



BOARD OF DIRECTORS MEETING*

May 21, 2020

4:00 PM

VIA Teleconference

AGENDA

1. Call to order
2. Approval of Minutes of May 11, 2020 Meeting
3. Finance Committee
 - FSMC Resolution No. 192 - Authorization for Agreements with Cree, Inc.
 - FRMC Resolution No. 170 - Authorization for Agreements with Cree, Inc.
4. New Business
5. Public Comment
6. Next Board of Directors meeting: TBD
7. Adjournment

*This includes the joint meetings of the Board of Directors of the Fuller Road Management Corporation and Fort Schuyler Management Corporation.

NY CREATES
Meeting of the Board of Directors
May 11, 2020
Via teleconference

Minutes

Directors present: Dr. Bahgat Sammakia - Chair, Alicia Barton, Michael Abbott, Christine Chung, Michael Frame, Franklin Hecht, Brad Johnson, Joan McDonald and Kristin Proud.

Staff: Dr. Douglas Grose – President, Patricia Arciero-Craig – Chief Administrative Officer and Acting General Counsel, Timothy Taylor – Chief Financial Officer, Scott Bateman –Treasurer and Patricia Bucklin – Board Secretary.

Guests: Dr. Tod Laursen – SUNY, Michael Frame – SUNY Polytechnic Foundation, Inc. and Emily Kunchala – RF SUNY.

1. Call to order

Chair Sammakia called the meeting of the Board of Directors of NY CREATES to order at 4:04 PM.

Chair Sammakia advised that, due to public health concerns, this meeting is being held via teleconference as authorized by Executive Order of the Governor. A webcast is available for members of the public to listen to the meeting.

Chair Sammakia conducted a roll call of all of the participants in the meeting and advised that he would be doing a roll call vote for each action item to ensure an accurate record of all votes.

Chair Sammakia asked the Directors if they had any potential conflict of interest with respect to items on today's agenda, and if so, to disclose it. There were no conflicts of interest.

2. Minutes

Chair Sammakia asked for a motion to approve the NY CREATES minutes of March 20, 2020.

Motion: Franklin Hecht
Second: Alicia Barton

Discussion: None.

Vote: Following a roll call vote, the minutes were unanimously approved as presented.

Chair Sammakia asked for a motion to approve the NY CREATES minutes of April 21, 2020.

Motion: Brad Johnson
Second: Franklin Hecht

Discussion: None.

Vote: Following a roll call vote, the minutes were unanimously approved as presented.

Chair Sammakia introduced Kristin Proud, Chair of the Finance Committee, to give the Finance Committee Report.

3. Finance Committee Report

A. FSMC Resolution No. 191 – Extension of Authorization for Access and Work by Cree, Inc. (“Cree”) at the Marcy Site

Ms. Proud asked for a motion to consider and adopt FSMC Resolution No. 191 extending the authorization for access and work by Cree, Inc. at the Marcy site.

Motion: Franklin Hecht
Second: Christine Chung

Ms. Proud advised that at the Board’s last meeting on April 21, 2020, the Fort Schuyler Management Corporation (“FSMC”) Board approved FSMC Board Resolution No. 190, pursuant to which FSMC consented to a license agreement between EDGE and Cree, Inc. (“License Agreement”) and approved related agreements, with respect to the new state-of-the-art 200mm silicon carbide (“SiC”) and GaN device wafer fabrication facility (Fab) that will be built at the Marcy Nanocenter (“Marcy Nanocenter Project”). Pursuant to the License Agreement, Cree was granted access to the Marcy site to perform initial construction work in order to avoid delays in its construction schedule pending the completion of the various legal agreements necessary to advance the Marcy Nanocenter Project.

The License Agreement will terminate on the earlier to occur of the execution and delivery of the EDGE-Cree sublease, a default of the License Agreement or termination other than due to the execution and delivery of the EDGE-Cree sublease, or May 11, 2020. The Board Resolution also authorized approval of a related escrow and guaranty agreement and other associated agreements necessary to effectuate the Resolution. The escrow and guaranty agreements will remain in effect until the Marcy Nanocenter Project is fully completed.

The parties are currently finalizing the legal agreements for the project and seek to amend the License Agreement in order to extend the date contained within the expiration provision therein from May 11, 2020 to May 22, 2020 (the “Amended License Agreement”), and, to make any necessary amendments to the guaranty agreement, escrow agreement and any associated or necessary agreements.

FSMC now desires to consent to the Amended License Agreement and to have its Finance Committee empowered to approve on behalf of the Corporation consents to any further amendments to the License Agreement and, as may be necessary, approve any amendments to the guaranty agreement, the escrow agreement and any associated or necessary agreements.

Ms. Proud stated that the Finance Committee approved a resolution (1) approving and authorizing the Corporation to consent to the Amended License Agreement and to make any necessary amendments to the guaranty agreement, escrow agreement, and any associated or necessary agreements, (2) approving and authorizing the President, and Treasurer, each of them without the other, on behalf of the Corporation, to consent to the Amended License Agreement and execute, acknowledge and deliver any necessary amendments to the guaranty agreement, escrow agreement, and any associated or necessary agreements, and take such other actions as are necessary to effectuate this resolution, (3) authorizing the Finance Committee to approve on behalf of the Corporation consents to any further amendments to the License Agreement, if necessary, with respect to its expiration, and approve any necessary amendments to the guaranty agreement, the escrow agreement and any associated or necessary agreements, and (4) recommending that the Board approve these same actions.

