventy-two (72) hours before such meeting to the extent practicable. To the extent practicable, materials submitted to the Directors for consideration at a meeting shall be made available to the public upon request at the meeting. In addition, to the extent practicable, such materials will be made available in advance of the meeting by means of posting to the Corporation's website.

Section 12. Quorum and Voting.

(a) At all meetings of the Board of Directors, except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, a quorum shall be required for the transaction of business and shall consist of a majority of Directors then in office but in no event fewer than four (4) Directors. A majority of the Directors present at any meeting, although less than a quorum, may adjourn the same from time to time, without notice other than announcement at the meeting.

(b) The affirmative vote of a majority of Directors present at any meeting at which a quorum is present shall decide any question that may come before the meeting, except as set forth below.

(c) The following action requires approval by two thirds vote of the entire Board of Directors:

(i) the purchase of real property that will constitute all, or substantially all, of the assets of the Corporation once purchased.

(d) The following items must be approved first by majority vote of its Board of Directors at a meeting at which a quorum is present and then submitted to the voting Members for approval:

(i) Amendment of the Corporation's Certificate of Incorporation;

(ii) Approval of a plan of merger or consolidation of the Corporation;

(iii) Approval of a plan of dissolution of the Corporation; provided, however, if the number of directors actually holding office as such at the time of the vote to adopt the plan is less than the number required to constitute a quorum of directors, then the remaining directors must approve unanimously; and

(iv) Approval of a recommendation for the sale of all or substantially all of the Corporation's assets; provided, however, if all or substantially all of the assets of the Corporation consist of real property, approval of such sale by two thirds vote of the entire Board of Directors is additionally required.

Section 13. Procedure.

(a) The order of business and all other matters of procedures at every meeting of Directors may be determined by the presiding officer.

(b) Minutes shall be taken at all meetings of the Board and copies thereof shall be distributed to all Directors and posted to the website of the Corporation.

(c) Executive Session. Upon the affirmative vote of a majority of the Directors present at a duly convened meeting, the Directors may conduct an Executive Session, which shall be closed to the public, for the reasons enumerated in Section 105 of Article 7 of the Public Officers Law. Attendance at any such Executive Session shall be limited to the representatives of either of the Members, the Directors, and such Officers, employees, and other persons relevant to the matters under consideration as determined by the Board.

Section 14. Informing the Directors of Corporate Activity. Reports of all material Corporate activities as determined by the President, including program development, applications for fiscal support and funds received in support of the purposes of the Corporation,

will be presented to the Board of Directors for information either at each regularly scheduled meeting of the Board or by mail. A copy of such information shall also be provided to each Member of the Corporation.

Section 15. Records. The Corporation shall maintain a fair record of all the transactions of the Corporation including financial statements prepared in accordance with the provisions of the NFPCL. The audited financial report shall become a part of the Corporation's permanent records and a copy of the report shall be entered in the minutes of the proceedings of the meeting of the Board of Directors at which such a report is presented to the Board and shall be provided to each Member of the Corporation. A report of the financial statements shall be presented to the members of the Finance Committee not less than quarterly.

Section 16. Investment Matters. The Corporation shall comply with the New York Prudent Management of Institutional Funds Act ("NYPMIFA") as applicable.

ARTICLE V

Committees of the Board

Section 1. Committees of the Board.

(a) The Board of Directors shall establish an Audit Committee and such other committees as the Board may deem appropriate. Each committee shall consist of at least three (3) Directors. The committees of the Corporation and the size of each shall be equal to the committees of the Member. Each director of the Member serving on a committee of the Member shall be deemed to have been appointed as a member of the corresponding committee of the Corporation.

(b) Committees shall be subject at all times to the direction of the Board of Directors. Committees shall be governed by a committee charter which shall be adopted by the Board of Directors and shall detail the committee roles and responsibilities. Except as otherwise provided in these By-Laws, no committee shall have any authority without specific authorization by the Board of Directors and no committee shall have authority as to the following matters:

- (i) The submission to members of any action requiring Members' approval under the law;
- (ii) The filling of any vacancies on the Board or any committee;
- (iii) The fixing of compensation of the Directors for serving on the Board or on any committee;
- (iv) The amendment or repeal of the By-Laws, or the adoption of new By-Laws;
- (v) The amendment or repeal of any resolution of the Board which, by its terms, shall not be so amendable or repealable;

- (vi) The election or removal of Officers and Directors;
- (vii) The approval of a merger or plan of dissolution;
- (viii) The adoption of a resolution recommending to the Members action on the sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation; and
- (ix) The approval of amendments to the certificate of incorporation.

(c) Committees shall keep regular minutes of their proceedings and shall make the same available to the Board of Directors upon request.

(d) Unless otherwise provided by resolution of the Board of Directors, a majority of all the members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the committee members shall be the act of the committee.

Section 2. Audit Committee. The Audit Committee shall be a committee of the Board and shall consist of at least three (3) members. All members shall be “Independent Directors” as defined under the NFPCL, who shall have the knowledge and experience appropriate and sufficient to competently assist the Board of Directors in fulfilling its responsibility with respect to: overseeing the Corporation’s material legal, audit, and compliance matters; its system of controls, reporting, and accounting systems, including the Corporation’s audited financial reports; the internal audit department, including the retention and management of an external auditor as may be needed; and the implementation of the policies and procedures required by these By-Laws, including, without limitation, policies governing conflicts of interest and related-party transactions. The Board of Directors shall adopt an Audit Committee Charter to govern the operations of the Audit Committee.

Section 3. Meetings.

