



BOARD OF DIRECTORS MEETING*

April 21, 2020

4:00 PM

VIA Teleconference

AGENDA

1. Call to order
2. Approval of Minutes of April 3, 2020 Meeting
3. Finance Committee
 - FSMC Resolution No. 190 – Authorization for Access and Work by Cree, Inc. at the Marcy site
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
April 3, 2020 – Via teleconference**

Minutes

Directors present: Dr. Bahgat Sammakia - Chair, Michael Frame, Franklin Hecht, Kenneth Tompkins, Michael Abbott, Dr. Meng-Ling Hsiao, Joan McDonald, Christine Chung, and Alicia Barton.

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

Guests: Dr. Tod Laursen – SUNY, Michael Frame – SUNY Polytechnic Foundation, Inc., Emily Kunchala – RF SUNY, Monika Conley, John Schopfer and Barry Valentinsen from the Public Resources Financial Group, and Robert Ryan from Harris Beach.

1. Call to order

Chair Sammakia called the meeting of the Board of Directors of NY CREATES to order at 3:36 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 disclosed.

2. Finance Committee Report

FRMC Resolution No. 169 - Authorizing the Engagement of Manufacturers and Traders Trust Company and KeyBank National Association for a One-Year Extension of the Corporation's Debt and an Increase to the Corporation's Line of Credit

Michael Frame asked for a motion to approve Resolution No. 169.

Motion: Kenneth Tompkins
Second: Franklin Hecht

Michael Frame advised that Fuller Road Management Corporation (the “Corporation”) has approximately \$259,933,422 (as of April 29, 2020) that is scheduled to either mature or has a mandatory tender in early May 2020 (the “Prior Indebtedness”). The Prior Indebtedness consists of three borrowings made up of bonds and bank loans, the proceeds of which were used to finance the construction of specific buildings and improvements on the Fuller Road campus as detailed in Resolution No. 169.

The Corporation by Resolution No. 166 adopted on March 19, 2020, approved and authorized the issuance of taxable municipal bonds through the New York State Transportation Development Corporation to refinance the Prior Indebtedness as well as the Corporation’s Series 2005 bonds and all or a portion of the Corporation’s line of credit (the “Series 2020 Bonds”). However due to current unprecedented market conditions, the public offering and sale of the Series 2020 Bonds has been delayed. Given the mandatory tender and maturity dates in early May 2020 for the Prior Indebtedness, the Corporation determined to engage its existing lenders, Manufacturers and Traders Trust Company (“M&T Bank”) and KeyBank National Association (“Key Bank”) and collectively with M&T Bank, the “Lenders”) for a one-year extension of the Prior Indebtedness (the “Extension”).

M&T Bank has offered engagement letters for the Series 2014A&B Bonds and the 2012 Credit Facility (“Engagement Letters”) and Key Bank has offered a term sheet for the Series 2007 Bonds (“Term Sheet”), each setting forth certain extension and arrangement fees in addition to other annual administrative fees as detailed in Resolution No. 169. The term sheet provides that 50% of these fees are due and considered earned upon execution of the Engagement Letter with the balance paid and considered earned at the closing of the Extension (the “Extension Closing”).

The approval and execution of the Engagement Letters and Term Sheet together with the payment of the portion of the extension and arrangement fees due at the time of execution, will allow the Lenders to commence the underwriting process to refine the terms and conditions of the Extension and obtain credit and other required approvals. Upon completion of the underwriting, credit and other required approvals, and the drafting of the definitive documents containing the specific terms and conditions, the proposed Extension will be brought to the Corporation’s Board of Directors for approval prior to the Extension Closing.

The Corporation has a \$15 million unsecured line of credit pursuant to a Credit Agreement dated as of March 30, 2012 by and between the Corporation and M&T Bank as amended by an Amended and Restated Credit Agreement dated May 27, 2014 (the

“Line of Credit”). M&T Bank has offered to increase the Line of Credit to accommodate the Lender’s fees and other closing costs associated with the Extension.