Requested Action:

Approve FSMC Resolution No. 191.

Discussion: None.

Vote: Following discussion and a roll call vote, the motion was unanimously approved.

B. Lease Amendment with Glauconix, Inc. (FRMC)

Ms. Proud asked for a motion to consider and adopt a lease amendment with Glauconix, Inc.

Motion: Michael Abbott

Second: Joan McDonald

Ms. Proud advised that Glauconix, a specialty pharma research company, has leased 346 square feet of lab space in the CESTM building since 2014. Its lease expired on March 31, 2020 and it seeks to extend the lease for two years with options to renew for two terms of 12 months each.

Glaucnix will pay \$24.53 per sq. ft. for 346 square feet of lab space, plus fees for parking and certain specialized gas and water supplies. This represents a 2% increase from the current rent and the rent will continue to escalate 2% annually.

The proposed lease represents a small fraction of the total building; therefor an appraisal of the fair market value of the asset is not practical. Staff has determined that lease meets fair market value based on other existing leases in the building.

Ms. Proud stated that the Finance Committee approved a resolution (1) authorizing and approving a lease amendment with Glaucnix on the terms described above, (2) authorizing the President and the Treasurer, each of them without the other, to take such actions, including without limitation to approve, sign, acknowledge and deliver the amendment in such form as either of them may deem appropriate, as are necessary to effectuate the resolution, and (3) recommending that the Board approve the same action.

Requested Action:

Approve a resolution (1) authorizing and approving a lease amendment with Glaucnix on the terms described above, and (2) authorizing the President and the Treasurer, each of them without the other, to take such actions, including without limitation to approve, sign, acknowledge and deliver the amendment in such form as either of them may deem appropriate, as are necessary to effectuate the resolution.

Discussion: None.

Vote: Following discussion and a roll call vote, the motion was unanimously approved.

Chair Sammakia introduced Michael Abbott, Chair of the Audit Committee, to give the Audit Committee Report.

4. Audit Committee Report

Authorization for Certain Tax Filings (FSMC)

Mr. Abbott asked for a motion to consider and adopt a resolution authorizing certain tax filings for FSMC.

Mr. Abbott advised that FSMC engaged KPMG to review its tax filings for the year ending on June 30, 2019, pursuant to authorization by the Board at its September 12, 2019 meeting. The filings include IRS Form 990 and NY CHAR 500; and IRS Form 990T and NY CT-2 and CT-13. The filing date for all of these forms, except the NY CT-2 and CT-13, has been extended to July 2020.

The CT-2 is a Corporation Tax Summary Return and the CT-13 is an Unrelated Business Income Return. Both forms are due to be filed by May 15, 2020. The IRS Form 990T, Exempt Organization Business Income Tax Return, reports the same information as the CT-2/CT-13 and is due to be filed by July 15. A copy of this return, although not due until the later date, must be attached as part of the CT-2/CT-13 filing.

KPMG has now completed its review of the CT-2, CT-13 and 990T tax filings.

Mr. Abbott stated that the FSMC Audit Committee approved a resolution approving the CT-2, CT-13 and 990T tax filings and authorizing the President and/or Treasurer to sign and file the tax filings on or before their respective due dates and to take all actions necessary and appropriate to effectuate such actions, and recommending that the Board approve the same actions.

Action Requested:

Approve a resolution approving the CT-2, CT-13 and 990T tax filings and authorizing the President and/or Treasurer to sign and file the tax filings on or before their respective due dates and to take all actions as are necessary and appropriate to effectuate such actions.

Discussion: None.

Vote: Following discussion and a roll call vote, the motion was unanimously approved.

5. New Business

Chair Sammakia asked if there was any new business. There was no new business.

6. Public Comment

Chair Sammakia stated that, given the change in meeting logistics due to public health concerns, we notified the public of the opportunity to send in comments via email prior to the meeting. We did not receive any comments.

7. Schedule of Next Meeting

Chair Sammakia advised that the date of the next meeting is to be determined and once finalized will be posted on the website.

8. Adjournment

With no further business to come before the Board, Chair Sammakia asked for a motion to adjourn the meeting.

Motion: Kristin Proud
Second: Franklin Hecht

The motion was unanimously approved and the meeting was adjourned at 4:23 PM.

Respectfully Submitted,

Patricia K. Bucklin

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

RE: Authorization for Agreements with Cree, Inc. (FSMC)

Background

On September 23, 2019, New York State announced a \$1 Billion public-private partnership (the “NY-Cree Project”) with Cree, Inc. (“Cree”) pursuant to which Cree will build, equip, occupy and operate a new, state-of-the-art 200mm capable silicon carbide (“SiC”) and GaN wafer fabrication facility and related improvements (collectively, the “Cree Marcy Facility”) on a portion of SUNY Polytechnic Institute’s Marcy, New York campus. A component of the NY-Cree Project involves the continuation of the success of the research, development and fabrication of SiC wafers through the New York Power Electronics Manufacturing Consortium (“NY-PEMC”) Advanced Technology Silicon Carbide Line (“SiC Line”) at the Albany Nanotech Fuller Road campus (the “NY-PEMC Program”).

