



BOARD OF DIRECTORS MEETING

March 23, 2017

4:45 PM

NFE 2107

AGENDA

1. Call to order
2. Approval of February 22, 2017 meeting minutes
3. Chair's Report:
 - Resolution 152 – Appointment of Interim Contracting Officer
 - Approval of Amendment of Certificate of Incorporation
4. President's Report:
 - Resolution 153–Approval of Notice to Proceed for Research and Manufacturing project in Plattsburgh, NY
 - Approval of lease related transactions on existing project
5. New Business
6. Public Comment
7. Next quarterly Board of Directors meeting: TBD
8. Adjournment



**Fort Schuyler Management Corporation
Meeting of the Board of Directors
February 22, 2017 NFE Conference Room 2107**

Directors present: Robert Samson, Joan McDonald, Megan Daly, Mike Evke, Franklin Hecht, and Kenneth Tompkins

Board Secretary: Cheryl Casey-Rose

Staff: Pat Bucklin

Guests: Howard Zemsky (ESD), Kevin Younis (ESD), Robert Megna, Emily Kunchala (RF SUNY)

1. Call to Order

- Chair Robert Samson asked for a motion to call to order the meeting of the Board of Directors of Fort Schuyler Management Corporation (FSMC). Megan Daly moved and Joan McDonald seconded the motion. The meeting was called to order at: 4:34 PM.

2. Introduction of Board of Directors

3. Minutes: Chair Robert Samson presented the minutes of the September 13, 2016 FSMC Board of Directors meeting for acceptance. Ken Tompkins moved that the minutes be accepted as presented and Franklin Hecht seconded the motion. Vote: ayes - 7, nays - 0, abstention - 0. The minutes were accepted as presented.

4. Howard Zemsky, President and CEO of Empire State Development (ESD) presented an overview of the role of ESD with respect to FSMC.

5. Governance Reform - Chair Robert Samson:

- The revised FSMC Bylaws provide for 11 directors; 4 appointed by RF SUNY, 4 appointed by SUNY Poly Foundation, and 3 independent appointments recommended by ESD. ESD also recommends 1 of the 4 for each of the RF and SUNY Poly Foundation Appointments for a total representation of 5. In addition, Howard Zemsky will act as a non-voting director on the Board.
- Audit Committee is comprised of three independent directors within the meaning of not-for-profit corporation laws
- Adopted voluntary compliance with key provisions of the Open Meetings Laws: meetings webcast and open to the public. Board agenda and materials posted to the website prior to the meeting.
- Adopted voluntary compliance with FOIL.
- Addition of Compliance Officer to oversee and implement new policies and procedures required by new bylaws.

6. Resolution 143 – Adoption of Audit Committee Charter and Committee Appointments. Chair Frame asked for a motion to introduce Resolution 143. Megan Daly moved to introduce the resolution and Michael



Evke seconded the motion. Chair Samson asked for discussion. Chair stated that new bylaws provide that the committee be comprised of no less than three (3) independent directors and the following have volunteered to serve on the committee: Megan Daly, Joan McDonald, and Robert Samson. Chair asked for discussion, there was none. Chair asked for a vote: ayes - 7, nays - 0, abstentions - 0. The motion to adopt Resolution 143 passed.

7. Resolution 144 – Appointment of Robert Megna as President of Fort Schuyler Management Corporation.

- Chair Samson introduced Mr. Megna and spoke about his current position as Senior Vice President at Stonybrook University, his wealth of knowledge and experience in state government, including former Executive Director of the New York State Thruway Authority, 5 years as New York State Budget Director, former Commissioner of NYS Department of Tax and Finance, Deputy Director of Fiscal Studies for the New York State Assembly Ways and Means Committee. Chair Samson asked for a motion to introduce the resolution. Michael Evke moved to introduce the resolution. Megan Daly seconded the motion. Chair Samson stated that the bylaws require that compensation for officers be fixed by the Audit Committee and deferred to Audit Committee member Robert Samson. Mr. Samson stated the Audit Committee met to discuss proposed compensation at \$200,000. He will be working half time and his salary will be \$50,000 for each Fuller Road and Fort Schuyler. Chair Samson opened the floor for any additional discussion. There being no discussion, Chair asked for a vote to approve Resolution 144: ayes – 7, nays – 0, abstentions – 0. The motion to adopt Resolution 144 passed.