Meetings of committees shall be held at such time and place as shall be fixed by the President of the Corporation, the Chair of the Board of Directors, the chair of the committee or by vote of a quorum of the members of the committee. Notice of such meetings may be delivered personally, by mail or electronically at least one day prior to the meeting and shall state the purposes, time and place of the meeting.

ARTICLE VI

Officers

Section 1. Officers. The Officers of the Corporation shall be the President, Chief Financial Officer, Compliance Officer, General Counsel, Secretary and such additional Officers as the Board may deem desirable, all of whom shall be appointed by the Board and shall serve at its pleasure, subject to any contractual rights. Such additional Officers shall exercise such powers and perform such duties as usually pertain to their respective offices or as are properly

delegated or assigned to them from time to time by the Board of Directors. The Officers of the Member shall serve ex-officio as the Officers of this Corporation in the same office that such individual holds with the Member.

Section 2. The President. The President shall be the Chief Executive Officer of the Corporation and shall be responsible for the general supervision and control of the affairs of the Corporation and shall see to it that all policies, resolutions and other directives of the Board of Directors are carried out. The President, in such capacity, shall be authorized to enter into and execute in the name of and on behalf of the Corporation any agreement, obligation, contract, document or instrument the President deems reasonable or necessary in carrying out the business and affairs of the Corporation and for which execution has been generally or specifically authorized by the Board of Directors. The President shall make recommendations to the Board for the programs and activities of the Corporation. The President shall make reports as the Board may request. The President shall perform other duties for the Board as the Board may direct. The President shall have such powers and perform such other duties as the Board may direct as are reasonably incident to such office. The President will ensure that Corporation activities comply with all legal and regulatory mandates, will consult with legal counsel as needed, and direct all Corporation Officers and employees in carrying out said obligations.

Section 3. The Secretary. The Secretary shall have charge of the books, documents, and papers as the President may determine and shall have the custody of the corporate seal. The Secretary shall issue notices of all meetings of the Members of the Corporation and of Directors of the Board and committees thereof where notices of such meetings are required by law or these By-Laws. The Secretary shall attend all meetings of the Board of Directors, except as otherwise directed by the Board, and shall keep the minutes thereof and shall fix the Corporate seal to and sign such instruments as require the seal or signature and, shall perform such other duties as usually pertain to the office or as are properly required of the Secretary by the Board of Directors.

Section 4. The Chief Financial Officer. Subject to the authority of the President, the Chief Financial Officer (“CFO”) shall serve as the chief financial officer of the Corporation and shall be directly responsible for the management and oversight of the Corporation’s daily financial operations, including accounting, budgeting, financial reporting, investing, debt issuances and contract compliance. The CFO shall be the financial advisor to the Corporation, the Board of Directors and its committees, except as otherwise directed by the Board or President. The CFO shall provide financial advice and opinions, prepare financial statements and shall represent the Board of Directors and the Corporation in all financial matters.

Section 5. General Counsel. The General Counsel shall serve as the Corporation’s Chief Legal Officer and legal advisor to the Corporation, the Board of Directors and its committees, except as otherwise directed by the Board or the President. The General Counsel shall provide legal advice and opinions, prepare legal documents and shall represent the Board of Directors and the Corporation in all legal matters.

Section 6. Compliance Officer. Under the direction of the President and the Board of Directors, the Compliance Officer shall be responsible for preparing and enforcing the

Corporation's internal policies and procedures designed to prevent and/or detect violations of applicable law, regulation, rules and ethical standards by the Corporation's employees, agents and/or others. The Compliance Officer shall conduct periodic risk assessments and develop response plans to address identified risks and conduct training programs for the Directors, Officers and employees of the Corporation ensure compliance with the policies and procedures required by these By-Laws. The Compliance Officer shall report annually to the Board on his/her activities and assessments.

Section 7. Board Meetings. The Officers shall attend all meetings of the Board of Directors unless otherwise directed by the Chair of the Board or by the Board; provided, however, that the absence of any officer at any meeting of the Board shall not affect the validity of any action taken by the Board in accordance with these By-Laws.

Section 8. Temporary Transfer of Powers and Duties. In case of the absence or illness of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate and assign, for the time being, the powers and duties of any officer to any other officer or to any Director.

Section 9. Compensation. Compensation of all Officers shall be fixed by the Board of Directors upon the recommendation of the Audit Committee.

Section 10. Officers Holding Two or More Offices. No officer holding more than one office shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

Section 11. Removal. Any officer of the Corporation shall be removed at such time as he/she is removed as an officer of the Member.

Section 12. Vacancies. A vacancy in any office shall be filled by the individual appointed to fill the corresponding vacancy of the Member.

ARTICLE VII

Surety Bonds, Insurance and Indemnification

Section 1. Surety Bonds. The Board of Directors may require all Officers and employees of the Corporation who handle Corporate funds to furnish adequate Surety Bonds approved by the Board of Directors as to form and coverage. The cost of all Surety Bonds so required shall be paid by the Corporation.

Section 2. Indemnification.

(a) Authorized Indemnification. Unless clearly prohibited by law or Section 2(b) of this Article VII, the Corporation shall indemnify any person (each such person, an "Indemnified Person") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that they, their testator or intestate, whether before or after adoption of this Section is or was

a Director, Officer or employee of the Corporation. The indemnification shall be against all judgment, fines, penalties, amounts paid in settlement (provided the Corporation consents to such settlement, such consent not to be unreasonably withheld) and reasonable expenses, including reasonable attorney's fees and reasonable costs of investigations, actually and necessarily incurred by the Indemnified Person in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein. Such right of indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled. Any Director, Officer or employee seeking to become an Indemnified Person in accordance with this paragraph (a) of Section 2, Article VII must obtain the approval of the Board of Directors pursuant to paragraph (d) of this Section 2, Article VII.

