



BOARD OF DIRECTORS MEETING

November 8, 2018

3:15 PM

NFE 2107

AGENDA

1. Call to order
2. Approval of Minutes of September 26, 2018 Meeting
3. Finance Committee
 - Resolution No. 180 Authorization Relating to Norsk Titanium US
 - Resolution No. 181 Modification of GMP for work at QUAD C
 - Resolution No. 182 Property transfer and leaseback
4. New Business
5. Public Comment
6. Next Board of Directors meeting: TBD
7. Adjournment



MINUTES

Fort Schuyler Management Corporation Meeting of the Board of Directors September 26, 2018 – CNSE Nano Fab East Conference Room 2107

Directors present: Kristin Proud, Franklin Hecht, Kenneth Tompkins, Robert Geer

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

Guests: Kevin Younis – ESD, Emily Kunchala – Research Foundation for SUNY, and Michael Frame – SUNY Poly Foundation.

1. Call to Order

- Kristin Proud called the meeting of the Board of Directors of Fort Schuyler Management Corporation (FSMC) to order at 2:30 PM.
- Ms. Proud welcomed Kevin Younis of ESD, Emily Kunchala of The Research Foundation, and Michael Frame as a representative of the SUNY Poly Foundation.
- Ms. Proud asked if any directors had a conflict of interest, and if so, that the conflict be disclosed. There were none.

2. Review/approval of June 27, 2018 meeting minutes

- Ms. Proud asked for a motion to approve the Minutes of June 27, 2018 meeting. A motion to approve was made by Robert Geer and seconded by Kenneth Tompkins. The minutes were approved as presented.

3. Finance Committee Report – Kristin Proud

- Resolution 179 - Authorization for the President to Form Advisory Bodies

Motion: Kenneth Tompkins

Second: Robert Geer

FSMC seeks authorization for the President to form and terminate advisory bodies from time to time as the President deems appropriate in order to assist the President and staff

with business strategies and guidance on emerging technology ideas, markets and partnerships that would further FSMC's mission.

These advisory bodies would be comprised, by invitation of the President, of volunteers from academic institutions, public entities and high-tech companies.

Such advisory bodies will not be given access to any confidential or proprietary information of FSMC and will not be provided the power to act on behalf of or represent FSMC in any manner.

The FSMC Finance Committee approved Resolution No. 179 authorizing the President to form and terminate advisory bodies from time to time as the President may deem appropriate for the sole purpose of receiving advice and guidance, and recommended that the Board approve the same.

Requested Action:

Approve Resolution No. 179 authorizing the President to form and terminate advisory bodies from time to time as the President may deem appropriate for the sole purpose of receiving advice and guidance.

Discussion: Robert Geer asked if Board approval is required for this resolution. Ms. Proud stated that it is not but is being done as a courtesy to the Board.

Vote:

Ayes: 4

Nays: 0

Abstentions: 0

- Easement for Utilities at Dunkirk site

Ms. Proud asked for a motion to consider approval of an easement for utilities at Dunkirk site

Motion: Robert Geer

Second: Kenneth Tompkins

FSMC and Athenex, a global biopharmaceutical company based in Buffalo, entered into an Alliance Agreement which provides for the construction of an approximately 315,000 square foot state-of-the art pharmaceutical manufacturing facility and related infrastructure on approximately 33.5 acres in Dunkirk, NY, which was acquired by FSMC for the project.

Empire State Development ("ESD") is providing Athenex with grant funds to be used for the purpose of constructing the facility and equipping it with manufacturing equipment.

In 2017 Athenex was granted access to the premises pursuant to a Site Access Agreement in 2017 for pre-construction activities. In April 2018, by Resolution No. 175, the FSMC

Board granted additional access to Athenex pursuant to the Site Access Agreement to permit Athenex to construct the manufacturing facility.