9. President’s Report – Adoption of Policy Resolutions

- Mr. Megna stated that the following resolutions were identical to the policy resolutions presented at the FRMC Board meeting and that the directors had ample time to review them. He suggested taking a collective vote on the seven resolutions and Chair Samson agreed. Mr. Megna provided a brief overview of the resolutions. Mr. Megna He opened the floor to discussion. There being no discussion he presented the following resolutions for adoption:

Resolution 145 – Acquisition and Disposition of Real Property Policy

Resolution 146 – Conflict of Interest Policy and Related Party Transaction Policy

Resolution 147 – Procurement Guidelines Policy

Resolution 148 - Records Access Policy

Resolution 149 – Whistleblower Policy

Resolution 150 – Risk Management and Insurance Policy

Resolution 151– Debt Management Policy



- Chair asked for a motion to adopt the resolutions. A motion to adopt the resolutions was made by Franklin Hecht and seconded by Megan Daly. Chair asked for a vote: 7 – ayes, 0 – nays, 0 – abstentions. Resolutions 145-151 passed.

10. Public Comment

No public comments were made.

11. New Business

There was no new business brought before the Board.

12. Next Meeting – Chair Samson

Notice of the next meeting will be posted as soon as the date is determined. It is anticipated that in addition to quarterly meetings, monthly meetings will be held if there is business to be considered.

13. Adjournment – Chair Samson

The FSMC Board of Directors meeting was adjourned at 4:50 pm.

Respectfully Submitted,

Cheryl Casey-Rose
Secretary of the Board of Directors
Fort Schuyler Management Corporation

RESOLUTION OF THE BOARD OF DIRECTORS OF
FORT SCHUYLER MANAGEMENT CORPORATION

March 23, 2017

RESOLUTION NO: 152

APPOINTMENT OF INTERIM CONTRACTING OFFICER FOR THE CORPORATION

WHEREAS, Article V, Section 1 of the Bylaws of Fort Schuyler Management Corporation (“the Corporation”), authorizes the Board of Directors to appoint such additional officers as the Board may deem desirable, all of whom shall serve at their pleasure and exercise such powers and 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; and

WHEREAS, the Board desires to appoint an Interim Contracting Officer to fulfill the duties set forth in the Acquisition and Disposition of Real Property Policy adopted by Board pursuant to Resolution No. 145 on February 22, 2017;

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

SECTION 1: Scott Bateman is hereby appointed as Interim Contracting Officer of the Corporation, effective immediately, to perform the duties set forth in the Acquisition and Disposition of Real Property Policy adopted by the Board in Resolution No. 145 on February 22, 2017.

SECTION 2: EFFECTIVE DATE. This Resolution takes effect immediately.

CERTIFICATION

FORT SCHUYLER MANAGEMENT CORPORATION
RESOLUTION NO: 152

The undersigned, being a duly elected and qualifying officer of Fort Schuyler Management Corporation ("Corporation"), DOES HEREBY CERTIFY that the attached resolution constitutes a true and correct copy of a resolution adopted by the Board of Directors of the Corporation on _____, 2017, as it appears in the records of the Corporation in my possession as of the date hereof.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have signed this Certification on this ____ day of _____, 2017.

Name: Cheryl Casey-Rose

Title: Secretary of the Board of Directors

CERTIFICATE OF INCORPORATION
OF
FORT SCHUYLER MANAGEMENT CORPORATION

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a not-for-profit corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York does hereby certify:

1. The name of the Corporation is Fort Schuyler Management Corporation.
2. The membership of the Corporation shall consist of two (2) members: (1) Institute of Technology Foundation at Utica/Rome, Inc., Route 12 North Horatio Street, Utica, New York, 13502 (the "IT Foundation"); SUNY Polytechnic Institute Foundation, Inc. (mailing address: 100 Seymour Rd., Utica, New York 13502) and (2) The Research Foundation of the State University of New York, P.O. Box 9, 35 State Street, Albany, New York 12201-0009 (the "Research Foundation").
3. The Corporation is a corporation of the type defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is not formed, conducted, or operated for purpose of pecuniary profit or financial gain. The Corporation is a Type C corporation under Section 201 of the Not-for-Profit Corporation Law.
4. The Corporation is formed exclusively for scientific, educational, and charitable purposes within the intent and meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or corresponding provision of any subsequent federal tax laws. Specifically, the Corporation will help facilitate research and economic development activities related to the research and educational mission of the State University of New York in and around the Cities of Utica and Rome, New York by purchasing, constructing, and developing and managing facilities and promoting the research therein which support the economic development, research activities, and the mission of the State University of New York and its State University of New York Institute of Technology campus.