(b) Prohibited Indemnification. The Corporation shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person or to the person whose actions are the basis for the action or proceeding, or the Board of Directors in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty which were material to the cause of action so adjudicated or that he/she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

(c) Advancement of Expenses. The Corporation shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Corporation as determined by the Board of Directors pursuant to paragraphs (a) and (d) of this Section 2, Article VII, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Corporation, with interest for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or paragraph (b) of this Section 2, Article VII. An Indemnified Person shall cooperate in good faith with any request by the Corporation that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

(d) Determination of Indemnification for Directors, Officers, and Employees. Indemnification mandated by final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court, the Board of Directors shall, upon written request of a Director, Officer or employee seeking to become an Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these By-Laws. Before indemnification can occur, the Board of Directors must explicitly find that such indemnification will not violate the provisions of paragraph (b) of Section 2 of this Article VII. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested Directors is not obtainable the Board of Directors shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these By-Laws.

(e) Binding Effect. Any person entitled to indemnification under these By-Laws has a legally enforceable right to indemnification which cannot be abridged by amendment of these By-Laws with respect to any event, action or omission occurring prior to the date of such amendment.

(f) Nonexclusive Rights. The provisions of this Section 2 of Article VII shall not limit or exclude any other rights to which any person may be entitled under law or contract.

Section 3. Insurance.

(a) The Corporation shall purchase such insurance as the Directors of the Corporation determine to be necessary or appropriate for the protection of the Corporation, its assets and its interests or as may be required by law. Subject to subparagraph (b) of this Article VII, Section 3, such insurance shall include General Liability Insurance.

(b) The Corporation is not required to, but it may, purchase Directors' and Officers' liability insurance if authorized and approved by the Board of Directors. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article VII or by operation of law and it may insure directly the Directors, Officers and employees of the Corporation for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

ARTICLE VIII
Finances

Section 1. Fiscal Year. The Corporation's fiscal year shall be from July 1 through June 30.

Section 2. Funds. The Corporation's funds shall be deposited in such bank or banks, in such types of accounts and subject to such deposit and withdrawal procedures as recommended by the CFO and approved by the President or the Board of Directors.

Section 3. Records and Accounts. The Corporation's financial records and accounts shall be maintained consistent with generally accepted accounting principles. All financial records and accounts of the Corporation shall be open to inspection by any Director or by either Member at any reasonable time.

Section 4. Annual Plan. The President, with recommendations of the CFO, shall present an annual plan, which shall set forth all anticipated revenues and expenditures, to the Board of Directors for its approval at the regularly scheduled Board meeting each year immediately preceding the commencement of the new fiscal year, or as soon as practicable thereafter. The plan shall include: (a) the approved expenditure levels, including approved changes, and estimated income and expenditures for the current fiscal year; (b) the actual income and expenditures for the prior fiscal year; and (c) the estimated income and expenditures for the forthcoming fiscal year.

Section 5. Audit. The Corporation's financial statements shall be audited annually by a certified public accounting firm approved by the Board of Directors. The Corporation shall also conduct all annual reviews necessary for compliance with all applicable regulations pertaining to not-for-profit and exempt corporations including IRS Form 990. The Board of Directors shall review and approve both the annual audit and the IRS Form 990 prior to submission to the appropriate agency and/or government entity. A copy of such reports shall be provided to the Directors and the Members prior to the meeting at which these will be reviewed.

ARTICLE IX Policies and Procedures

Section 1. Policies and Procedures. The Board of Directors is authorized and directed to adopt, implement, and enforce policies and procedures for the proper and ethical conduct of the affairs of the Corporation consistent with the Corporation's Certificate of Incorporation, these By-Laws, and all applicable law. At a minimum, these shall include the following:

- (a) Code of Conduct for Directors, Officers, and Employees;
- (b) Policy regarding Conflicts of Interest;
- (c) Fraud and Whistleblower Policy;
- (d) Policy and Procedure for the Procurement and Administration of Contracts;
- (e) Policy regarding the Acquisition and Disposition of Real Estate;
- (f) Records Access Policy, in conformance with Article 6 of the Public Officers Law ("FOIL"), as the same may be amended from time to time;
- (g) Policy Regarding Debt, Risk Assessment, and Risk Mitigation.

Section 2. Annual Review. At least annually, the Compliance Officer shall prepare and present to the Board a report on the implementation of the Corporation's policies and procedures during the preceding year, including any recommendations with respect thereto. Such report shall include any recommendations regarding such policies and procedures or the adoption of any new policy or procedure in accordance with then current best practices.

ARTICLE X Miscellaneous

Section 1. Form of Seal. The seal of the Corporation shall be in such form as the Directors shall determine.

Section 2. Books and Records. There shall be kept at the office of the Corporation: (1) correct and complete books and records of accounts; (2) minutes of the proceedings of the Members, the Board of Directors, and any committee of the Board; (3) a current list of the Directors and Officers of the Corporation; (4) a list of all Members or classes of membership,

including name and address; (5) a copy of these By-Laws; (6) a copy of the Corporation's application for recognition of exemption with the Internal Revenue Service; and (7) copies of the past three (3) years of information returns and Form 990-Ts (if any) filed with the Internal Revenue Service.

ARTICLE XI
Amendment

These By-Laws and the Certificate of Incorporation may be added to, amended, repealed, or replaced only by the unanimous agreement of the Members of the Corporation.