To support the facility, Niagara Mohawk Power Corporation seeks an easement for \$1.00 on .61 acres for the installation and maintenance of facilities for the transmission and distribution of high and low voltage electric current and for the transmission of intelligence and communication purposes. Costs will be funded by the grant.

The Acquisition and Disposition of Real Property Policy, adopted by the FSMC Board in Resolution No. 145 on February 22, 2017 requires that certain information be provided for the disposition of a beneficial interest in real property, which definition includes the granting of an easement. This information is in the materials provided to you.

FSMC President Douglas Grose and Contracting Officer Scott Bateman approve the proposed easement. The President and CEO of Empire State Development also consents to the proposed easement, finding that the purpose of the proposed transfer is within the purpose or mission of FSMC and that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of the transfer.

The FSMC Finance Committee approved a resolution (1) authorizing the President and/or Treasurer to grant an easement to Niagara Mohawk Power Corporation for the installation and maintenance of facilities for the transmission and distribution of high and low voltage electric current and for the transmission of intelligence and communication purposes, and to take related actions to implement the resolution, and (2) recommending that the Board approve the same.

Requested Action:

Approve a resolution authorizing the President and/or Treasurer to grant an easement to Niagara Mohawk Power Corporation for the installation and maintenance of facilities for the transmission and distribution of high and low voltage electric current and for the transmission of intelligence and communication purposes, and to take related actions to implement the resolution.

Discussion: none.

Vote:

Ayes: 4

Nays: 0

Abstentions: 0

4. Audit Committee Report – Kristin Proud

- Authorization to Engage KPMG for Audit and Review of Tax Filings

Ms. Proud asked for a motion to consider authorization to engage KPMG for the Audit and to review the tax filings

Motion: Kenneth Tompkins
Second: Robert Geer

Section 5 of Article VIII of the Bylaws of the Fort Schuyler Management Corporation (“FSMC”) provides that “[t]he financial records and accounts of the Corporation shall be audited annually, or at such other times as directed by the Board of Directors, by a certified public accountant or firm thereof designated for the purpose by the Board of Directors.”

FSMC seeks authorization to engage KPMG to audit its financial statements and review its tax filings for the year ending June 30, 2018. The tax filings include IRS Forms 990 and 990T and NY CHAR 500 and CT-13.

KPMG has performed the FSMC audit since 2013 and reviewed its tax filings since 2010. Given KPMG’s work on and familiarity with FSMC’s finances and tax filings, which cover the same time period, KPMG has the unique knowledge and ability to perform the needed review in a thorough and expeditious manner.

Accordingly, FSMC seeks to engage KPMG based on a single source justification to conduct its audit and review its tax filings for the year ending June 30, 2018. The base fee for the audit includes a 3% increase from the prior year and the fee for review of the tax filings includes a 12.5% increase (\$1550) from the prior year due to the additional two tax filings for 2017.

The Audit Committee approved a resolution (1) approving the engagement of KPMG to audit FSMC’s financial statements and review its tax filings for the year ending June 30, 2018, (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 foregoing actions.

Requested Action:

Approve a resolution authorizing the engagement of KPMG to audit FSMC’s financial statements and review its tax filings for the year ending June 30, 2018 and authorizing the President and/or Treasurer to take any and all actions necessary and appropriate to effectuate such actions.

Discussion:

Kenneth Tompkins asked what the two additional tax filings are. Kristin Proud responded that they are the 990T and NY CT-13

Mr. Tompkins also stated that as in the FRMC Board meeting he'd like to recommend that there is a competitive bid for next year.