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Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Section 404(a)-(v) of the Not-For-Profit Corporation Law.

The lawful public or quasi-public objective which each purpose of the Corporation will achieve: to enhance the ability of the State University of New York and its campus near Utica-Rome, to attract public and private funds to further research and research-related economic development activities in the Utica-Rome area, to increase faculty, staff and student involvement in research and high technology and create jobs.

To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its directors or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law.

Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for one or more of the purposes specified in Section 501 (c)(3) of the Code or corresponding provision of any subsequent federal tax laws and shall not carry on any other activities not permitted to be carried on by (i) a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code, or the corresponding section of any subsequent federal tax laws, or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code, or the corresponding provision of any subsequent federal tax laws.

5. In furtherance of the purposes stated in paragraph 4 above, the Corporation will cooperate with the New York State Urban Development Corporation d/b/a Empire State Development Corporation (ESD) in its economic development activities, which activities are in furtherance of ESD's economic development mission and are related to the State University of New York and its State University of New York Institute of Technology campus, by purchasing, constructing and developing and managing facilities and promoting the research therein.

~~5.6.~~ The Corporation shall not be conducted or operated for profit, and no part of the assets, income, net earnings or profit of the Corporation shall inure to the benefit of any individual, except that reasonable compensation may be paid for personal services rendered to or for the benefit of the Corporation affecting one or more of its purposes; nor shall any of such net earnings nor any of the property or assets of the Corporation be used other than for the objects and purposes of the Corporation set out in paragraph 3 of this Certificate.

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~~6-7.~~ No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation (except to the extent authorized by section 501(h) of the Code), nor shall the Corporation participate or intervene in, by the publishing or distributing of statements or otherwise, any political campaign on behalf of, or in opposition to, any candidate for public office.

~~7-8.~~ In the event of liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary or by operation of law, all the remaining assets and property of the Corporation after payment of expenses and the satisfaction of all liabilities shall be distributed to the State University of New York, intended for the benefit of the SUNY campus at the State University of New York Institute of Technology in Utica/Rome, New York.

~~8-9.~~ Nothing contained herein shall be deemed to authorize the Corporation to do, perform, or carry on any activity for which any special approval or consent is required by appropriate provisions of the Not-for-Profit Corporation Law, or any other law or laws other than the approval of a Justice of the Supreme Court of the Judicial District in which the office of that Corporation is to be located.

~~9-10.~~ The office of the Corporation shall be located in the County of Oneida, State of New York.

~~10-11.~~ The names and addresses of the directors until the first annual meeting are:

Michael Evke
Eversan, Inc.
34 Main Street
Whitesboro, NY 13492-1025

Bruce E. Reichel
PO Box 3050
Utica, NY 13504-3050

James Weyhenmeyer
35 State Street
Albany, NY 12207

~~11~~12. The directors of the Corporation shall not be personally liable to the Corporation for monetary damages because of their breach of duty as directors unless such liability is based upon a judgment or other final adjudication adverse to the director which establishes, (i) that the director's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of the law, (ii) that the director personally gained in fact a financial profit or other advantage to which the director was not legally entitled, or (iii) that the director's acts violated Section 719 of the New York Not-for-Profit Corporation Law. If the New York Not-for-Profit Corporation Law is amended to authorize the further elimination or limitation of the liability of directors, the liability of a director of the Corporation, in addition to the limitation on personal liability established by this certificate, shall be further limited to the fullest extent permitted by the amended New York Not-for-Profit Corporation Law.

~~12~~13. The duration of the Corporation shall be perpetual.

~~13~~14. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is:

Fort Schuyler Management Corporation
c/o Office of General Counsel
The Research Foundation of State University of New York
P.O. Box 9, 5th Floor
Albany, New York 12201-0009

The subscriber is of the age of eighteen (18) or over.