The Cree Marcy Facility will be located on a portion of a larger 322.56 acre parcel that is presently ground leased to Fort Schuyler Management Corporation (“FSMC”) from the State University of New York (“SUNY”). FSMC currently ground subleases such larger parcel to the Economic Development Growth Enterprises Corporation (“EDGE”) pursuant to a Ground Sublease dated May 1, 2010 (the “FSMC-EDGE Original Ground Sublease”). The FSMC-EDGE Original Ground Sublease has enabled EDGE to act as the lead developer to make the site ready for use by one or more semiconductor manufacturing companies, nanotechnology firms and/or other high end users. As part of the NY-Cree Project, approximately 53.76 acres of the total 322.56 acre parcel will be the subject of a new sublease between FSMC and EDGE, and, in turn, EDGE will ground sub-sublease such portion to Cree, together with an adjoining 1.49 acre parcel owned by EDGE.

The NY-Cree Project involves the collaboration with Cree of multiple parties including FSMC, Fuller Road Management Corporation (“FRMC”), SUNY, EDGE, the Research Foundation for SUNY (“Foundation”) and New York State Urban Development Corporation d/b/a Empire State Development (“ESD”). Pending the finalization of the various agreements necessary to advance the NY-Cree Project and in order to avoid delays in its construction schedule, Cree requested and was granted access to the site pursuant to a license agreement to perform initial construction work in order to avoid delays in its construction schedule. FSMC Board Resolution Nos. 190 and 191 authorized FSMC to grant consent to such access and authorized approval of associated agreements, including a guaranty agreement and escrow agreement pursuant to which Cree established an escrow account in the amount of \$10 million as security for its obligations under the license agreement and the guaranty agreement. The escrow and guaranty agreements will remain in effect until the NY-Cree Project is fully completed.

NY-Cree Project Agreements

The NY-Cree Project involves the collaboration of all parties pursuant to the following agreements.

1) NY-PEMC Agreement – This agreement by and among the Foundation, SUNY and Cree provides among other things that (A) Cree will gain access to the NY-PEMC facilities at the Albany Nanotech Campus for purposes of, among other things, facilitating further research and development in and to, and fabrication of SiC wafers; (B) title to certain transferrable SiC Line Tools will be transferred from the Foundation to Cree so that Cree may remove such transferrable SiC Line Tools from the Albany campus and install them in the new Cree Marcy Facility once constructed; and (C) Cree and SUNY will establish certain additional educational, curriculum development and research collaborations.

2) Grant Disbursement Agreement – This agreement by and between ESD and Cree provides, among other things, for partial funding by ESD of Cree’s construction of the Cree Marcy Facility and purchase of tools, as well as the terms and conditions for Cree’s commitments related to the project, including (A) the creation of 614 new jobs during the first eight years of the project; and (B) investment in research and development expenses at the facility or at the Albany Nanotech Campus up to \$30 million during the first ten years of the project.

3) FSMC-EDGE Ground Sublease – This is a new ground sublease by and between FSMC and EDGE (“FSMC-EDGE Ground Sublease No. 2”) whereby FSMC and EDGE agree that approximately 53.76 of the 322.56 acres currently subleased by EDGE from FSMC pursuant to the FSMC-EDGE Original Ground Sublease is released from the FSMC-EDGE Original Ground Sublease and is to be subleased to EDGE pursuant to the FSMC-EDGE Ground Sublease No. 2. Such released parcel is to be specifically sub-subleased to Cree by EDGE for construction of the Cree Marcy Facility. Carving out this portion of the premises from the FSMC-EDGE Original Ground Lease enables the FSMC-EDGE Ground Sublease No. 2 and the EDGE-Cree Ground Sub-Sublease to address the same parcel of land and ensure clarity and consistency in relevant provisions.

4) EDGE-Cree Ground Sub-Sublease – This sub-sublease agreement between EDGE and Cree provides for Cree’s sublease of the approximately 53.76 acres described above and lease of the 1.49 acres described above (total of 55.25 acres) for construction of the Cree Marcy Facility and related buildings (the “EDGE-Cree Ground Sub-Sublease”).

5) FRMC-Cree Office Lease Agreement - This lease agreement between FRMC and Cree provides for Cree’s lease of certain office space on the Albany Nanotech Campus in conjunction with its work at the NY-PEMC facilities.

6) Memorandum of Understanding (MOU) - This is an agreement by and among the Foundation, SUNY, FRMC, FSMC, ESD and EDGE which sets forth the various understandings between and among the parties with respect to the projects with Cree.

FSMC Agreements

FSMC seeks authorization to approve and enter into the FSMC-EDGE Ground Sublease No. 2 (#3 above) and the MOU (#6 above).