Following extensive deliberations, including taking into account the current unprecedented market conditions, and upon the advice and recommendation of the Corporation’s financial advisors, the Finance Committee approved (1) proposed Board Resolution No. 169 (A) approving and authorizing the engagement of M&T Bank and Key Bank for a one-year extension of the Corporation’s Prior Indebtedness, including the payment of the Lenders’ fees in an amount not to exceed the amounts as presented herein, (B) increasing the Line of Credit up to \$5 million and (C) authorizing the execution and delivery of the Engagement Letters, Term Sheet and Line of Credit amendment, and (2) recommending that the Board approve the same actions.

Discussion: None.

Action Requested: Approve Resolution No. 169.

Following a roll call vote, the motion was unanimously approved.

3. New Business

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

4. 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.

5. 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.

6. Adjournment

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

Motion: Michael Frame

Second: Kenneth Tompkins

The meeting was unanimously approved and the meeting was adjourned at 3:51 PM.

Respectfully Submitted,

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

RE: Authorization for Access and Work by Cree, Inc. at the Marcy site (FSMC)

Background:

On September 23, 2019, New York State announced a \$1 Billion public-private partnership with Cree, Inc. (“Cree”) to build and equip a state of the art silicon carbide device wafer fabrication facility (fab) at the Marcy Nanocenter. The Marcy fab will be located on property presently ground leased to Fort Schuyler Management Corporation (“FSMC”) from the State University of New York (“SUNY”). FSMC, in turn, subleases a portion of the premises to the Economic Development Growth Enterprise Corporation (“EDGE”) to enable EDGE to act as the lead developer of a project at the Marcy site designed to make the site ready for use by one or more semiconductor manufacturing companies, nanotechnology firms and/or other high end users (the “Marcy Nanocenter Project”).

In order to advance the Marcy Nanocenter Project, EDGE is currently negotiating the terms of a ground sublease with Cree whereby Cree would lease a portion of the site on which to construct the fab. In addition, there are other associated agreements necessary to advance the project which are also currently being negotiated between and among several parties with respect to the Cree project. Once completed, certain of the agreements will be brought to the NYCREATES Board for action by FRMC and FSMC, which is anticipated to be in the next few weeks

To facilitate the continued development of the site pending the finalization and execution of the agreements, Cree has requested access to the site to perform initial construction work in order to avoid delays in its construction schedule. The granting of such access will allow Cree to remain on schedule toward its goal of completing the buildings and commencing installation of the manufacturing equipment by Spring 2021.

The license agreement between EDGE and Cree provides, among other things, that: (1) Cree has access to the premises immediately for the purpose of commencing the concrete pouring of the foundation and building floor slabs; (2) the access will terminate on the earlier to occur of the full execution and delivery of the EDGE-Cree sublease, a default of the license agreement or termination other than due to the full execution and delivery of the EDGE-Cree sublease, or May 11, 2020; (3) Cree has indemnified all involved parties, including FSMC and NY CREATES, from any damages arising from Cree’s access; (4) Cree will maintain appropriate insurance; and (5) if the license terminates for any reason prior to the execution of the EDGE-Cree sublease, Cree is obligated to restore the premises to the condition as required by FSMC and EDGE. In addition, Cree has entered into a guaranty agreement and established an escrow account in the

amount of \$10 million as security for its obligations under the license agreement and guaranty agreement.

The construction work taking place at the site is consistent with the Governor's recent Executive Orders pertaining to essential construction activities during the coronavirus pandemic restrictions. Appropriate safety precautions are being taken to ensure the safety of the workers.

The Finance Committee approved a resolution (1) authorizing the President of FSMC to consent to the license agreement between EDGE and Cree, finalize and execute the guaranty agreement, escrow agreement, and any other associated or necessary documents, and take such other actions as are necessary to effectuate the arrangement, and (2) recommending that the Board approve and ratify these same actions.