IN WITNESS WHEREOF, this Certificate of Incorporation has been subscribed

_____ 2017

RESOLUTION OF THE BOARD OF DIRECTORS
OF FORT SCHUYLER MANAGEMENT CORPORATION

March 23, 2017

RESOLUTION NO.: 153

APPROVAL AND AUTHORIZATION FOR AMENDING THE NOTICE TO PROCEED
WITH WHITING TURNER TO INCREASE THE SPENDING AMOUNT AUTHORIZED BY
THE NOTICE TO PROCEED

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, consistent with its purposes, the mission of the Corporation is to advance high-tech research, development, and commercialization opportunities through the acquisition, construction, and management of state-of-the art facilities, while promoting economic development and education and workforce training throughout New York; and

WHEREAS, the vision of the Corporation is to further expand New York’s global leadership in nanotechnology by leveraging cutting edge facilities and infrastructure, in conjunction with the world class resources and expertise of SUNY Poly, to enable innovation, private and corporate investments, and job creation across New York; 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 Number 123 the Board of Directors authorized and approved the Corporation undertaking the development, design, construction, and fit-up, of an approximately 170,000 square feet manufacturing facility to house Norsk Titanium’s (“NORSK”) USA based manufacturing and business operations, the acquisition of real property for the manufacturing facility, and the acquisition of manufacturing equipment to be housed in the manufacturing facility for use by Norsk to support its USA based manufacturing and business operations (“Project”);

WHEREAS, by Resolution 124, in support of the Project, the Board of Directors authorized and approved the Corporation, in conjunction with SUNY Poly, conducting an open, competitive procurement process for the selection of a developer and/or construction contractor through the issuance of a request for proposals for qualified local developers and/or construction contractors for a strategic research, technology outreach, business development, manufacturing, education and training ventures (or a subset of such) in the greater Plattsburgh area; and

WHEREAS, by Resolution 135, in support of the Project, the Board of Directors authorized and approved the selection by the Corporation of Whiting Turner as the preferred candidate for the Corporation's preferred construction contractor and EYP as the preferred candidate for the Corporation's preferred architect; and

WHEREAS, by Resolution 135, in support of the Project, the Board of Directors stated that the Corporation shall obtain the approval and authorization of the Board of Directors prior to entering into contracts with Whiting Turner and EYP for the Project; and

WHEREAS, on August 5, 2016, in advance of negotiating and entering into a contract and in order to enable Whiting Turner and EYP to begin various pre-construction activities, documentation, design and planning for the Project, Carl J. Kempf III, acting in his capacity as General Counsel to the Corporation, signed a Notice to Proceed with Whiting Turner authorizing expenditures in furtherance of the Project in an amount not to exceed \$1,670,927; and

WHEREAS, since the Notice to Proceed was signed, Whiting Turner and its subcontractors and design consultants have diligently worked on the Project and have reached the expenditure limit of \$1,670,927; and

WHEREAS, to enable Whiting Turner and its subcontractors and design consultants to continue the preconstruction planning and design for the Project the expenditure limit must be increased; and

WHEREAS, on June 23, 2016, The Board of Directors of New York State Urban Development Corporation d/b/a Empire State Development ("EDC") authorized a grant in the amount of \$4,050,000 to the Corporation for preconstruction planning and design in furtherance of the Project, and on December 15, 2016, Scott Bateman, acting in his capacity as Acting Treasurer for the Corporation, entered into a Grant Disbursement Agreement with ESD for the disbursement of the \$4,050,000 grant to the Corporation;

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

SECTION 1: APPROVAL OF THE FIRST AMENDMENT TO THE NOTICE TO PROCEED BETWEEN THE CORPORATION AND WHITING TURNER. The Board hereby authorizes and approves the Corporation entering into the First Amendment to the Notice to Proceed entered into on August 5, 2016 between the Corporation and Whiting Turner. This amendment increases the Project expenditure authorization from \$1,670,927 to \$4,050,000. The amendment makes no other changes to the Notice to Proceed.

SECTION 2: AUTHORIZED CORPORATION REPRESENTATIVES. The Board of Directors of the Corporation hereby authorizes, empowers and directs Robert Megna, as President, and Scott Bateman, as Assistant Treasurer, each of them without the other, to implement and carry out the purposes and intents of this Resolution.

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

CERTIFICATION

FORT SCHUYLER MANAGEMENT CORPORATION
RESOLUTION NO: 153

The undersigned, being a duly elected and qualifying officer of Fort Schuyler Management Corporation ("Corporation"), DOES HEREBY CERTIFY that the attached resolution constitutes a true and correct copy of a resolution adopted by the Board of Directors of the Corporation on _____, 2017, as it appears in the records of the Corporation in my possession as of the date hereof.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have signed this Certification on this ____ day of _____, 2017.