FSMC-EDGE Ground Sublease No.2

The FSMC-EDGE Original Ground Sublease includes the 53.76 acres on which the Cree Marcy Facility will be constructed. As stated above, under the proposed FSMC-EDGE Ground Sublease No. 2, the parties will release the approximately 53.76 acres from the FSMC-EDGE Original Ground Sublease to be subleased to EDGE pursuant to the FSMC-EDGE Ground Sublease No. 2 and, in turn, sub-subleased to Cree, along with another approximately 1.49 acres that EDGE currently owns. Principal terms are as follows:

1. Term: 40 years with an option to renew for nine years.
2. Rent: EDGE will retain all fixed rent received from Cree during the first 20 years of the initial term of the EDGE-Cree Ground Sub-Sublease, and therefore EDGE is not required to pay fixed rent to FSMC under the FSMC-EDGE Ground Sublease No. 2 during that period. The rent allocation pursuant to which EDGE will receive the fixed rent for the first 20 years will allow EDGE to recoup significant monies it invested in the Marcy site to make it shovel-ready for development. Thereafter for the remainder of the term, EDGE is to pay to FSMC all fixed rent received by EDGE from Cree pursuant to its sub-sublease. In turn, all of the fixed rent received by FSMC from or pursuant to the FSMC-EDGE Ground Sublease No. 2 or the EDGE-Cree Ground Sub-Sublease, will be split equally between FSMC and SUNY (or a SUNY affiliate) as Ground Lessor of the property. Rent under the EDGE-Cree Ground Sub-Sublease shall be \$220,000 per year for years 1-10 of the term and escalates every 10 years to \$456,192 in years 41-49.
3. FSMC right of substitution: FSMC has the right for any reason to replace and be substituted for EDGE as Landlord under the EDGE-Cree Ground Sub-Sublease.
4. Restoration: At the end of the sublease, if Cree fails to do so, EDGE is required to restore the premises to the condition mutually agreed to but at a minimum to the requirements specified in the sub-sublease between EDGE and Cree relating to the condition of the building and equipment.
5. Default: In addition to non-payment, a default by EDGE of its sub-sublease with Cree and termination of certain of the other NY-Cree Project agreements will be deemed a default under the FSMC-EDGE Ground Sublease No. 2.

6. Consent to EDGE-Cree Ground Sub-Sublease: FSMC consents to the sub-sublease between EDGE and Cree.
7. Fair market value: EDGE represents to FSMC that the fixed rent to be charged to Cree under the EDGE-Cree Ground Sub-Sublease is fair market ground rent for the premises.

MOU

The MOU between and among the parties sets forth certain mutual understandings concerning the conduct of the NY-Cree Project and the respective parties' coordination in furtherance of the project. With respect to FSMC, it provides for the sharing of fixed rent that it receives from or pursuant to the FSMC-EDGE Ground Sublease No. 2 or the EDGE-Cree Ground Sub-Sublease, such that the rent will be split equally between FSMC and SUNY (or a SUNY affiliate). The MOU also provides for FSMC consent to the sub-sublease between EDGE and Cree, and provides a coordination among the parties with respect to any party declaring a default under any of the cross-default provisions contained in the various agreements. This coordination will ensure that other New York parties are notified in the event that Cree defaults under any of the agreements.

FSMC seeks authorization to approve and enter into the FSMC-EDGE Ground Sublease No. 2 and the MOU on the terms as summarized above.

The Finance Committee approved a resolution (1) approving and authorizing the Corporation to enter into the FSMC-EDGE Ground Sublease No. 2 and the Memorandum of Understanding each in the form substantially described herein and in the accompanying Resolution; (2) approving and authorizing the President and Treasurer, each of them without the other, on behalf of the Corporation, to execute, acknowledge and deliver the FSMC-EDGE Ground Sublease No. 2 and the Memorandum of Understanding, with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval; (3) approving and authorizing the President and Treasurer, each of them without the other, on behalf of the Corporation, to take such actions as are necessary and appropriate, including the execution, acknowledgement and delivery of other documents and agreements as may be necessary or appropriate to implement and carry out the purposes and intents of the Resolution; and (4) recommending that the Board approve the same actions.

Requested Action:

Approve FSMC Resolution No. 192.

RESOLUTION OF THE BOARD OF DIRECTORS OF
FORT SCHUYLER MANAGEMENT CORPORATION

May 21, 2020

RESOLUTION NO. 192

AUTHORIZATION FOR AGREEMENTS WITH CREE, INC.

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, on September 23, 2019, New York State announced a \$1 Billion public-private partnership (the “NY-Cree Project”) with Cree, Inc. (“Cree”) pursuant to which Cree will build, equip, occupy and operate a new, state-of-the-art 200mm capable silicon carbide (“SiC”) and GaN wafer fabrication facility and related improvements (collectively, the “Cree Marcy Facility”) on a portion of SUNY Polytechnic Institute’s Marcy, New York campus; and

WHEREAS, a component of the NY-Cree Project involves the continuation of the success of the research, development and fabrication of SiC wafers through the New York Power Electronics Manufacturing Consortium (“NY-PEMC”) Advanced Technology Silicon Carbide Line (“SiC Line”) at the Albany Nanotech Fuller Road campus (the “NY-PEMC Program”); and

WHEREAS, the Cree Marcy Facility will be located on a portion of a larger 322.56 acre parcel that is presently ground leased to Fort Schuyler Management Corporation (“FSMC”) from SUNY; and

