



BOARD OF DIRECTORS MEETING\*

Via Webex/Teleconference

April 22, 2022

2:00 p.m.

AGENDA

1. Call to order
2. Approval of Minutes of February 9, 2022 Meeting
3. NY CREATES Resolution No. 16 - Appointment of President (NY CREATES)
4. Finance Committee
  - FRMC Resolution No. 182 - Sale of Kiernan Plaza (FRMC)
  - Agreement with Wainschaf Associates, Inc. (FRMC)
  - Lease with General Control Systems, Inc. (FRMC)
  - Lease Amendment with IBM (FSMC)
  - Agreement for Independent Contractor (NY CREATES)
5. New Business
6. Public Comment
7. Next Board of Directors meeting: TBD
8. 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**

**February 9, 2022  
Via Webex and teleconference**

**Minutes**

Directors present: Dr. Douglas Grose (Chair), Kristin Proud (Vice Chair), Michael Abbott, Christine Chung, Heather Hage, Doreen Harris, Dr. Meng-Ling Hsiao, and Kenneth Tompkins

Excused Absence: Anita Brown and Joan McDonald

Staff: Patricia Arciero-Craig – Chief Administrative Officer and Acting General Counsel, Paul Kelly – Chief Operating Officer, Timothy Taylor – Chief Financial Officer, Scott Bateman – Treasurer, Jamie Cote – Compliance Officer, and Patricia Bucklin – Board Secretary

Guests: Michael Frame (SUNY Polytechnic Institute Foundation, Inc.) and Emily Kunchala (Research Foundation)

**1. Call to order**

Chair Grose called the meeting of the Board of Directors of NY CREATES to order at 11:04 am and introduced the directors and guests.

**2. Conflict of Interest**

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

**3. Minutes**

Chair Grose asked for a motion to approve the NY CREATES minutes of December 14, 2021.

Motion: Kristin Proud  
Second: Dr. Meng-Ling Hsiao

Discussion: None.

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

#### **4. Finance Committee Report**

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

##### **A. FSMC Resolution No. 203 - Assignment Transaction related to Athenex, Inc. (FSMC)**

Committee Chair Proud asked for a motion to consider and adopt a FSMC Resolution No. 203 approving and authorizing agreements with Athenex, Inc. and ImmunityBio, Inc.

Motion: Kenneth Tompkins

Second: Christine Chung

Committee Chair Proud advised that, in 2015, FSMC entered into that certain Agreement for Medical Technology Research, Development, Innovation, and Commercialization Alliance with Athenex, Inc. which, among other things, contemplated the construction of a 409,000 square foot pharmaceutical manufacturing facility which was ultimately located at 3805 Lakeshore Drive East, Dunkirk, New York. Pursuant to the Alliance Agreement, FSMC subsequently leased the manufacturing facility and certain related manufacturing equipment to Athenex for an initial term of 10 years, with an option to renew for an additional 10 years at a base rent of \$2 per year. Athenex is also responsible for paying all utilities, maintenance and operating expenses, municipal charges and real estate taxes levied against the facility.

Committee Chair Proud noted that Athenex also committed to spend \$1.520 billion on raw materials, labor, supplies, equipment, capital expenditures and other operating costs at the facility during the initial 10 year term. To exercise its renewal option, Athenex would have had to commit to make an additional \$1.5 billion in expenditures on operating costs. In addition, Athenex committed to add 450 permanent jobs during the first 5 years after completion of the manufacturing facility. Athenex's failure to meet its spending, employment or other obligations would constitute an event of default under both the Alliance Agreement and the Lease.

She further advised that Athenex provided notice to FSMC that Athenex has entered into an agreement to sell and assign to ImmunityBio, Inc. all of Athenex's rights and obligations with respect to the manufacturing facility, including those under the Lease and the Alliance Agreement. ImmunityBio, a late-clinical-stage immunotherapy company developing next-generation therapies for defeating cancers and infectious diseases, intends to commence manufacturing at the facility soon. Immunity Bio is a

Nasdaq-listed company with a market capitalization of approximately \$2.4 billion. The assignment transaction between Athenex and ImmunityBio is subject to FSMC's consent, which FSMC cannot unreasonably withhold.