Requested Action:

Approve FSMC Resolution No. 190 authorizing and ratifying the Corporation's consent to the license agreement between EDGE and Cree dated April 17, 2020 as provided by the Corporation's President and approving the finalization, execution and delivery of the guaranty agreement, escrow agreement, and any other associated or necessary documents, and authorizing, empowering and directing the President and Treasurer, each of them without the other, to execute, acknowledge and deliver the guaranty agreement, escrow agreement, and any other associated or necessary documents, and take such other actions, as are necessary to effectuate this resolution.

RESOLUTION OF THE BOARD OF DIRECTORS OF
FORT SCHUYLER MANAGEMENT CORPORATION

April 21, 2020

RESOLUTION NO. 190

AUTHORIZATION FOR ACCESS AND WORK BY CREE, INC AT THE MARCY SITE

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, on September 23, 2019, New York State announced a \$1 Billion public-private partnership with Cree, Inc. (“Cree”) to build and equip a state of the art silicon carbide device wafer fabrication facility (fab) at the Marcy Nanocenter; and

WHEREAS, the Marcy fab which will be located on property presently ground leased to Fort Schuyler Management Corporation (“FSMC”) from the State University of New York (“SUNY”); and

WHEREAS, FSMC subleases a portion of these premises to the Economic Development Growth Enterprise Corporation (“EDGE”) to enable EDGE to act as the lead developer of a project at the Marcy site designed to make the site ready for use by one or more semiconductor manufacturing companies, nanotechnology firms and/or other high end users; and

WHEREAS, EDGE is currently negotiating the terms of a ground sublease with Cree, whereby Cree would lease a portion of the site on which to construct the fab; and

WHEREAS, other associated agreements are also currently being negotiated between and among several parties with respect to the Cree project and, once completed, certain of these agreements will be brought to the NY CREATES Board for action by FRMC and FSMC, which is anticipated to be in the next few weeks; and

WHEREAS, to facilitate the continued development of the site pending the finalization and execution of the agreements, Cree has requested access to the site to perform initial construction work in order to avoid delays in its construction schedule, thereby allowing Cree to remain on schedule toward its goal of completing the buildings and commencing installation of the manufacturing equipment by Spring 2021; and

WHEREAS, the license agreement between EDGE and Cree provides, among other things, that: (1) Cree has access to the premises immediately for the purpose of commencing the concrete pouring of the foundation and building floor slabs; (2) the access will terminate on the earlier to occur of the full execution and delivery of the EDGE-Cree sublease, a default of the license

agreement or termination other than due to the full execution and delivery of the EDGE-Cree sublease, or May 11, 2020; (3) Cree has indemnified all involved parties, including FSMC and NY CREATES, from any damages arising from Cree's access; (4) Cree will maintain appropriate insurance; and (5) if the license terminates for any reason prior to the execution of the EDGE-Cree sublease, Cree is obligated to restore the premises to the condition as required by FSMC and EDGE; and

WHEREAS, Cree also has entered into a guaranty agreement and established an escrow account in the amount of \$10 million as security for its obligations under the license agreement and guaranty agreement; and

WHEREAS, the Board of Directors desires to grant the requested access;

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

SECTION 1: The Corporation's Board of Directors hereby authorizes and ratifies the Corporation's consent to the license agreement between EDGE and Cree dated April 17, 2020 as provided by the Corporation's President.

SECTION 2. The Board of Directors hereby approves the finalization, execution and delivery of the guaranty agreement, escrow agreement, and any other associated or necessary documents.

SECTION 3. The Board of Directors hereby authorizes, empowers and directs the President and the Treasurer, each of them without the other, to execute, acknowledge and deliver the guaranty agreement, escrow agreement, and any other associated or necessary documents, and to take such other actions as are necessary to effectuate this resolution.

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