Vote:

Ayes: 4

Nays: 0
Abstentions: 0

5. New Business: None.

6. Public Comment: None

7. Next Board of Directors meeting: TBD

7. Adjournment:

- There being no further business to come before the Board, Ms. Proud asked for a motion to adjourn. Kenneth Tompkins moved to adjourn and Robert Geer 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: Authorization Relating to Norsk Titanium US Inc. (“NORSK”)

Background

FSMC and NORSK entered into an Agreement for Establishment of a High-Volume Additive Manufacturing Technology, Research, Development, Innovation and Commercial Alliance (the “Alliance Agreement”) between FSMC and NORSK dated July 23, 2015, which provided that NORSK would establish its manufacturing operations in the Plattsburgh, New York area. The Alliance Agreement contemplated the construction of a 170,000 square foot facility and purchase of manufacturing equipment to be owned by FSMC and leased to NORSK (the “Project”) at a base rent of \$1.00 per year for 10 years, and was contingent upon the receipt of funding from Empire State Development in the amount of \$125,000,000. In return, NORSK agreed to invest \$875 million in the Project and create 383 new jobs.

Pursuant to FSMC Resolution No. 123, dated July 28, 2015, the Board authorized FSMC to enter into one or more agreements with NORSK to undertake the Project consistent with the following: 1) FSMC shall own the manufacturing facility and manufacturing equipment and shall lease them to NORSK for a base rent of \$1.00 per year. NORSK shall be responsible for all operating expenses for the manufacturing facility and manufacturing equipment; and 2) Under no circumstances shall the aggregate amount expended by FSMC for the Project exceed \$125 million.

Pursuant to FSMC Resolution No. 161, dated July 19, 2017, the Board approved an amendment to Resolution No. 123 and modification of the Project to include construction of a smaller 100,000 square foot facility and use of the real property located at 44 Martina Circle Plattsburgh, New York by NORSK consisting of approximately 67,500 square feet. FSMC now seeks to amend the Alliance Agreement to memorialize modifications to the Project, including: 1) construction of the new NORSK manufacturing facility to contain up to 100,000 square feet; 2) lease of both the new manufacturing facility and manufacturing equipment to NORSK at a base rent of \$1.00 per year for a period of 10 years pursuant to a real estate lease and a separate equipment lease; and 3) updates to operational responsibilities of the parties and related items.

FSMC also seeks to purchase property for the new facility as contemplated by the Alliance Agreement. FSMC has identified a 21.67 parcel of vacant land in Plattsburgh owned by Clinton County that was previously part of the Clinton County Airport (the “Airport Property”) as the proposed site for the new NORSK facility. FSMC and Clinton County have reached an agreement pursuant to which Clinton County will sell the Airport Property to FSMC for a purchase price of \$253,638.

Compliance with Acquisition and Disposition of Real Property Policy

The Acquisition and Disposition of Real Property Policy adopted by the FSMC Board in Resolution No. 145 on February 22, 2017 permits an acquisition of property to further FSMC’s

mission. The policy provides that property selection shall involve a review of several sites and an analysis of the best location and price for the intended use. Following selection of a site, the policy provides for solicitation of at least 5 bids from a list of appraisers through Request for Proposal letters. FSMC has performed a review of potential sites in the Plattsburgh area and based upon such review, has selected the Airport Property as the best location and price for the intended use by NORSK. Due to the unique characteristics of the Airport Property, FSMC only solicited bids from 2 appraisers, Adirondack Appraisal Services and Value First, Inc., and below are the appraised values that were received:

	<u>Appraisal Value</u>
Adirondack Appraisal Services	\$499,800
Value First, Inc.	\$385,000

The proposed purchase price for the Airport Property is less than the above appraisals due to the demolition of buildings and remediation of environmental hazards that has been performed by FSMC to make the property suitable for construction.

The FSMC Finance Committee approved Resolution No. 180 and recommended that the Board approve the same action.