Given the economic development benefits that will continue to be realized with the transaction, FSMC seeks approval to deliver its consent to the assignment transaction subject to and conditional upon the execution and delivery of the following agreements:

- (1) Consent and Release Agreement: FSMC seeks authorization to enter into an agreement which sets forth FSMC's consent to the Assignment Transaction subject to the execution of the below referenced Amendment to the Alliance Agreement and Amendment to the Manufacturing Facility Lease and addresses various other matters related to the Assignment Transaction.
- (2) Amendment to the Alliance Agreement: FSMC seeks authorization to enter into an amendment to the Alliance Agreement with Athenex to remove the references and obligations related to the Manufacturing Facility, including Athenex's investment and job creation commitments at the Manufacturing Facility, all of which will become the obligations of ImmunityBio pursuant to an amendment to the Manufacturing Facility Lease.
- (3) Amendment to the Manufacturing Facility Lease: FSMC seeks authorization to enter into an amendment to the Manufacturing Facility Lease with ImmunityBio to, among other things, incorporate the investment obligations and job creation commitments of ImmunityBio at the Manufacturing Facility.

The Finance Committee approved a resolution (1) approving and authorizing the Corporation to deliver its consent to the Assignment Transaction, enter into the Consent and Release Agreement and execute amendments to the Alliance Agreement and the Manufacturing Facility Lease on the terms stated in the memorandum provided to the Finance Committee in advance of the meeting; (2) approving and authorizing the President, Chief Financial Officer and Treasurer, each of them without the other, on behalf of the Corporation, to (i) execute, acknowledge and deliver the Corporation's consent and the aforesaid Consent and Release Agreement and amendments with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) take such other actions as are necessary or appropriate to implement and carry out the purposes and intents of the resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements; and (3) recommending that the Board approve the same actions.

Requested Action: Approve FSMC Resolution No. 203.

Discussion: None.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

**B. Lease Amendment with Air Liquide Electronics, U.S. LLP (FRMC)**

Committee Chair Proud asked for a motion to consider and adopt a lease amendment with Air Liquide Electronics, U.S. LLP.

Motion: Kenneth Tompkins  
Second: Christine Chung

Committee Chair Proud advised that Air Liquide is a company that provides gas and chemical maintenance for the cleanrooms. It currently leases 565 square feet of space in CESTM and 222 square feet of space in NanoFab North pursuant to a lease which expires on September 23, 2023. Under the proposed amendment, Air Liquide would lease 1,260 square feet of space in CESTM and 206 square feet of space in NanoFab North for a term that expires on or about June 30, 2027 (which date is dependent on the date of fit-up completion). Air Liquide would have the right to extend the term for two additional one year periods. Rent would be \$36.90 per square foot, including utilities and operating expenses, with annual increases of 3% per year.

The Finance Committee approved the resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

Requested Action: Approve a resolution (1) approving and authorizing the Corporation to enter into an amendment to the Amended and Restated Lease Agreement with Air Liquide Electronics, U.S. LP on the terms stated in the memorandum provided to the Board in advance of the meeting; and (2) approving and authorizing the President, Chief Financial Officer and Treasurer, each of them without the other, on behalf of the Corporation, to (i) execute, acknowledge and deliver the aforesaid lease amendment with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) take such other actions as are necessary or appropriate to implement and carry out the purposes and intents of the resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

Discussion: None.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

### **C. Lease with Lux Semiconductors, Inc. (FRMC)**

Committee Chair Proud asked for a motion to consider and adopt a resolution approving a lease with Lux Semiconductors, Inc.

Motion: Christine Chung  
Second: Doreen Harris

Committee Chair Proud advised that Lux, an advanced microelectronics startup founded by two SUNY Poly alums, seeks to lease 521 square feet of space in CESTM for a one year term at a base rent of \$25.52 per square foot. Lux would have the right to extend the term for up to two additional one year terms, with annual rent increases of 2% per year.

The Finance Committee approved the resolution described in the memorandum provided to the Board in advance of the meeting, including recommending that the Board approve the same actions.

Requested Action: Approve a resolution (1) approving and authorizing the Corporation to enter into a lease with Lux Semiconductors, Inc. on the terms stated in the memorandum provided to the Board in advance of the meeting; and (2) approving and authorizing the President, Chief Financial Officer and Treasurer, each of them without the other, on behalf of the Corporation, to (i) execute, acknowledge and deliver the aforesaid lease with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) take such other actions as are necessary or appropriate to implement and carry out the purposes and intents of the resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

Discussion: None.

Vote: Following a roll call vote, the motion was approved. There were no nays or abstentions.