WHEREAS, FSMC currently ground subleases such larger parcel to the Economic Development Growth Enterprises Corporation (“EDGE”) pursuant to a Ground Sublease dated May 1, 2010 (the “FSMC-EDGE Original Ground Sublease”) to enable EDGE to act as the lead developer to make the site ready for use by one or more semiconductor manufacturing companies, nanotechnology firms and/or other high end users; and

WHEREAS, as part of the NY-Cree Project, approximately 53.76 acres of the total 322.56 acre parcel will be the subject of a new sublease between FSMC and EDGE, and, in turn, EDGE will ground sub-lease such portion to Cree, together with an adjoining 1.49 acre parcel owned by EDGE; and

WHEREAS, the NY-Cree Project involves the collaboration with Cree of multiple parties including FSMC, Fuller Road Management Corporation (“FRMC”), SUNY, EDGE, the Research Foundation for SUNY (“Foundation”) and New York State Urban Development Corporation d/b/a Empire State Development (“ESD”); and

WHEREAS, pending the finalization of the various agreements necessary to advance the NY-Cree Project and in order to avoid delays in its construction schedule, Cree requested access to the site pursuant to a license agreement to perform initial construction work in order to avoid delays in its construction schedule; and

WHEREAS, FSMC Board Resolution Nos. 190 and 191 authorized FSMC to grant consent to such access and authorized approval of associated agreements, including a guaranty agreement and escrow agreement pursuant to which Cree established an escrow account in the amount of \$10 million as security for its obligations under the license agreement and the guaranty agreement; and

WHEREAS, the NY-Cree Project involves the collaboration of all parties pursuant to the following agreements:

NY-PEMC Agreement – An agreement by and among the Foundation, SUNY and Cree which provides among other things that (A) Cree will gain access to the NY-PEMC facilities at the Albany Nanotech Campus for purposes of, among other things, facilitating further research and development in and to, and fabrication of SiC wafers; (B) title to certain transferrable SiC Line Tools will be transferred from the Foundation to Cree so that Cree may remove such transferrable SiC Line Tools from the Albany campus and install them in the new Cree Marcy Facility once constructed; and (C) Cree and SUNY will establish certain additional educational, curriculum development and research collaborations (the “NY-PEMC Agreement”).

Grant Disbursement Agreement – An agreement by and between ESD and Cree which provides, among other things, for partial funding by ESD of Cree’s construction of the Cree Marcy Facility and purchase of tools, as well as the terms and conditions for Cree’s commitments related to the project (the “Grant Disbursement Agreement”).

FSMC-EDGE Ground Sublease No. 2 – A ground sublease by and between FSMC and EDGE (“FSMC-EDGE Ground Sublease No. 2”) whereby approximately 53.76 of the 322.56 acres currently subleased by EDGE from FSMC is released from the FSMC-EDGE Original Ground Sublease and is to be subleased to EDGE pursuant to the FSMC-EDGE Ground Sublease No. 2, with such released parcel to be specifically sub-subleased to Cree by EDGE for construction of the Cree Marcy Facility.

EDGE-Cree Ground Sub-Sublease – A sub-sublease agreement by and between EDGE and Cree which provides for Cree’s sublease of the approximately 53.76 acres described above and lease of the 1.49 acres described above (total of 55.25 acres) for construction of the Cree Marcy Facility and related buildings (the “EDGE-Cree Ground Sub-Sublease”).

FRMC-Cree Office Lease Agreement - An agreement by and between FRMC and Cree which provides for Cree’s lease of certain office space on the Albany Nanotech Campus in conjunction with its work at the NY-PEMC facilities (the “FRMC-Cree Office Lease Agreement”).

Memorandum of Understanding - An agreement by and among the Foundation, SUNY, FRMC, FSMC, ESD and EDGE which sets forth the various understandings between and among the parties with respect to the projects with Cree (the “Memorandum of Understanding”); and

WHEREAS, FSMC desires to enter into the proposed FSMC-EDGE Ground Sublease No. 2, to sublease approximately 53.76 acres to EDGE, which, in turn, will sub-sublease to Cree, along with another approximately 1.49 acres that EDGE currently owns; and

WHEREAS, FSMC desires to enter into the Memorandum of Understanding by and among the parties to set forth certain mutual understandings concerning the conduct of the NY-Cree Project and the respective parties’ coordination in furtherance of the project, including with respect to FSMC, (1) providing for the sharing of fixed rent that it receives from or pursuant to the FSMC-EDGE Ground Sublease No. 2 or the EDGE-Cree Ground Sub-Sublease, such that the rent will be split equally between FSMC and SUNY (or a SUNY affiliate), (2) providing for FSMC consent to the sub-sublease between EDGE and Cree, and (3) providing a coordination among the parties with respect to any party declaring a default under any of the cross-default provisions contained in the various agreements; and

WHEREAS, FSMC now seeks authorization to approve and enter into the FSMC-EDGE Ground Sublease No. 2 and the Memorandum of Understanding on the terms as summarized above and in the accompanying memorandum that was provided to the Board; and

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 and authorizes the Corporation to enter into the FSMC-EDGE Ground Sublease No. 2 and the Memorandum of Understanding each in the form substantially described herein and in the accompanying memorandum.