Dated: December 18, 2019

EXHIBIT B

CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF INCORPORATION OF FORT
SCHUYLER MANAGEMENT CORPORATION

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
FORT SCHUYLER MANAGEMENT CORPORATION**

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the President of Fort Schuyler Management Corporation (the "Corporation"), hereby certifies:

1. The name of the Corporation is Fort Schuyler Management Corporation.
2. The original Certificate of Incorporation was filed by the Department of State on October 20, 2009. A Restated Certificate of Incorporation was filed by the Department of State on April 12, 2017.
3. The Corporation was formed under Section 402 of the Not-for-Profit Corporation Law.
4. The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
5. The Certificate of Incorporation is amended as follows:
 - A. Paragraph 2 of the Certificate of Incorporation regarding membership is hereby amended to read in its entirety as follows:
 2. The sole member of the Corporation is the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES) having an address at 257 Fuller Road, Albany, New York 12203.
 - B. Paragraph 7 of the Certificate of Incorporation regarding dissolution is hereby amended to read in its entirety as follows:

7. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more organizations that are organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, as amended, subject to the approval of the Attorney General of the State of New York or a Justice of the Supreme Court of the State of New York.

C. Paragraph 9 of the Certificate of Incorporation regarding the location of the office of the Corporation is hereby amended to read in its entirety as follows:

9. The office of the Corporation shall be located in the County of Albany, State of New York.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: c/o General Counsel, Fort Schuyler Management Corporation, 257 Fuller Road, Albany, New York 12203.

7. This Amendment to the Certificate of Incorporation was authorized by the unanimous written consent of the members entitled to vote thereon.

IN WITNESS WHEREOF, I have signed this Certificate of Amendment this 18th day of December, 2019.

By: Douglas A. Grose

Title: President

CERTIFICATE OF AMEDNMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
FORT SCHUYLER MANAGEMENT CORPORATION

Under Section 803 of the Not-for-Profit Corporation Law

Filed By:

Robert J. Ryan, Esq.
Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207

EXHIBIT C

RESTATED BY-LAWS OF FORT SCHUYLER MANAGEMENT CORPORATION

**RESTATED BY-LAWS
OF
FORT SCHUYLER MANAGEMENT CORPORATION**

(Adopted December 18, 2019)

**ARTICLE I
Organization**

Section 1. Type. Fort Schuyler Management Corporation (hereinafter referred to as the “Corporation”), is a charitable, Not-for-Profit Corporation.

Section 2. Principal Office. The principal office of the Corporation in the State of New York shall be located at 257 Fuller Road, Albany, New York 12203.

Section 3. Other Offices. The Corporation may have such other offices, either within or without the County of Albany, State of New York, as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

**ARTICLE II
Membership**

Section 1. Member. The sole Member of the Corporation shall be the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES).

Section 2. Dues. No dues shall be required from the Member of the Corporation.

Section 3. Power and Duties. The Member shall make possible the orderly and sound existence of the Corporation, and shall establish, and amend as necessary, these By-Laws of the Corporation. The Member shall have all the voting rights provided to members under the New York Not-for-Profit Corporation Law (the “NFPCL”) and common law.

**ARTICLE III
Meetings of the Member**

Section 1. Annual Meeting. The Member of the Corporation shall hold a meeting at least annually in June of each year, or as soon thereafter as practicable, for the transaction of such other business as may properly come before the meeting. Membership meetings shall be held at the principal office of the Corporation or at such other place and by such other means as the Member may determine.

The President and/or Chief Financial Officer shall present at a meeting within six (6) months after the close of the Fiscal Year, or as soon as practicable thereafter, financial statements in accordance with generally accepted accounting principles that have been certified by a firm of

independent public accountants selected by the Audit Committee showing in appropriate detail, at least the following:

- (a) The assets and liabilities, direct or contingent, of the Corporation;
- (b) The principal changes in assets and liabilities since the last report;
- (c) The revenue and/or receipts of the Corporation, restricted and unrestricted; and
- (d) The expenses and/or disbursements of the Corporation for both general and restricted purposes.

Section 2. Special Meetings. Special meetings of the Member, except as otherwise provided by law, may be called to be held at the principal office of the Corporation or elsewhere at any time at the request in writing of the Member directed to the President or the Secretary of the Corporation. Special meetings shall also be called, with the consent of the Member, by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors to the President or Secretary of the Corporation. Any such request shall specify the date of the meeting, which shall not be less than two nor more than three months from the date of such written request, and shall detail the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the subjects stated in the call and matters germane thereto.

Section 3. Notice of Meetings. Written notice of the place, date, and hour of each meeting of the Member shall be given, personally, by first class mail or by electronic means, to the Member by the President or Secretary of the Corporation, and, unless it is an annual meeting, indicate that it is being issued by, or at the direction of, the Member, Directors, the Chair of the Board of Directors, or by the President or Secretary of the Corporation calling the special meeting. Notice shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting directed to the Member at its (physical or electronic) address as appears on the list of Members, or, if the Member shall have filed with the Secretary of the Corporation a written request that notices to it be mailed to some other address, then directed to it at such other address. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at the address the Member provides to the Corporation. If sent by fax or e-mail, such notice is given when directed to the Member's fax number or e-mail address the Member provides to the Corporation; provided, that notice shall not be deemed delivered if: (a) the Corporation is unable to deliver two (2) consecutive notices to the individual by e-mail or fax; or (b) the Corporation otherwise becomes aware that notice cannot be delivered to the individual by e-mail or fax.