### **5. New Business**

Chair Grose asked if there is any new business. There was none.

### **6. Public Comment**

Chair Grose asked if there is any comment from the public. There was none.

## **7. Schedule of Next Meeting**

Chair Grose 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 Grose asked for a motion to adjourn the meeting.

Motion: Kristin Proud

Second: Heather Hage

The motion was approved and the meeting was adjourned at 11:23 am.

Respectfully Submitted,

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Patricia K. Bucklin  
Secretary of the Board

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

**Background:**

Article VI, Sections 1 and 9 of the Bylaws of Fuller Road Management Corporation (“FRMC”), Fort Schuyler Management Corporation (“FSMC”), and NY CREATES authorize the Board of Directors (“Board”) to appoint officers of the respective corporations and fix a salary based on the recommendation of the Audit Committee. Article VI, Section 1 of the Bylaws of FRMC and FSMC provide that the officers of the member (i.e. NY CREATES) shall serve ex-officio as the officers of each corporation in the same office that such individuals hold with the member. Article VI, Section 1 of the Bylaws of NY CREATES provides that the officers of the NY CREATES shall be the President, Chief Financial Officer, Compliance Officer, General Counsel, Secretary and such additional officers as the Board may deem desirable.

The office of President became vacant on June 30, 2021 when then-President, Dr. Douglas A. Grose, resigned from the office of President and became Chair of the Board of Directors of NY CREATES. Following a thorough selection process, the selection committee recommended David Anderson to serve as President. NY CREATES now seeks to appoint David Anderson to the office of President, effective April 25, 2022, and to have the determination and establishment of the compensation for the office of President delegated to the Audit Committee.

**Requested Action:**

Approve NY CREATES Resolution No. 16.



RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
NEW YORK CENTER FOR RESEARCH, ECONOMIC ADVANCEMENT,  
TECHNOLOGY, ENGINEERING AND SCIENCE CORPORATION (d/b/a “NY CREATES”)

APRIL 22, 2022

RESOLUTION NO. 16

APPOINTMENT OF PRESIDENT

WHEREAS, the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a “NY CREATES”) (hereinafter the “Corporation”) Board of Directors is charged with appointing individuals to serve as officers of the Corporation and fixing their compensation upon the recommendation of the Audit Committee in accordance with Article VI, Sections 1 and 9 of the Corporation’s Bylaws; and

WHEREAS, Article VI, Section 1 of the Bylaws of FRMC and FSMC provide that the officers of the member (i.e. NY CREATES) shall serve ex-officio as the officers of each corporation in the same office that such individuals hold with the member; and

WHEREAS, the office of President became vacant on June 30, 2021 when then-President Dr. Douglas A. Grose resigned and became Chair of the Board of Directors of NY CREATES; and

WHEREAS, following a thorough selection process, the selection committee recommended David Anderson to serve as President; and

WHEREAS, the Corporation now seeks to appoint David Anderson to the office of President, effective April 25, 2022, and to have the determination and establishment of the compensation for the office of President delegated to the Audit Committee; and

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

**SECTION 1: APPOINTMENT OF PRESIDENT.** The Corporation’s Board of Directors hereby appoints David Anderson to the office of President effective April 25, 2022 to serve at the pleasure of the Board, with such compensation as shall be determined and established by the Audit Committee.

**SECTION 2: ESTABLISHMENT OF COMPENSATION.** The Corporation’s Board of Directors hereby delegates to the Audit Committee the determination and establishment of the appropriate compensation for the office of the President, as may be necessary or desirable from time to time.

**SECTION 3: DOCUMENTS AND CONTRACTS.** The Board of Directors approves and authorizes the Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (1) to execute, acknowledge and deliver any associated documents for such

appointment with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (2) to take such actions as are necessary or appropriate to implement and carry out the purposes and intents of the Resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

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

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

**Re: Sale of Kiernan Plaza, 575 Broadway, Albany, NY (FRMC)**

**Background:**

Fuller Road Management Corporation (“FRMC”) is the owner of Kiernan Plaza, an historic four-level structure at 575 Broadway, Albany that originally served as Union Station, Albany’s passenger rail station. The building consists of 111,693 square feet of space situated on a lot that is approximately 1.03 acres in size. In January, FRMC issued and publicly advertised a Request for Offers (“RFO”) for the sale of the property. Two bids were received. The highest bidder was Redburn Development Partners (“Redburn”) with a bid of \$1.25MM. FRMC now seeks authorization to sell the facility to Redburn and/or its affiliates for \$1.25MM.