SECTION 2. The Board of Directors hereby approves and authorizes the President and Treasurer, each of them without the other, on behalf of the Corporation, to execute, acknowledge and deliver the FSMC-EDGE Ground Sublease No. 2 and the Memorandum of Understanding, with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval.

SECTION 3. The Board of Directors hereby approves and authorizes the President and Treasurer, each of them without the other, on behalf of the Corporation, to take such actions as are necessary and appropriate, including the execution, acknowledgement and delivery of other

documents and agreements as may be necessary or appropriate to implement and carry out the purposes and intents of this Resolution.

SECTION 4: EFFECTIVE DATE. This Resolution takes effect immediately.

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

RE: Authorization for Agreements with Cree, Inc. (FRMC)

Background

On September 23, 2019, New York State announced a \$1 Billion public-private partnership (the “NY-Cree Project”) with Cree, Inc. (“Cree”) pursuant to which Cree will build, equip, occupy and operate a new, state-of-the-art 200mm capable silicon carbide (“SiC”) and GaN wafer fabrication facility and related improvements (collectively, the “Cree Marcy Facility”) on a portion of SUNY Polytechnic Institute’s Marcy, New York campus. A component of the NY-Cree Project involves the continuation of the success of the research, development and fabrication of SiC wafers through the New York Power Electronics Manufacturing Consortium (“NY-PEMC”) Advanced Technology Silicon Carbide Line (“SiC Line”) at the Albany Nanotech Fuller Road campus (the “NY-PEMC Program”).

The Cree Marcy Facility will be located on a portion of a larger 322.56 acre parcel that is presently ground leased to Fort Schuyler Management Corporation (“FSMC”) from the State University of New York (“SUNY”). FSMC currently ground subleases such larger parcel to the Economic Development Growth Enterprises Corporation (“EDGE”) pursuant to a Ground Sublease dated May 1, 2010 (the “FSMC-EDGE Original Ground Sublease”). The FSMC-EDGE Original Ground Sublease has enabled EDGE to act as the lead developer to make the site ready for use by one or more semiconductor manufacturing companies, nanotechnology firms and/or other high end users. As part of the NY-Cree Project, approximately 53.76 acres of the total 322.56 acre parcel will be the subject of a new sublease between FSMC and EDGE, and, in turn, EDGE will ground sub-sublease such portion to Cree, together with an adjoining 1.49 acre parcel owned by EDGE.

The NY-Cree Project involves the collaboration with Cree of multiple parties including FSMC, Fuller Road Management Corporation (“FRMC”), SUNY, EDGE, the Research Foundation for SUNY (“Foundation”) and New York State Urban Development Corporation d/b/a Empire State Development (“ESD”). Pending the finalization of the various agreements necessary to advance the NY-Cree Project and in order to avoid delays in its construction schedule, Cree requested and was granted access to the site pursuant to a license agreement to perform initial construction work in order to avoid delays in its construction schedule. FSMC Board Resolution Nos. 190 and 191 authorized FSMC to grant consent to such access and authorized approval of associated agreements, including a guaranty agreement and escrow agreement pursuant to which Cree established an escrow account in the amount of \$10 million as security for its obligations under the license agreement and the guaranty agreement. The escrow and guaranty agreements will remain in effect until the NY-Cree Project is fully completed.

NY-Cree Project Agreements

The NY-Cree Project involves the collaboration of all parties pursuant to the following agreements.

1) NY-PEMC Agreement – This agreement by and among the Foundation, SUNY and Cree provides among other things that (A) Cree will gain access to the NY-PEMC facilities at the Albany Nanotech Campus for purposes of, among other things, facilitating further research and development in and to, and fabrication of SiC wafers; (B) title to certain transferrable SiC Line Tools will be transferred from the Foundation to Cree so that Cree may remove such transferrable SiC Line Tools from the Albany campus and install them in the new Cree Marcy Facility once constructed; and (C) Cree and SUNY will establish certain additional educational, curriculum development and research collaborations.

2) Grant Disbursement Agreement – This agreement by and between ESD and Cree provides, among other things, for partial funding by ESD of Cree’s construction of the Cree Marcy Facility and purchase of tools, as well as the terms and conditions for Cree’s commitments related to the project, including (A) the creation of 614 new jobs during the first eight years of the project; and (B) investment in research and development expenses at the facility or at the Albany Nanotech Campus up to \$30 million during the first ten years of the project.

3) FSMC-EDGE Ground Sublease – This is a new ground sublease by and between FSMC and EDGE (“FSMC-EDGE Ground Sublease No. 2”) whereby FSMC and EDGE agree that approximately 53.76 of the 322.56 acres currently subleased by EDGE from FSMC pursuant to the FSMC-EDGE Original Ground Sublease is released from the FSMC-EDGE Original Ground Sublease and is to be subleased to EDGE pursuant to the FSMC-EDGE Ground Sublease No. 2. Such released parcel is to be specifically sub-subleased to Cree by EDGE for construction of the Cree Marcy Facility. Carving out this portion of the premises from the FSMC-EDGE Original Ground Lease enables the FSMC-EDGE Ground Sublease No. 2 and the EDGE-Cree Ground Sub-Sublease to address the same parcel of land and ensure clarity and consistency in relevant provisions.