Notice of any meeting of the Member need not be given to the Member provided the Member submits a signed waiver of notice whether before or after the meeting. The attendance by the Member at a meeting without protesting the lack of notice prior to or at the start of the meeting shall constitute a waiver of notice by it. Waivers may be provided: (i) in writing signed by a Member or the Members' proxy either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient

can reasonably determine that the transmission was authorized by the individual submitting the waiver.

Section 4. Procedure. The order of business and all other matters of procedure at every meeting of the Member will be determined by the Member.

Section 5. Quorum. At every meeting of the Member, except as otherwise provided by law or these By-Laws, the Member must be present for the transaction of any business. The Member shall be represented by its President or his or her designee.

Section 6. Adjournments. The Member shall have the power to adjourn the meeting from time to time. Subject to any notice required by law, at any adjourned meeting at which the Member is present, any business may be transacted which might have been transacted on the original date of the meeting.

Section 7. Voting. Any action required or permitted to be taken by the Member in its capacity as the member of the Corporation under applicable law, the Certificate of Incorporation or these Bylaws shall be taken by the Member through resolution.

Section 8. Account and Minutes. Account and minutes shall be taken at every proceeding of Members and a copy shall be kept at the office of the Corporation for inspection by the Members.

Section 9. Action Without a Meeting. Whenever the Member is required or permitted to take any action by vote, such action may be taken without a meeting, on written consent, setting forth the action so taken, signed by the Member. Consent may be provided: (i) in a writing signed by a duly authorized representative of the Member either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by a duly authorized representative of the Member.

ARTICLE IV **Directors**

Section 1. Number. The size of the Board of Directors shall equal in number to the size of the board of the Member.

Section 2. Composition of the Board. Each director of the Member, including all ex-officio non-voting advisory representatives, shall be deemed to have been appointed a Director of the Corporation by virtue of being a director of the Member.

Section 3. Powers and Duties. The Board of Directors shall direct the management of the operations, property, affairs and concerns of the Corporation consistent with the provisions of these By-Laws, as written or amended, all policies and procedures adopted by the Board, and the Certificate of Incorporation.

Section 4. Term. Each director of the Member shall serve as a Director of the Corporation for the term co-terminus with his/her term as a director of the Member.

Section 6. Resignation. A Director shall be deemed to have resigned from the Board at the same time he/she resigns from the board of directors of the Member and such resignation shall take effect at the same time his/her resignation from the board of directors of the Member takes effect.

Section 7. Removal. A Director shall be automatically removed from the Board simultaneous with the Director's removal from the board of directors of the Member.

Section 8. Vacancies. Whenever a vacancy shall occur in the Board of Directors it shall be filled by the individual(s) appointed to fill the corresponding vacancy on the board of directors of the Member.

Section 9. Compensation. No Director as such shall receive any compensation, either by way of salary, fees for attendance at meetings, or otherwise. Directors may be reimbursed for reasonable expenses incurred by them in the performance of their duties as Directors.

Section 10. Meetings of Directors.

(a) Regular meetings of the Board of Directors shall be held at least quarterly and at such times and at such places as may be determined by action of the Board of Directors, or in the absence of such action, by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors directed to the President or Secretary of the Corporation. The first meeting on or after July 1 of each year shall be the annual meeting.

(b) Special meetings of the Board of Directors may be called by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors directed to the President or Secretary of the Corporation. Such request shall state the purpose or purposes of the proposed meeting. The person or persons authorized to call special meetings of the Board may select any place within the State, as the place for holding any special meeting of the Board called by them. Business transacted at a special meeting shall be confined to the subject(s) stated in the call and matters germane thereto.

(c) Each Director shall have one (1) vote. No Director may vote by proxy.

(d) Except as provided in Section 13(c) of this Article IV and Section 108 of Article 7 of the New York Public Officers Law, every duly convened meeting of the Corporation's Board of Directors at which a quorum is present shall be open to the general public. All reasonable efforts shall be made to ensure that Board meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision 5 of Section 50 of the Public Buildings Law and can adequately accommodate members of the public who wish to attend such meetings.

(e) Directors must participate in meetings of the Board in person or via videoconference. Directors participating via videoconference shall be counted toward the quorum and may vote.

Section 11. Notice of Meetings of the Board of Directors.

(a) Notice of the time and place of each meeting of the Board of Directors shall be given by the Chair of the Board, or the Secretary, or by the three (3) Directors of the Board calling the same, to each Director on the Board, copies of such notice to each Member of the Corporation and to the ESD and SUNY representatives, not less than seven (7) business days before the meeting by mailing the notice, postage prepaid, addressed to each Director on the Board at the address on file with the Secretary, and to the two (2) Members and the ESD and SUNY representatives at their respective principal offices, or not less than one (1) business day before the meeting by delivering the notice to each Director on the Board, and to the two (2) Members and the ESD and SUNY representatives, personally or electronically.

(b) Notice of a meeting of the Board of Directors or a committee thereof need not be given to any Director who submits a signed waiver of notice, whether before or after the meeting. The attendance of any Director at a meeting of the Board or a committee thereof without protesting prior thereto or at its commencement the lack of notice to him or her shall constitute a waiver of notice by the Director. The meeting shall be duly called and held if notice is given to, or is waived by, all absent Directors. Waivers may be provided: (i) in a writing signed by the Director either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by the individual submitting the waiver.

(c) Public notice of the date, time and place of a Board meeting shall be given to the news media and shall be conspicuously posted on the Corporation's website, along with the meeting's agenda, at least seventy-two (72) hours before such meeting to the extent practicable. To the extent practicable, materials submitted to the Directors for consideration at a meeting shall be made available to the public upon request at the meeting. In addition, to the extent practicable, such materials will be made available in advance of the meeting by means of posting to the Corporation's website.