Redburn advises that it plans to invest \$10MM to upgrade the facility. It has identified a large law firm as the potential tenant for the building, which will strengthen the nongovernmental base of occupants and lessees in Albany. The sale of the property will relieve FRMC of the need to invest in various capital improvements at the facility and the need to address the upcoming lease expirations of two large tenants in the facility. It also will enable FRMC to streamline its property holdings and focus on high-tech growth opportunities that better fulfill its mission.

In accordance with the Procurement and Acquisition and Disposition of Property policies, an appraisal of the property was conducted in 2021 and the property was appraised for \$4.225MM. While the bid offer is substantially lower than the value identified in that appraisal, there are several factors which mitigate this difference. First, the appraisal specifically states that it did not take into account major structural, mechanical or code related issues that may need to be addressed. In this regard, FRMC’s current budget includes \$1.515 MM for capital repairs. Moreover, one of the budgeted items provides for \$175K to study the scope of repairs which are required to the building’s facade, which are estimated to cost a minimum of \$1MM to complete. In addition, some of the windows and ironwork will need to be replaced, the cost of which has not yet been assessed. These capital improvements were not included in the appraisal and will cost a minimum of \$2.515MM to complete. Secondly, the appraisal noted that the property is highly unique; there are no truly comparable sales and there is nothing like the property on a regional basis. The appraiser noted that this resulted in a highly subjective appraised value. In completing his appraisal, the appraiser reviewed four sales in downtown Albany and adjusted the price per square foot for various factors, including curb appeal. Depending on the motivation of the parties, the appraisal noted that a reasonable range of value is 20%, which would place the range at \$3,800,000 - \$4,650,000. Subtracting the capital improvements of \$2.515MM from \$3.8MM, the low end of the appraisal, produces a market value of \$1.285MM, which is close to the highest bid received. Finally, generally the highest bid received through a sale process is

considered market value. For these reasons, we believe the Redburn offer constitutes the fair market value of the property, and a sale to Redburn would further (i) a public purpose by ensuring that a historic building is given new life and a private local business remains in downtown Albany; and (ii) FRMC's mission by streamlining FRMC's holdings such as to allow FRMC to focus on high-tech growth opportunities that better fulfill its mission.

### **Compliance with Acquisition and Disposition of Real Property Policy:**

The Acquisition and Disposition of Real Property Policy requires that certain information be provided for the disposition of real property through a negotiation and for less than fair market value. As noted above, FRMC believes that the proposed sale is one for fair market value. However, in the interests of providing all relevant information to the Board, we have set forth below the information required by the policy for a less than fair market sale:

(1) Full Description of the Asset – The property consists of a building at 575 Broadway, Albany NY that is 111,693 square feet in size and includes 88,294 square feet of office space on the first, second and third floors and 20,000 square feet of data center space on the sub-level floor. It is located on a parcel of land that is approximately 1.03 acres in size.

(2) Appraisal of the Fair Market Value of the Asset – Based on an independent appraisal, the appraised value of the property is \$4.225MM. The appraisal noted that the property is unique and, based on the appraiser's research and local knowledge, not only are there no truly comparable sales, but there is nothing like the subject property on a regional basis. As a result, it was necessary for the appraiser to cite sales less similar and with more subjective adjustments than would typically be desired. Depending on the motivation of the parties, the appraiser assigned a range of value of 20%, which would place the range at \$3,800,000 - \$4,650,000. Additionally, as set forth above, the appraiser noted that the appraised value is highly subjective and did not take into consideration required capital improvements.

(3) Description of the Transfer and a Reasonable Statement of the Kind and Amount of Benefit to the Public Resulting from the Transfer – The sale will enable investments into the building to restore and enhance a historic and architecturally significant centerpiece in downtown Albany which will yield economic development benefits to the City. The purchaser intends to invest \$10MM into the facility and expects to attract a large law firm as the single use tenant for the building. This will enable the City to retain the law firm in the downtown area rather than having it relocate to the suburbs, with resultant economic benefits to the entire surrounding area. The purchaser notes its extensive experience restoring buildings, citing its recently completed \$85MM investment into the nearby long vacant Kenmore Hotel, and its current work to complete, by the end of 2023, a \$100MM investment in two buildings in the Warehouse District in downtown Albany.