Requested Action

Approve Resolution No. 180

1. Ratifying the Alliance Agreement and authorizing an amendment to the Alliance Agreement to provide for: 1) construction of the new NORSK manufacturing facility to contain up to 100,000 square feet; 2) lease of both the new manufacturing facility and manufacturing equipment to NORSK at a base rent of \$1.00 per year for a period of 10 years pursuant to a real estate lease and a separate equipment lease; and 3) updates to operational responsibilities of the parties and related items.
2. Authorizing FSMC to purchase the Airport Property from Clinton County for \$253,638 to be used for constructing the new NORSK manufacturing facility.
3. Authorizing FSMC to lease the Airport Property and improvements to NORSK at a base rent of \$1.00 per year for 10 years.
4. Authorizing FSMC to lease the manufacturing equipment to NORSK at a base rent of \$1.00 per year for 10 years.
5. Authorizing the FSMC President and Treasurer, each of them without the other, to approve, sign, acknowledge and deliver all documents or contracts in such form, substance and content, and upon such terms as such officer may deem necessary or appropriate, to implement and carry out the purposes and intent of this Resolution.

RESOLUTION OF THE BOARD OF DIRECTORS
OF FORT SCHUYLER MANAGEMENT CORPORATION

November 8, 2018

RESOLUTION NO. 180

APPROVAL AND AUTHORIZATION RELATING TO
FSMC'S PROJECT WITH NORSK TITANIUM US

WHEREAS, Fort Schuyler Management Corporation ("Corporation") is a 501(c)(3) corporation formed for the purposes of helping to facilitate research and economic development activities related to the research and educational mission of the State University of New York ("SUNY") by purchasing, constructing, and developing and managing facilities and promoting the research therein which support the economic development, research activities, and the mission of SUNY and the State University of New York Polytechnic Institute ("SUNY Poly"); and

WHEREAS, in accordance with the purposes, mission and vision of the Corporation, and in furtherance of additional private investment and job creation in Upstate New York, particularly in the Greater Plattsburgh, New York area, by Resolution No. 123, dated July 28, 2015, the Board of Directors authorized and approved the Corporation undertaking the development, design, construction, and fit-up, of an approximately 170,000 sq. ft. facility to house the USA based manufacturing and business operations of Norsk Titanium US Inc. ("NORSK"), the acquisition of real property for the new facility, and the acquisition of manufacturing equipment to be housed in the facility ("Project"); and

WHEREAS, pursuant to that Agreement for Establishment of a High-Volume Additive Manufacturing Technology, Research, Development, Innovation and Commercial Alliance between FSMC and NORSK dated July 23, 2015 (the "Alliance Agreement"), NORSK agreed to establish its manufacturing operations in the Plattsburgh, New York area, which agreement provided for the construction of a 170,000 square foot facility and purchase of manufacturing equipment (the "Manufacturing Equipment") to be owned by FSMC and leased to NORSK (the "Project") at a base rate of \$1.00 per year for 10 years, contingent on the receipt of funding in the amount of \$125,000,000 to be provided by the New York State Urban Development Corporation d/b/a Empire State Development; and

WHEREAS, by Resolution No. 124, dated October 30, 2015, the Board of Directors authorized and approved the issuance of a request for proposals for construction of the NORSK facility and by Resolution No. 135, dated April 11, 2016, the Board of Directors authorized and approved the selection of Whiting Turner as the Corporation's construction contractor and EYP as the Corporation's architect; and

WHEREAS, by Resolution No. 161, dated July 19, 2017, the Board of Directors authorized and approved a change to the provisions of Resolution 123 such that, instead of the design, construction and fit-up of a new approximately 170,000 sq. ft. building consisting of office and manufacturing space, the Project would include: 1) the design,

construction and fit up of a new approximately 100,000 sq. ft. building consisting of office, R&D and manufacturing space and 2) utilization of the real property located at 44 Martina Circle, Plattsburgh, New York (“44 Martina”) for the rest of the manufacturing space needed by NORSK; the remaining provisions of Resolution No. 123 authorizing the purchase of real property and equipment remain in effect; and