Name: Cheryl Casey-Rose
Title: Secretary of the Board



To: FSMC Board of Directors

Re: Amendment to Notice to Proceed between FSMC and Whiting Turner for Norsk Project

Norsk Titanium US, Inc. ("Norsk") is the US subsidiary of a Norwegian company that has developed proprietary technology that enables it to manufacture aircraft components out of titanium using additive manufacturing (3D printing) machines. In July of 2015, pursuant to Resolution 123, the Board of Directors authorized and approved the Corporation undertaking the development, design, construction, and fit-up, of an approximately 170,000 square feet manufacturing facility to house Norsk's USA based manufacturing and business operations, the acquisition of real property for the manufacturing facility, and the acquisition of manufacturing equipment to be housed in the manufacturing facility for use by Norsk ("Project"). The 2016/2017 New York State Budget included an appropriation of \$125,000,000 for the Project.

In subsequent Board actions pertaining to the Project, the FSMC Board authorized and approved the Corporation conducting an open, competitive procurement process for the selection of a developer and/or construction contractor through the issuance of a request for proposals and approved the selection by the Corporation of Whiting Turner as the preferred candidate for the Corporation's construction contractor and EYP as the preferred candidate for the Corporation's architect.

On June 23, 2016, The Board of Directors of New York State Urban Development Corporation d/b/a Empire State Development ("EDC") authorized a grant in the amount of \$4,050,000 to the Corporation for preconstruction planning and design in furtherance of the Project, and on December 15, 2016, Scott Bateman, acting in his capacity as Acting Treasurer for the Corporation, entered into a Grant Disbursement Agreement with ESD for the disbursement of the \$4,050,000 grant to the Corporation.

On August 5, 2016, in advance of negotiating and entering into a contract and in order to enable Whiting Turner and EYP to begin various pre-construction activities including design and planning for the Project, the then General Counsel to the Corporation, signed a Notice to Proceed with Whiting Turner authorizing expenditures in furtherance of the Project in an amount not to exceed \$1,670,927.

Since the Notice to Proceed was signed, Whiting Turner and its subcontractors and design consultants have diligently worked on the Project and have reached the expenditure limit of \$1,670,927. To enable Whiting Turner and its subcontractors and design consultants to continue the preconstruction planning and design for the Project the expenditure limit must be increased. The proposed resolution would authorize the Corporation to enter into the First Amendment to the Notice to Proceed. This amendment increases the expenditure authorization from \$1,670,927 to \$4,050,000. The amendment makes no other changes to the Notice to Proceed.



Requested Board Action: Approve the resolution increasing the expenditure authorization in the Notice to Proceed to \$4,050,000 and authorizing the President to take necessary or appropriate actions to implement the resolution.



To: FSMC Board of Directors

Re: Proposed Lease Amendment – Conventus Partners
Proposed Sublease Amendment - Athenex

- 1) **Description of Property:** FSMC has an existing lease with Conventus Partners for 51,750 sf on the sixth floor and 8,874 sf on the first floor of the Conventus Building located at 1001 Main Street in Buffalo. The intent of this lease amendment is to incorporate a small portion of the basement area into the original lease with no increase in rent. The area in question is approximately 74 sf in size, will contain an acid neutralization system for the sixth floor tenant and is located within an existing mechanical room on level B2.
- 2) **Tenant:** FSMC subleases the sixth floor of the Conventus Building, 1001 Main Street, Buffalo, NY 14203 to Athenex. Athenex is an innovative oncology company with drug discovery, drug formulation, clinical development, and API/drug product manufacturing facilities in both the United States and China. Their mission is to improve the lives of cancer patients by creating more effective, safer and tolerable treatments. FSMC's existing sublease with Athenex will also be amended to add this space to their premises at no cost.
- 3) **Lease Term:** 74 sf at no cost for 20 years.
- 4) **Associated Costs for Site Preparation:** No additional costs. The work is included in the original construction project.
- 5) **Requested Action:** Authorize the President to amend FSMC lease with Conventus to add 74 sf at no cost and to amend FSMC sublease with Athenex to add 74 sf at no cost.