(4) Statement of the Value to be Received Compared to the Fair Market Value – FRMC will receive \$1.25MM in exchange for the property. Additionally, Redburn will invest \$10MM into the building and help to revive the neighborhood and boost the local economy with a large single use tenant. The sale will relieve FRMC of the need to make over \$2.515MM in capital repairs to the building and need to address the upcoming lease expirations of two large tenants in the building. It also will enable FRMC to streamline its property holdings and focus on high-tech growth opportunities that better fulfill its mission.

(5) Names of Private Parties Participating in the Transfer – Redburn Development Partners and/or its affiliates.

(6) Names of Private Parties who have made an Offer for such Asset – There was one other bid for \$700K.

(7) Statement of Disposal by Negotiation – NA

(8) Approvals – Chief Operating Officer Paul Kelly and Interim Contracting Officer Scott Bateman approve this proposed transfer. In addition, Hope Knight, President and Chief Executive Officer - Designate of Empire State Development consents to the transfer.

The Finance Committee approved a resolution (1) determining that, based upon the economic benefits to be derived from the transfer and the other factors enumerated above, there is no reasonable alternative to the proposed transfer of the property to Redburn Development Partners that would achieve the same purpose as such transfer, and approving and authorizing the sale of Kiernan Plaza by FRMC to Redburn Development Partners for \$1.25MM; (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation (i) to execute, acknowledge and deliver any associated agreements for such transfer 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, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements; and (3) recommending that the Board approve the same actions.

**Requested Action:**

Approve FRMC Resolution No. 182.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

April 22, 2022

RESOLUTION NO: 182

AUTHORIZATION TO ENTER INTO A REAL PROPERTY PURCHASE AND SALE  
AGREEMENT AND TAKE RELATED ACTIONS

WHEREAS, the Fuller Road Management Corporation (the “Corporation”) was formed for the purpose of establishing the infrastructure to help 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, selling, leasing, constructing, developing, and managing facilities; and

WHEREAS, the Corporation is the owner of Kiernan Plaza, an historic four-level structure at 575 Broadway, Albany that consists of 111,693 square feet of space situated on a lot that is approximately 1.03 acres in size; and

WHEREAS, in January 2022, the Corporation, in an effort to streamline its holdings and focus on high-tech growth initiatives, issued and publicly advertised a Request for Offers for the sale of the property and facility in accordance with its Procurement Guidelines Policy and its Acquisition and Disposition of Real Property Policy; and

WHEREAS, the Corporation received two bids for the property and, having conducted the bid process in accordance with its Procurement Guidelines Policy and its Acquisition and Disposition of Real Property Policy, desires to sell the property to the highest bidder, Redburn Development Partners and/or its affiliates for \$1.25MM, which is deemed to be the fair market value of the property based on the (i) Request for Offers process (ii) appraisal, (iii) significant further facility-related repairs that have been identified and were not taken into consideration in the appraisal; and (iv) the appraiser’s acknowledgement that the appraisal is more subjective than customary due to the uniqueness of the property; and

WHEREAS, the Corporation believes that the proposed sale is one for fair market value; however in the interests of providing all relevant information, the information required by the Acquisition and Disposition Policy for a less than fair market sale has been set forth in the memorandum provided to the Board of Directors in advance of the meeting; and

WHEREAS, the Interim Contracting Officer, Scott Bateman, approves the terms and conditions of the sale.

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

**SECTION 1: APPROVAL AND AUTHORIZATION FOR SALE OF THE PROPERTY.** The Board of Directors hereby approves and authorizes the sale of Kiernan Plaza by the Corporation to Redburn Development Partners and/or its affiliates for \$1.25MM.

**SECTION 2: APPROVAL OF TRANSFER.** The Board of Directors hereby determines that, based upon the economic benefits to be derived from the transfer of the property to Redburn Development Partners and/or its affiliates, and the other factors enumerated in the memorandum provided to the Board in advance of the meeting, there is no reasonable alternative to the proposed transfer that would achieve the same purpose as such transfer.

**SECTION 3: DOCUMENTS AND CONTRACTS.** The Board of Directors approves and authorizes the President, Treasurer and Chief Financial Officer , each of them without the other, on behalf of the Corporation, (1) to execute, acknowledge and deliver the associated documents for such transfer of property 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, and (2) to take such actions as are necessary or appropriate to implement and carry out the purposes and intents of this Resolution, including without limitation, the execution, acknowledgement and delivery of other documents and agreements.