Section 12. Quorum and Voting.

(a) At all meetings of the Board of Directors, except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, a quorum shall be required for the transaction of business and shall consist of a majority of Directors then in office but in no event fewer than four (4) Directors. A majority of the Directors present at any meeting, although less than a quorum, may adjourn the same from time to time, without notice other than announcement at the meeting.

(b) The affirmative vote of a majority of Directors present at any meeting at which a quorum is present shall decide any question that may come before the meeting, except as set forth below.

(c) The following action requires approval by two thirds vote of the entire Board of Directors:

(i) the purchase of real property that will constitute all, or substantially all, of the assets of the Corporation once purchased.

(d) The following items must be approved first by majority vote of its Board of Directors at a meeting at which a quorum is present and then submitted to the voting Members for approval:

(i) Amendment of the Corporation's Certificate of Incorporation;

(ii) Approval of a plan of merger or consolidation of the Corporation;

(iii) Approval of a plan of dissolution of the Corporation; provided, however, if the number of directors actually holding office as such at the time of the vote to adopt the plan is less than the number required to constitute a quorum of directors, then the remaining directors must approve unanimously; and

(iv) Approval of a recommendation for the sale of all or substantially all of the Corporation's assets; provided, however, if all or substantially all of the assets of the Corporation consist of real property, approval of such sale by two thirds vote of the entire Board of Directors is additionally required.

Section 13. Procedure.

(a) The order of business and all other matters of procedures at every meeting of Directors may be determined by the presiding officer.

(b) Minutes shall be taken at all meetings of the Board and copies thereof shall be distributed to all Directors and posted to the website of the Corporation.

(c) Executive Session. Upon the affirmative vote of a majority of the Directors present at a duly convened meeting, the Directors may conduct an Executive Session, which shall be closed to the public, for the reasons enumerated in Section 105 of Article 7 of the Public Officers Law. Attendance at any such Executive Session shall be limited to the representatives of either of the Members, the Directors, and such Officers, employees, and other persons relevant to the matters under consideration as determined by the Board.

Section 14. Informing the Directors of Corporate Activity. Reports of all material Corporate activities as determined by the President, including program development, applications for fiscal support and funds received in support of the purposes of the Corporation,

will be presented to the Board of Directors for information either at each regularly scheduled meeting of the Board or by mail. A copy of such information shall also be provided to each Member of the Corporation.

Section 15. Records. The Corporation shall maintain a fair record of all the transactions of the Corporation including financial statements prepared in accordance with the provisions of the NFPCL. The audited financial report shall become a part of the Corporation's permanent records and a copy of the report shall be entered in the minutes of the proceedings of the meeting of the Board of Directors at which such a report is presented to the Board and shall be provided to each Member of the Corporation. A report of the financial statements shall be presented to the members of the Finance Committee not less than quarterly.

Section 16. Investment Matters. The Corporation shall comply with the New York Prudent Management of Institutional Funds Act ("NYPMIFA") as applicable.

ARTICLE V

Committees of the Board

Section 1. Committees of the Board.

(a) The Board of Directors shall establish an Audit Committee and such other committees as the Board may deem appropriate. Each committee shall consist of at least three (3) Directors. The committees of the Corporation and the size of each shall be equal to the committees of the Member. Each director of the Member serving on a committee of the Member shall be deemed to have been appointed as a member of the corresponding committee of the Corporation.

(b) Committees shall be subject at all times to the direction of the Board of Directors. Committees shall be governed by a committee charter which shall be adopted by the Board of Directors and shall detail the committee roles and responsibilities. Except as otherwise provided in these By-Laws, no committee shall have any authority without specific authorization by the Board of Directors and no committee shall have authority as to the following matters:

- (i) The submission to members of any action requiring Members' approval under the law;
- (ii) The filling of any vacancies on the Board or any committee;
- (iii) The fixing of compensation of the Directors for serving on the Board or on any committee;
- (iv) The amendment or repeal of the By-Laws, or the adoption of new By-Laws;
- (v) The amendment or repeal of any resolution of the Board which, by its terms, shall not be so amendable or repealable;

- (vi) The election or removal of Officers and Directors;
- (vii) The approval of a merger or plan of dissolution;
- (viii) The adoption of a resolution recommending to the Members action on the sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation; and
- (ix) The approval of amendments to the certificate of incorporation.

(c) Committees shall keep regular minutes of their proceedings and shall make the same available to the Board of Directors upon request.

(d) Unless otherwise provided by resolution of the Board of Directors, a majority of all the members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the committee members shall be the act of the committee.

Section 2. Audit Committee. The Audit Committee shall be a committee of the Board and shall consist of at least three (3) members. All members shall be “Independent Directors” as defined under the NFPCL, who shall have the knowledge and experience appropriate and sufficient to competently assist the Board of Directors in fulfilling its responsibility with respect to: overseeing the Corporation’s material legal, audit, and compliance matters; its system of controls, reporting, and accounting systems, including the Corporation’s audited financial reports; the internal audit department, including the retention and management of an external auditor as may be needed; and the implementation of the policies and procedures required by these By-Laws, including, without limitation, policies governing conflicts of interest and related-party transactions. The Board of Directors shall adopt an Audit Committee Charter to govern the operations of the Audit Committee.

Section 3. Meetings.