WHEREAS, FSMC now seeks to amend the Alliance Agreement to provide that the new manufacturing facility will consist of up to 100,000 square feet, that NORSK will continue to use 44 Martina Circle, and that both the new manufacturing facility and Manufacturing Equipment will be leased to NORSK at a base rent of \$1.00 per year for a period of 10 years pursuant to a real estate lease and a separate equipment lease; and

WHEREAS, the Corporation seeks to purchase property for the new NORSK facility and has identified a 21.67 acre parcel of vacant land situated off of Industrial Boulevard, Plattsburgh, New York that is owned by Clinton County and was previously part of the Clinton County Airport (the “Airport Property”) as the proposed site of the new NORSK facility ; and

WHEREAS, the Corporation and Clinton County have reached an agreement pursuant to which Clinton County shall sell the Airport Property to the Corporation for a purchase price of \$253,638; and

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

SECTION 1: RATIFICATION OF THE ALLIANCE AGREEMENT AND AUTHORIZATION TO AMEND THE ALLIANCE AGREEMENT. The Board of Directors ratifies the Alliance Agreement and authorizes its amendment to provide for: 1) construction of the new NORSK facility to contain up to 100,000 square feet; 2) lease of both the new manufacturing facility and manufacturing equipment to NORSK at a base rent of \$1.00 per year for a period of 10 years pursuant to a real estate lease and a separate equipment lease; 3) updates to operational responsibilities of the parties and related items.

SECTION 2. AUTHORIZATION TO PURCHASE THE AIRPORT PROPERTY. The Board of Directors hereby authorizes and approves the purchase of the Airport Property by FSMC from Clinton County for a purchase price of \$253,638 to be used for constructing the new NORSK manufacturing facility.

SECTION 3: AUTHORIZATION TO LEASE THE AIRPORT PROPERTY AND IMPROVEMENTS. The Board of Directors hereby authorizes and approves the lease of the Airport Property and improvements to be constructed thereon by FSMC to NORSK at a base rent of \$1.00 per year for 10 years.

SECTION 4: AUTHORIZATION TO LEASE THE MANUFACTURING EQUIPMENT. The Board of Directors hereby authorizes and approves the lease of the Manufacturing Equipment by FSMC to NORSK at a base rent of \$1.00 per year for 10 years.

SECTION 5: DOCUMENTS AND CONTRACTS. The Board of Directors of the Corporation hereby authorizes, empowers and directs the President and Treasurer of FSMC, each of them without the other, to approve, sign, acknowledge and deliver all documents or contracts in such form, substance and content, and upon such terms as such officer may deem necessary or appropriate, to implement and carry out the purposes and intents of this Resolution.

SECTION 6: EFFECTIVE DATE. This Resolution shall take effect immediately.

To: Fort Schuyler Management Corporation Board of Directors
Re: Modification of GMP for Work at Quad-C

Background

Pursuant to Resolution No. 154 approved on March 27, 2017, Fort Schuyler Management Corporation (FSMC) entered into a Contribution and Collaboration Agreement with Danfoss Silicon Power LLC (“Danfoss”) and General Electric Global Research (“GEGR”) to establish a power electronics manufacturing packaging center at Quad-C. To facilitate this project, FSMC, in conjunction with the SUNY Polytechnic Institute (“SUNY Poly”), released a Request for Proposal (“RFP”) for qualified construction contractors for the facilitation of cleanroom space, related infrastructure, and tool installation at Quad-C. After an RFP Process conducted in compliance with the Corporation’s Procurement Guidelines Policy and protocols, FSMC approved Resolution No. 159 authorizing an award to M+W U.S., Inc. (“M+W”), and a contract with M+W for the design and construction of the project in an amount not to exceed \$27,000,000 with the guaranteed maximum price established upon further development of the project scope and design.

Following further development of the project scope and design, additional building and system improvements were included in the M+W scope of work and a GMP of \$35,300,000 was established. On April 25, 2018, FSMC approved Resolution No. 173 authorizing the President and/or Treasurer, subject to available grant funds, to enter into a contract amendment with M+W, U.S., Inc. to establish a GMP of \$35,300,000 for the project.