**SECTION 4:** This Resolution shall take effect immediately.

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

**RE: Authorization for Increase in Maximum Cost for Agreement with Wainschaf Associates, Inc. (FRMC)**

**Background:**

At its meeting on September 30, 2021, the Board approved a lease amendment with IBM and two related agreements to enable IBM to repurpose 780 square feet of office space for a lab expansion project in the NanoFab East Building. Specifically, the Board approved (1) a lease amendment with IBM to provide that FRMC will provide design and construction services and to modify the description of the leased premises and rent to be charged upon completion of the lab expansion project; (2) an agreement between FRMC and Wainschaf Associates, Inc. to provide design and construction services to the extent of grant funding for the project; and (3) an agreement between FRMC and the Research Foundation that provides reimbursement from grant funding to FRMC for the design and construction services for the lab.

The agreement with Wainschaf provided that design and construction costs are not to exceed the estimated maximum cost of \$420,000, that the maximum cost shall be further adjusted upon completion of the design process, and that any increase beyond \$420,000 would require further Board approval. The design work has now been completed, thereby enabling the costs for materials and subcontractors to be identified. At this time, the new cost is expected to be \$673,183. Given the constant increases in construction prices and costs for materials, FRMC seeks authorization for a maximum cost of up to \$865,000. This will enable FRMC to address any additional cost increases that might arise before the completion of the project and facilitate timely completion of the project.

The Finance Committee approved a resolution (1) approving and authorizing the Corporation to authorize a maximum cost of up to \$865,000 for the design and construction services in the agreement with Wainschaf; (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid increase in maximum cost with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intents of the resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements; and (3) recommending that the Board approve the same actions.



**Requested Action:**

Approve a resolution (1) approving and authorizing the Corporation to authorize a maximum cost of up to \$865,000 for the design and construction services in the agreement with Wainschaf; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid increase in maximum cost with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intents of the resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

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

**Re: Lease with General Control Systems, Inc. (FRMC)**

- 1) **Description of Property:** 251 Fuller Road, Albany, NY; CESTM Building, 1st floor office space.
- 2) **Tenant:** General Control Systems, Inc. provides various services to the semi-conductor industry, including instrumentation and control engineering as it pertains to toxic gas monitoring, clean room environmental controls, tool installation controls, and infrastructure. It has leased 433 square feet in CESTM since May 2012.
- 3) **Lease Terms:** General Control Systems seeks to lease new space in CESTM that consists of 1,862 square feet for a term expiring on December 31, 2026. The tenant will pay \$23.50 per square foot for the partial year ending on December 31, 2022 and \$24.09 for the first full lease year ending December 31, 2023, with a 2.5% increase each year thereafter. The tenant also will pay parking fees. Rent includes utilities and operating expenses. The tenant will have an option to extend the lease for up to two additional 12-month terms.
- 4) **Fair Market Value:** 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 the lease meets fair market value based on other existing leases on the Albany Nanotech Campus.
- 5) **Associated Costs for Site Preparation:** FRMC will provide a \$60,000 fit-up allowance.
- 6) **Associated Costs of Lease:** None.
- 7) **Finance Committee:** The Finance Committee approved a resolution (1) approving and authorizing the Corporation to enter into a lease with General Control Systems, Inc. on the terms stated above; (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid lease 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, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements; and (3) recommending that the Board approve the same actions.
- 8) **Action Requested:** Approve a resolution (1) approving and authorizing the Corporation to enter into a lease with General Control Systems, Inc. on the terms stated above; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of

them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid lease 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, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