Meetings of committees shall be held at such time and place as shall be fixed by the President of the Corporation, the Chair of the Board of Directors, the chair of the committee or by vote of a quorum of the members of the committee. Notice of such meetings may be delivered personally, by mail or electronically at least one day prior to the meeting and shall state the purposes, time and place of the meeting.

ARTICLE VI

Officers

Section 1. Officers. The Officers of the Corporation shall be the President, Chief Financial Officer, Compliance Officer, General Counsel, Secretary and such additional Officers as the Board may deem desirable, all of whom shall be appointed by the Board and shall serve at its pleasure, subject to any contractual rights. Such additional Officers shall exercise such powers and perform such duties as usually pertain to their respective offices or as are properly

delegated or assigned to them from time to time by the Board of Directors. The Officers of the Member shall serve ex-officio as the Officers of this Corporation in the same office that such individual holds with the Member.

Section 2. The President. The President shall be the Chief Executive Officer of the Corporation and shall be responsible for the general supervision and control of the affairs of the Corporation and shall see to it that all policies, resolutions and other directives of the Board of Directors are carried out. The President, in such capacity, shall be authorized to enter into and execute in the name of and on behalf of the Corporation any agreement, obligation, contract, document or instrument the President deems reasonable or necessary in carrying out the business and affairs of the Corporation and for which execution has been generally or specifically authorized by the Board of Directors. The President shall make recommendations to the Board for the programs and activities of the Corporation. The President shall make reports as the Board may request. The President shall perform other duties for the Board as the Board may direct. The President shall have such powers and perform such other duties as the Board may direct as are reasonably incident to such office. The President will ensure that Corporation activities comply with all legal and regulatory mandates, will consult with legal counsel as needed, and direct all Corporation Officers and employees in carrying out said obligations.

Section 3. The Secretary. The Secretary shall have charge of the books, documents, and papers as the President may determine and shall have the custody of the corporate seal. The Secretary shall issue notices of all meetings of the Members of the Corporation and of Directors of the Board and committees thereof where notices of such meetings are required by law or these By-Laws. The Secretary shall attend all meetings of the Board of Directors, except as otherwise directed by the Board, and shall keep the minutes thereof and shall fix the Corporate seal to and sign such instruments as require the seal or signature and, shall perform such other duties as usually pertain to the office or as are properly required of the Secretary by the Board of Directors.

Section 4. The Chief Financial Officer. Subject to the authority of the President, the Chief Financial Officer (“CFO”) shall serve as the chief financial officer of the Corporation and shall be directly responsible for the management and oversight of the Corporation’s daily financial operations, including accounting, budgeting, financial reporting, investing, debt issuances and contract compliance. The CFO shall be the financial advisor to the Corporation, the Board of Directors and its committees, except as otherwise directed by the Board or President. The CFO shall provide financial advice and opinions, prepare financial statements and shall represent the Board of Directors and the Corporation in all financial matters.

Section 5. General Counsel. The General Counsel shall serve as the Corporation’s Chief Legal Officer and legal advisor to the Corporation, the Board of Directors and its committees, except as otherwise directed by the Board or the President. The General Counsel shall provide legal advice and opinions, prepare legal documents and shall represent the Board of Directors and the Corporation in all legal matters.

Section 6. Compliance Officer. Under the direction of the President and the Board of Directors, the Compliance Officer shall be responsible for preparing and enforcing the

Corporation's internal policies and procedures designed to prevent and/or detect violations of applicable law, regulation, rules and ethical standards by the Corporation's employees, agents and/or others. The Compliance Officer shall conduct periodic risk assessments and develop response plans to address identified risks and conduct training programs for the Directors, Officers and employees of the Corporation ensure compliance with the policies and procedures required by these By-Laws. The Compliance Officer shall report annually to the Board on his/her activities and assessments.

Section 7. Board Meetings. The Officers shall attend all meetings of the Board of Directors unless otherwise directed by the Chair of the Board or by the Board; provided, however, that the absence of any officer at any meeting of the Board shall not affect the validity of any action taken by the Board in accordance with these By-Laws.

Section 8. Temporary Transfer of Powers and Duties. In case of the absence or illness of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate and assign, for the time being, the powers and duties of any officer to any other officer or to any Director.

Section 9. Compensation. Compensation of all Officers shall be fixed by the Board of Directors upon the recommendation of the Audit Committee.

Section 10. Officers Holding Two or More Offices. No officer holding more than one office shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

Section 11. Removal. Any officer of the Corporation shall be removed at such time as he/she is removed as an officer of the Member.

Section 12. Vacancies. A vacancy in any office shall be filled by the individual appointed to fill the corresponding vacancy of the Member.

ARTICLE VII

Surety Bonds, Insurance and Indemnification

Section 1. Surety Bonds. The Board of Directors may require all Officers and employees of the Corporation who handle Corporate funds to furnish adequate Surety Bonds approved by the Board of Directors as to form and coverage. The cost of all Surety Bonds so required shall be paid by the Corporation.

Section 2. Indemnification.

(a) Authorized Indemnification. Unless clearly prohibited by law or Section 2(b) of this Article VII, the Corporation shall indemnify any person (each such person, an "Indemnified Person") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that they, their testator or intestate, whether before or after adoption of this Section is or was

a Director, Officer or employee of the Corporation. The indemnification shall be against all judgment, fines, penalties, amounts paid in settlement (provided the Corporation consents to such settlement, such consent not to be unreasonably withheld) and reasonable expenses, including reasonable attorney's fees and reasonable costs of investigations, actually and necessarily incurred by the Indemnified Person in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein. Such right of indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled. Any Director, Officer or employee seeking to become an Indemnified Person in accordance with this paragraph (a) of Section 2, Article VII must obtain the approval of the Board of Directors pursuant to paragraph (d) of this Section 2, Article VII.