Danfoss now seeks to construct the second phase of the project scope which includes a new automotive line and related improvements. To accommodate this increased scope of work, FSMC seeks an increase in the GMP for M+W from \$35,300,000 to \$40,300,000. The increase in the GMP is within the overall project grant budget. Moreover, it is anticipated that this second phase will complete FSMC’s construction work for Danfoss at Quad-C.

The Finance Committee approved Resolution No. 181 authorizing the President and/or Treasurer, subject to available grant funds, to enter into a contract amendment with M+W to establish a GMP of \$40,300,000 for the project, authorizing the President and/or Treasurer to approve and sign contracts and take any and all actions necessary and appropriate to effectuate such actions, and recommending that the Board approve the same actions.

Requested Action

Approve Resolution No. 181 authorizing the President and/or Treasurer, subject to available grant funds, to enter into a contract amendment with M+W to establish a GMP of \$40,300,000 for the project and authorizing the President and/or Treasurer to approve and sign contracts and take any and all actions necessary and appropriate to effectuate such actions.

RESOLUTION OF THE BOARD OF DIRECTORS OF
FORT SCHUYLER MANAGEMENT CORPORATION

November 8, 2018

RESOLUTION NO:181

MODIFICATION OF THE GMP IN THE CONTRACT FOR THE FACILITATION OF
CLEAN SPACE, RELATED INFRASTRUCTURE, AND TOOL INSTALLATION AT
QUAD-C

WHEREAS, the Fort Schuyler Management Corporation (the “Corporation”) was formed for the purpose of helping to facilitate research and economic development activities related to the research and educational mission of the State University of New York (“SUNY”) and SUNY Polytechnic Institute (“SUNY Poly”) by purchasing, constructing, developing, and managing facilities; and

WHEREAS, pursuant to Resolution No.154 approved by the Board of Directors on March 27, 2017, the Corporation entered into a Contribution and Collaboration Agreement (“Agreement”) with Danfoss Silicon Power LLC (“Danfoss”) and General Electric Global Research (“GEGR”) to establish a power electronics manufacturing packaging center at Quad-C; and

WHEREAS, pursuant to such Agreement, the Corporation, in conjunction with the SUNY Poly, issued a Request for Proposal (“RFP”) for “Qualified Construction Contractors for the Facilitation of Clean Space, Related Infrastructure, and Tool Installation at Quad-C in Marcy, New York” (“RFP”), and after an RFP process conducted in compliance with the Corporation’s Procurement Guidelines Policy and protocols, the Corporation, in Resolution No.159 authorized, empowered and directed an award to M+W U.S., Inc. as the construction contractor for the facilitation of clean space, related infrastructure, and tool installation at Quad-C, and authorized, empowered and directed the President and Treasurer, each of them without the other, to enter into a contract with M+W U.S., Inc. in an amount not to exceed \$27,000,000 with the guaranteed maximum price (GMP) established upon further development of the project scope and design; and

WHEREAS, following further development of the project scope and design, a GMP of \$35,300,000 was established and the Corporation, by Resolution No. 173, authorized the President and/or Treasurer to enter into a contract amendment with M+W, U.S., Inc. to establish a GMP of \$35,300,000; and

WHEREAS, Danfoss now seeks to construct the second phase of the project scope which includes a new automotive line and related improvements and, to accommodate this increased scope of work, FSMC seeks to increase the GMP for M+W. U.S., Inc. to \$40,300,000; and

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

SECTION 1: The Board of Directors of the Corporation, subject to available grant funds, hereby authorizes, empowers and directs the President and Treasurer, each of them without the other, to enter into a contract amendment with M+W U.S., Inc. to increase the GMP to \$40,300,000 for the facilitation of clean space, related infrastructure, and tool installation at Quad-C; and

SECTION 2. DOCUMENTS AND CONTRACTS. The Board hereby authorizes, empowers and directs the President and Treasurer, each of them without the other, to approve, sign, acknowledge and deliver all documents or contracts in such form, substance, and content, and upon such terms, as may be necessary or appropriate, to implement and carry out the purposes and intents of this Resolution.