4) EDGE-Cree Ground Sub-Sublease – This sub-sublease agreement between EDGE and Cree provides for Cree’s sublease of the approximately 53.76 acres described above and lease of the 1.49 acres described above (total of 55.25 acres) for construction of the Cree Marcy Facility and related buildings (the “EDGE-Cree Ground Sub-Sublease”).

5) FRMC-Cree Office Lease Agreement - This lease agreement between FRMC and Cree provides for Cree’s lease of certain office space on the Albany Nanotech Campus in conjunction with its work at the NY-PEMC facilities.

6) Memorandum of Understanding (MOU) - This is an agreement by and among the Foundation, SUNY, FRMC, FSMC, ESD and EDGE which sets forth the various understandings between and among the parties with respect to the projects with Cree.

FRMC Agreements

FRMC seeks authorization to approve and enter into the FRMC-Cree Office Lease Agreement (#5 above) and the MOU (#6 above).

FRMC-Cree Office Lease Agreement

The FRMC-Cree Office Lease Agreement provides that Cree will lease 3,186 square feet of office space in CESTM for two years, with an option to extend the lease beyond the two-year term if the NY-PEMC Agreement remains in full force and effect and Cree continues to need use of the space in furtherance of the NY-PEMC objectives.

Cree will pay \$23 per square foot, including operating expenses and utilities. Cree also will have use of office furniture and pay for parking. Cree has been occupying the space since September 23, 2019 pursuant to a Facility Use Agreement and will receive a rent credit for the first year of occupancy, at which time the rent will increase by 3%. Rent will continue to escalate by 3% annually.

The proposed lease represents a small fraction of the total building; therefore an appraisal of the fair market value of the asset is not practical. Staff has determined that lease meets fair market value based on other existing leases on the Albany Nanotech Campus.

MOU

The MOU between and among the parties sets forth certain mutual understandings concerning the conduct of the NY-Cree Project and the respective parties' coordination in furtherance of the project. With respect to FRMC, it provides a coordination among the parties with respect to any party declaring a default under any of the cross-default provisions contained in the various agreements. This coordination will ensure that other New York parties are notified in the event that Cree defaults under any of the agreements.

FRMC seeks authorization to approve and enter into the FRMC-Cree Office Lease Agreement and the MOU on the terms as summarized above.

The Finance Committee approved a resolution (1) approving and authorizing the Corporation to enter into the FRMC-Cree Office Lease Agreement and the Memorandum of Understanding each in the form substantially described herein and in the accompanying Resolution; (2) approving and authorizing the President and Treasurer, each of them without the other, on behalf of the Corporation, to execute, acknowledge and deliver the FRMC-Cree Office Lease Agreement and the Memorandum of Understanding, with such changes, variations, omissions and insertions as

the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval; (3) approving and authorizing the President and Treasurer, each of them without the other, on behalf of the Corporation, to take such actions as are necessary and appropriate, including the execution, acknowledgement and delivery of other documents and agreements as may be necessary or appropriate to implement and carry out the purposes and intents of the Resolution; and (4) recommending that the Board approve the same actions.

Requested Action:

Approve FRMC Resolution No. 170.

RESOLUTION OF THE BOARD OF DIRECTORS OF
FULLER ROAD MANAGEMENT CORPORATION

May 21, 2020

RESOLUTION NO. 170

AUTHORIZATION FOR AGREEMENTS WITH CREE, INC.

WHEREAS, the Fuller Road 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, on September 23, 2019, New York State announced a \$1 Billion public-private partnership (the "NY-Cree Project") with Cree, Inc. ("Cree") pursuant to which Cree will build, equip, occupy and operate a new, state-of-the-art 200mm capable silicon carbide ("SiC") and GaN wafer fabrication facility and related improvements (collectively, the "Cree Marcy Facility") on a portion of SUNY Polytechnic Institute's Marcy, New York campus; and

WHEREAS, a component of the NY-Cree Project involves the continuation of the success of the research, development and fabrication of SiC wafers through the New York Power Electronics Manufacturing Consortium ("NY-PEMC") Advanced Technology Silicon Carbide Line ("SiC Line") at the Albany Nanotech Fuller Road campus (the "NY-PEMC Program"); and

WHEREAS, the Cree Marcy Facility will be located on a portion of a larger 322.56 acre parcel that is presently ground leased to Fort Schuyler Management Corporation ("FSMC") from SUNY; and

WHEREAS, FSMC currently ground subleases such larger parcel to the Economic Development Growth Enterprises Corporation ("EDGE") pursuant to a Ground Sublease dated May 1, 2010 (the "FSMC-EDGE Original Ground Sublease") to enable EDGE to act as the lead developer to make the site ready for use by one or more semiconductor manufacturing companies, nanotechnology firms and/or other high end users; and

WHEREAS, as part of the NY-Cree Project, approximately 53.76 acres of the total 322.56 acre parcel will be the subject of a new sublease between FSMC and EDGE, and, in turn, EDGE will ground sub-sublease such portion to Cree, together with an adjoining 1.49 acre parcel owned by EDGE; and