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

**Re: Proposed Lease Amendment with IBM (FSMC)**

- 1) **Description of Property:** 562 Main St. a/k/a 40 Fountain Plaza, Buffalo, NY; office space
- 2) **Tenant:** IBM currently leases 103,099 square feet of office space in condominiums owned by FSMC in an office building at 562 Main Street in Buffalo, NY. The lease commenced in 2015, the term expired on September 15, 2021 and, thus pursuant to the lease, IBM is currently a month-to-month tenant.
- 3) **Lease Terms:** IBM seeks to amend the lease to extend the term and decrease the space leased. As amended, the lease will (i) include 43,027 square feet of space for a term expiring on September 15, 2023, with an option to extend for two years; and (ii) require tenant to pay annual rent of \$1,875,000. The new rental rate includes operating expenses, utilities, taxes, condominium fees and related costs, and landlord’s insurance. The lease also includes a reconciliation of certain charges and payments as follows: (1) the tenant will pay \$156,250 per month for the period from September 16, 2021 to the effective date of the amendment, and (2) the tenant will receive credits in the amount of (i) \$276,662.11 as a reconciliation of additional rent already paid by tenant for calendar year 2020, and (ii) \$49,104.24 as a result of tenant’s overpayment of additional rent for the period of July 1, 2021 through September 15, 2021.
- 4) **Fair Market Value:** 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 the lease meets fair market value based on other existing leases in the area.
- 5) **Associated Costs for Site Preparation:** None.
- 6) **Associated Cost of Lease:** None.
- 7) **Finance Committee:** The Finance Committee approved a resolution (1) approving and authorizing the Corporation to enter into a lease amendment with IBM on the terms stated above; (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid lease amendment with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements; and (3) recommending that the Board approve the same actions.

**8) Action Requested:** Approve a resolution (1) approving and authorizing the Corporation to enter into a lease amendment with IBM on the terms stated above; and (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid lease amendment with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intent of this resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.

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

**RE: Authorization for Agreement with Independent Contractor (NY CREATES)**

**Background:**

The U.S. Federal Government desires to revive semiconductor research and development (“R&D”) in the United States and, in furtherance thereof, has passed the \$52B CHIPS for America Act as part of the FY 2021 National Defense Authorization Act and other pieces of legislation. NY CREATES, due to its infrastructure and history of public private partnerships, is uniquely positioned to support the Federal Government’s desire to focus on semiconductor R&D and is working with its affiliates, committed semiconductor industrial partners, academic institutions and national laboratories to support this initiative (collectively, the “Partners”). Specifically, this involves completing a submission to the U.S. Federal Government, in response to a request for proposals, for the National Semiconductor Technology Center (“NSTC”) and the Advanced Manufacturing Program (“NAMPAP”) with R&D locations throughout the US (including one at the Albany Nanotech Complex) and headquartered in New York State.

To provide dedicated expertise and leadership for this work, NY CREATES seeks to hire Dr. Douglas Grose as an independent contractor to work with the Partners in structuring, directing and implementing the work necessary to complete a submission that will serve to establish the NSTC and NAMPAP. Dr. Grose, who currently is serving as Chair of NY CREATES, FRMC and FSMC and previously served as their President, is uniquely suited to serve in this critical role guiding NY CREATES and its partners in furtherance of their objective to support the Federal Government and provide the requested services. Dr. Grose would resign from his position as Chair of the three Corporations effective April 23, 2022, prior to entering into an independent contractor agreement with NY CREATES. The term of the agreement with Dr. Grose would be for six months beginning on April 25, 2022 and could be extended upon agreement of the parties. Dr. Grose would be paid \$140,000 for his services. Dr. Grose is not taking part in any deliberations or vote by the Finance Committee and the Board. Given Dr. Grose’s extensive leadership experience, technical expertise, and familiarity with NY CREATES and industry and academic partners, NY CREATES believes that this is a fair and reasonable arrangement that is in the best interests of the Corporation and that there is no reasonable alternative that would accomplish the intended purpose.

The Finance Committee approved a resolution (1) approving and authorizing the Corporation to enter into an agreement with Dr. Douglas Grose as an independent contractor in the amount of \$140,000 on the terms stated in the memorandum provided to the Committee in advance of the meeting; (2) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid agreement with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intents of the resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements; and (3) recommending that the Board approve the same actions.

**Requested Action:**

Approve a resolution (1) determining that the agreement to engage Dr. Douglas Grose as an independent contractor on the terms stated above is fair and reasonable and in the best interests of the Corporation and that there is no reasonable alternative that would accomplish the intended purpose; (2) approving and authorizing the Corporation to enter into an agreement with Dr. Grose as an independent contractor in the amount of \$140,000 on the terms stated above; and (3) approving and authorizing the President, Treasurer and Chief Financial Officer, each of them without the other, on behalf of the Corporation, (i) to execute, acknowledge and deliver the aforesaid agreement with such changes, variations, omissions and insertions as the officer of the Corporation signing the same shall approve, the execution thereof by such officer to constitute conclusive evidence of such approval, and (ii) to take such actions as are necessary or appropriate to implement and carry out the purposes and intents of the resolution, including without limitation the execution, acknowledgement and delivery of other documents and agreements.