SECTION 3: EFFECTIVE DATE. This Resolution shall take effect immediately.

To: Fort Schuyler Management Corporation Board of Directors

Re: Property transfer and leaseback

Background:

Fort Schuyler Management Corporation (“FSMC”) is the owner of the 88.24-acre parcel of land and 1.2 million square foot building located at the Buffalo High-Tech Manufacturing Innovation Hub at Riverbend Park (“Riverbend Facility”). Empire State Development (“ESD”) and the Dormitory Authority of the State of New York (“DASNY”) provided grant funding for the acquisition of land and construction associated with the Riverbend Facility, where Tesla currently produces solar energy products.

The land upon which the Riverbend Facility was constructed is located on a former site of Republic Steel in the City of Buffalo. In 2014, FSMC acquired the land from the Buffalo Urban Development Corporation (“BUDC”), a local development company created by the City of Buffalo. The Riverbend Facility has been exempt from property taxes since FSMC acquired the property due to the tax-exempt status of FSMC. In order to preserve the property tax exemption for the Riverbend Facility now that Tesla, Inc. has commenced its manufacturing operations, FSMC proposes to convey the Riverbend Facility, including the land, to ESD for \$1.00 and ESD will then lease the property back to FSMC for a period of 10 years with rent of \$1.00 per year. At the expiration of 10 years, ESD shall convey the property back to FSMC for \$1.00.

Compliance with Acquisition and Disposition of Real Property Policy:

The Acquisition and Disposition of Real Property Policy adopted by the FRMC Board in Resolution No. 145 on February 22, 2017 permits a disposition of real property through negotiation and certain sales of property for less than fair market value under certain circumstances provided that certain information is provided. That information is set forth below.

(1) Full Description of the Asset – The Riverbend Facility is a 1.2 million square foot building located on 88.24 acres of land in the City of Buffalo constructed to house the largest solar energy product manufacturing facility in the Western Hemisphere.

(2) Appraisal of the Fair Market Value of the Asset – An appraisal of the Riverbend Facility would not be practical or useful in this situation where the proposed purchase price for the real property is \$1.00 and the purpose of the proposed transfer is to preserve the property tax exemption of the property and not to achieve the highest purchase price. Based upon the foregoing, the Interim Contracting Officer has determined the fair market value of the Riverbend Facility to be at least equivalent to the assessed value of \$197,058,800.

(3) Description of the Transfer and a Reasonable Statement of the Kind and Amount of Benefit to the Public Resulting from the Transfer – The proposed transfer is intended to preserve the property tax exemption for the Riverbend Facility that generates a significant economic benefit to Western New York through investment of capital in the economy and employment.

(4) Statement of the Value to be Received Compared to the Fair Market Value – FSMC will receive \$1.00 in exchange for the Riverbend Facility.

(5) Names of Private Parties Participating in the Transfer – None.

(6) Names of Private Parties who have made an Offer for such Asset – None.

(7) Statement of Disposal by Negotiation – FSMC determined that the property can be disposed of by negotiation at less than fair market value due to the financial benefit to be derived by FSMC in preserving the property tax exemption for the Riverbend Facility.

(8) Approvals – FSMC President Douglas A. Grose and Interim Contracting Officer Scott Bateman approve this proposed transfer, finding that the purpose of the transfer is within the purpose or mission of FSMC and that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of the transfer. In addition, upon the recommendation of Howard Zemsky, President and Chief Executive Officer of Empire State Development, the Board of Directors of Empire State Development approved the proposed transfer on September 20, 2018.