(b) Prohibited Indemnification. The Corporation shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person or to the person whose actions are the basis for the action or proceeding, or the Board of Directors in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty which were material to the cause of action so adjudicated or that he/she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

(c) Advancement of Expenses. The Corporation shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Corporation as determined by the Board of Directors pursuant to paragraphs (a) and (d) of this Section 2, Article VII, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Corporation, with interest for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or paragraph (b) of this Section 2, Article VII. An Indemnified Person shall cooperate in good faith with any request by the Corporation that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

(d) Determination of Indemnification for Directors, Officers, and Employees. Indemnification mandated by final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court, the Board of Directors shall, upon written request of a Director, Officer or employee seeking to become an Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these By-Laws. Before indemnification can occur, the Board of Directors must explicitly find that such indemnification will not violate the provisions of paragraph (b) of Section 2 of this Article VII. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested Directors is not obtainable the Board of Directors shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these By-Laws.

(e) Binding Effect. Any person entitled to indemnification under these By-Laws has a legally enforceable right to indemnification which cannot be abridged by amendment of these By-Laws with respect to any event, action or omission occurring prior to the date of such amendment.

(f) Nonexclusive Rights. The provisions of this Section 2 of Article VII shall not limit or exclude any other rights to which any person may be entitled under law or contract.

Section 3. Insurance.

(a) The Corporation shall purchase such insurance as the Directors of the Corporation determine to be necessary or appropriate for the protection of the Corporation, its assets and its interests or as may be required by law. Subject to subparagraph (b) of this Article VII, Section 3, such insurance shall include General Liability Insurance.

(b) The Corporation is not required to, but it may, purchase Directors' and Officers' liability insurance if authorized and approved by the Board of Directors. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article VII or by operation of law and it may insure directly the Directors, Officers and employees of the Corporation for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

ARTICLE VIII
Finances

Section 1. Fiscal Year. The Corporation's fiscal year shall be from July 1 through June 30.

Section 2. Funds. The Corporation's funds shall be deposited in such bank or banks, in such types of accounts and subject to such deposit and withdrawal procedures as recommended by the CFO and approved by the President or the Board of Directors.

Section 3. Records and Accounts. The Corporation's financial records and accounts shall be maintained consistent with generally accepted accounting principles. All financial records and accounts of the Corporation shall be open to inspection by any Director or by either Member at any reasonable time.

Section 4. Annual Plan. The President, with recommendations of the CFO, shall present an annual plan, which shall set forth all anticipated revenues and expenditures, to the Board of Directors for its approval at the regularly scheduled Board meeting each year immediately preceding the commencement of the new fiscal year, or as soon as practicable thereafter. The plan shall include: (a) the approved expenditure levels, including approved changes, and estimated income and expenditures for the current fiscal year; (b) the actual income and expenditures for the prior fiscal year; and (c) the estimated income and expenditures for the forthcoming fiscal year.

Section 5. Audit. The Corporation's financial statements shall be audited annually by a certified public accounting firm approved by the Board of Directors. The Corporation shall also conduct all annual reviews necessary for compliance with all applicable regulations pertaining to not-for-profit and exempt corporations including IRS Form 990. The Board of Directors shall review and approve both the annual audit and the IRS Form 990 prior to submission to the appropriate agency and/or government entity. A copy of such reports shall be provided to the Directors and the Members prior to the meeting at which these will be reviewed.

ARTICLE IX Policies and Procedures

Section 1. Policies and Procedures. The Board of Directors is authorized and directed to adopt, implement, and enforce policies and procedures for the proper and ethical conduct of the affairs of the Corporation consistent with the Corporation's Certificate of Incorporation, these By-Laws, and all applicable law. At a minimum, these shall include the following:

- (a) Code of Conduct for Directors, Officers, and Employees;
- (b) Policy regarding Conflicts of Interest;
- (c) Fraud and Whistleblower Policy;
- (d) Policy and Procedure for the Procurement and Administration of Contracts;
- (e) Policy regarding the Acquisition and Disposition of Real Estate;
- (f) Records Access Policy, in conformance with Article 6 of the Public Officers Law ("FOIL"), as the same may be amended from time to time;
- (g) Policy Regarding Debt, Risk Assessment, and Risk Mitigation.

Section 2. Annual Review. At least annually, the Compliance Officer shall prepare and present to the Board a report on the implementation of the Corporation's policies and procedures during the preceding year, including any recommendations with respect thereto. Such report shall include any recommendations regarding such policies and procedures or the adoption of any new policy or procedure in accordance with then current best practices.

ARTICLE X Miscellaneous

Section 1. Form of Seal. The seal of the Corporation shall be in such form as the Directors shall determine.

Section 2. Books and Records. There shall be kept at the office of the Corporation: (1) correct and complete books and records of accounts; (2) minutes of the proceedings of the Members, the Board of Directors, and any committee of the Board; (3) a current list of the Directors and Officers of the Corporation; (4) a list of all Members or classes of membership,

including name and address; (5) a copy of these By-Laws; (6) a copy of the Corporation's application for recognition of exemption with the Internal Revenue Service; and (7) copies of the past three (3) years of information returns and Form 990-Ts (if any) filed with the Internal Revenue Service.

ARTICLE XI
Amendment

These By-Laws and the Certificate of Incorporation may be added to, amended, repealed, or replaced only by the unanimous agreement of the Members of the Corporation.

Dated: December 18, 2019