WHEREAS, the NY-Cree Project involves the collaboration with Cree of multiple parties including FSMC, Fuller Road Management Corporation ("FRMC"), SUNY, EDGE, the Research Foundation for SUNY ("Foundation") and New York State Urban Development Corporation d/b/a Empire State Development ("ESD"); and

WHEREAS, pending the finalization of the various agreements necessary to advance the NY-Cree Project and in order to avoid delays in its construction schedule, Cree requested access to the site pursuant to a license agreement to perform initial construction work in order to avoid delays in its construction schedule; and

WHEREAS, FSMC Board Resolution Nos. 190 and 191 authorized FSMC to grant consent to such access and authorized approval of associated agreements, including a guaranty agreement and escrow agreement pursuant to which Cree established an escrow account in the amount of \$10 million as security for its obligations under the license agreement and the guaranty agreement; and

WHEREAS, the NY-Cree Project involves the collaboration of all parties pursuant to the following agreements:

NY-PEMC Agreement – An agreement by and among the Foundation, SUNY and Cree which provides among other things that (A) Cree will gain access to the NY-PEMC facilities at the Albany Nanotech Campus for purposes of, among other things, facilitating further research and development in and to, and fabrication of SiC wafers; (B) title to certain transferrable SiC Line Tools will be transferred from the Foundation to Cree so that Cree may remove such transferrable SiC Line Tools from the Albany campus and install them in the new Cree Marcy Facility once constructed; and (C) Cree and SUNY will establish certain additional educational, curriculum development and research collaborations (the “NY-PEMC Agreement”).

Grant Disbursement Agreement – An agreement by and between ESD and Cree which provides, among other things, for partial funding by ESD of Cree’s construction of the Cree Marcy Facility and purchase of tools, as well as the terms and conditions for Cree’s commitments related to the project (the “Grant Disbursement Agreement”).

FSMC-EDGE Ground Sublease No. 2 – A ground sublease by and between FSMC and EDGE (“FSMC-EDGE Ground Sublease No. 2”) whereby approximately 53.76 of the 322.56 acres currently subleased by EDGE from FSMC is released from the FSMC-EDGE Original Ground Sublease and is to be subleased to EDGE pursuant to the FSMC-EDGE Ground Sublease No. 2, with such released parcel to be specifically sub-subleased to Cree by EDGE for construction of the Cree Marcy Facility.

EDGE-Cree Ground Sub-Sublease – A sub-sublease agreement by and between EDGE and Cree which provides for Cree’s sublease of the approximately 53.76 acres described above and lease of the 1.49 acres described above (total of 55.25 acres) for construction of the Cree Marcy Facility and related buildings (the “EDGE-Cree Ground Sub-Sublease”).

FRMC-Cree Office Lease Agreement - An agreement by and between FRMC and Cree which provides for Cree’s lease of certain office space on the Albany Nanotech Campus in conjunction with its work at the NY-PEMC facilities (the “FRMC-Cree Office Lease Agreement”).

Memorandum of Understanding - An agreement by and among the Foundation, SUNY, FRMC, FSMC, ESD and EDGE which sets forth the various understandings between and among the parties with respect to the projects with Cree (the “Memorandum of Understanding”); and

WHEREAS, FRMC desires to enter into the FRMC-Cree Office Lease Agreement which provides that Cree will (1) lease 3,186 square feet of office space in CESTM for two years, with an option to extend the lease beyond the two-year term if the NY-PEMC Agreement remains in full force and effect and Cree continues to need use of the space in furtherance of the NY-PEMC objectives, and (2) pay \$23 per square foot, including operating expenses and utilities, with a 3% annual escalation and a rent credit for the first year of the lease; and

WHEREAS, FSMC desires to enter into the Memorandum of Understanding by and among the parties to set forth certain mutual understandings concerning the conduct of the NY-Cree Project and the respective parties’ coordination in furtherance of the project, including with respect to FRMC, providing for a coordination among the parties with respect to any party declaring a default under any of the cross-default provisions contained in the various agreements; and

WHEREAS, FRMC now seeks authorization to approve and enter into the FRMC-Cree Office Lease Agreement and the Memorandum of Understanding on the terms as summarized above and in the accompanying memorandum that was provided to the Board; and

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 and authorizes the Corporation to enter into the FRMC-Cree Office Lease Agreement and the Memorandum of Understanding each in the form substantially described herein and in the accompanying memorandum.

SECTION 2. The Board of Directors hereby approves and authorizes the President and Treasurer, each of them without the other, on behalf of the Corporation, to execute, acknowledge and deliver the FRMC-Cree Office Lease Agreement and the Memorandum of Understanding, with such changes, variations, omissions and insertions as the officer of the Corporation signing same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval.

SECTION 3. The Board of Directors hereby approves and authorizes the President and Treasurer, each of them without the other, on behalf of the Corporation, to take such actions as are necessary and appropriate, including the execution, acknowledgement and delivery of other documents and agreements as may be necessary or appropriate to implement and carry out the purposes and intents of this Resolution.

SECTION 4: EFFECTIVE DATE. This Resolution takes effect immediately.