The FSMC Finance Committee approved Resolution No. 182 and recommended that the Board approve the same action.

Requested Action:

Approve Resolution No. 182

1. Authorizing FSMC to convey the Riverbend Facility, including the land, to ESD for \$1.00.
2. Authorizing FSMC to enter into a lease of the Riverbend Facility from ESD for a term of ten (10) years with rent of \$1.00 per year, which lease shall include a provision requiring ESD to convey the property back to FSMC at the expiration of the ten (10) year lease term.
3. Authorizing the FSMC President and Treasurer, each of them without the other, to approve, sign, acknowledge and deliver all documents or contracts in such form, substance and content and upon such terms as such officer may deem necessary or appropriate, to implement and carry out the purposes and intent of this Resolution.

RESOLUTION OF THE BOARD OF DIRECTORS
OF FORT SCHUYLER MANAGEMENT CORPORATION

November 8, 2018

RESOLUTION NO. 182

APPROVAL TO TRANSFER OWNERSHIP OF THE RIVERBEND FACILITY
TO EMPIRE STATE DEVELOPMENT CORPORATION AND LEASEBACK
OF THE RIVERBEND FACILITY FROM EMPIRE STATE DEVELOPMENT

WHEREAS, Fort Schuyler Management Corporation (“Corporation”) is a 501(c)(3) corporation formed for the purposes of helping to facilitate research and economic development activities related to the research and educational mission of the State University of New York (“SUNY”) by purchasing, constructing, and developing and managing facilities and promoting the research therein which support the economic development, research activities, and the mission of SUNY and the State University of New York Polytechnic Institute (“SUNY Poly”); and

WHEREAS, in accordance with the purposes, mission and vision of the Corporation, and in furtherance of additional private investment and job creation in Upstate New York, the Corporation is the owner of the 88.24-acre parcel of land in the City of Buffalo upon which a facility consisting of approximately 1.2 million square feet was constructed by the Corporation (the “Riverbend Facility”) to house the largest solar energy product manufacturing facility in the Western Hemisphere; and

WHEREAS, Tesla, Inc. currently occupies the Riverbend Facility and has commenced production of solar energy products; and

WHEREAS, the Riverbend Facility has been exempt from property taxes since the Corporation acquired the real property due to the tax-exempt status of the Corporation; and

WHEREAS, in order to preserve the property tax exemption for the Riverbend Facility now that Tesla, Inc. has commenced its manufacturing operations, the Corporation proposes to convey the Riverbend Facility, including the land, to Empire State Development for \$1.00 and Empire State Development shall then lease the property back to the Corporation for a period of 10 years with rent of \$1.00 per year; and

WHEREAS, at the expiration of the 10 years, Empire State Development shall convey the property back to the Corporation for \$1.00.

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

SECTION 1: AUTHORIZATION TO TRANSFER THE RIVERBEND FACILITY.
The Board of Directors hereby authorizes and approves the transfer of the Riverbend Facility, including the land, by the Corporation to Empire State Development for \$1.00.

SECTION 2: AUTHORIZATION TO LEASE THE RIVERBEND FACILITY. The Board of Directors hereby authorizes and approves the lease of Riverbend Facility, including the land, by the Corporation from Empire State Development at a base rent of \$1.00 per year for 10 years, with a lease provision requiring Empire State Development to convey the property back to the Corporation at the expiration of the 10-year lease term for \$1.00.

SECTION 3: DOCUMENTS AND CONTRACTS. The Board of Directors of the Corporation hereby authorizes, empowers and directs the President and Treasurer of the Corporation, each of them without the other, to approve, sign, acknowledge and deliver all documents or contracts in such form, substance and content, and upon such terms as may be necessary or appropriate, to implement and carry out the purposes and intents of this Resolution.

SECTION 4: EFFECTIVE DATE. This Resolution shall take effect immediately.