



## BOARD OF DIRECTORS MEETING

February 22, 2017

3:30 pm

NFE 2107

### AGENDA

1. Call to order
2. Welcome and Introductions
3. August 3, 2016 FRMC meeting minutes
4. Empire State Development – Howard Zemsky, President and CEO
5. Overview of Governance Reforms – Chair, Michael Frame
6. Resolution 130 - Adoption of Audit Committee Charter and Appointment of Audit Committee
7. Resolution 131 - Appointment of Finance Committee
8. Resolution 132 – Appointment of Fuller Road President
9. President's Report
  - Adoption of Board Policies:
    - Resolution 133 – Acquisition and Disposition of Real Property Policy
    - Resolution 134 – Conflicts of Interest and Related Party Transaction Policy
    - Resolution 135 – Procurement Guidelines Policy
    - Resolution 136 – Records Access Policy
    - Resolution 137 – Whistleblower Policy and Procedures
    - Resolution 138 – Risk Management and Insurance Policy
    - Resolution 139 – Debt Management Policy
10. Audit Committee Report
11. New Business
12. Public Comment
13. Adjournment
14. Next quarterly Board of Directors meeting: TBD



## BOARD OF DIRECTORS MEETING

August 3rd, 2016

3:30 pm

NFE 2107

### MINUTES

Directors present: Karen Murphy (Chair), Robert Blackman, Michael Castellana, Robert Samson, Joan McDonald, John Hudacs, John Cavalier (via teleconference), RoAnn Destito (via teleconference)

President: Jerry Barber

CNSE Staff: Carl J. Kempf, Deborah Reichler, Cheryl Casey-Rose, Pat Bucklin, Scott Bateman

Guests: Paul Kutey (Research Foundation), Anthony LaPolla (SUNY Poly Foundation), members of the public

1. Call to Order: The meeting of the Board of Directors of Fuller Road Management Corporation (FRMC) was called to order at 3:35 pm by Chair Karen Murphy. She noted that the required quorum (six members) was present.

2. Chair's Report – Karen Murphy

- Recognition of Open Meeting – Chair Murphy stated that, in the interest of transparency the Board is adopting practices to guide it in conducting our Board meetings open to the public and in doing so welcomed all that were in attendance at today's meeting.
- New FRMC website – Chair Murphy advised that FRMC has a new website at [www.frmc.us](http://www.frmc.us) and showed the homepage on a screen and asked for Board members' input.
- Board Member Introduction – Chair Murphy asked Board members and executive staff to introduce themselves and give a brief biography. She gave biographies for Brad Johnson, who was unable to attend, and RoAnn Destito, who was joining by phone later.
- Review and Approval of 5/4/16 FRMC quarterly meeting minutes – With no changes requested, the minutes were unanimously approved.
- Review and Approval of 6/21/16 FRMC Annual Plan meeting minutes – With no changes requested the minutes were unanimously approved.
- First order of business – Resolution 129 – Approval and Authorization for the Selection of a Preferred Candidate for Corporation's Preferred Qualified Developer and/or Construction

Contractor for SUNY Poly Student Housing. Chair Murphy made a motion for the Board to approve Resolution 129 to accept management's recommendation to approve the selection by the evaluation committee of the Whiting Turner Team (Whiting Turner, EYP and BBL) as the preferred candidate to work with the FRMC in connection with the design and implementation of the Student Residence Facility. Michael Castellana seconded the motion. Chair Murphy then asked President Barber to explain the bid process that was followed.

3. President's Report – Jerry Barber

- Mr. Barber stated that FRMC followed 29 key steps in the procurement process for the student housing facility to ensure accountability. He provided a list of these steps on a screen and explained the key elements of the process. Board member RoAnn Destito, Commissioner of the Office of General Services, joined the meeting by phone to explain her review and participation in the process and her conclusion that it was a good procurement process, well executed, done fairly and looked at in an objective way. Mr. Barber stated that eight proposals were received and, after review, four bidders were invited to deliver presentations to the evaluation committee. Robert Blackman asked if the four bidders who were not selected for presentations had been notified. Mr. Barber responded that none of the bidders had been notified to date but all would be informed after the meeting. John Hudacs commended the comprehensive nature of the process. Michael Castellana asked whether, given the business relationship between Columbia Development and BBL, Columbia had any involvement in the proposal. Mr. Barber responded that Columbia was not selected nor were they listed as a team member.

Chair Murphy asked for a vote and Resolution 129 passed unanimously.

Vote: 6 ayes, 0 nays, 0 abstentions.

4. Audit Committee Report – John Cavalier

- Chair John Cavalier advised that the committee recently met with KPMG and launched the audit for the 2015-16 year and all understand what is required. He noted that there have been clean audits for the last several years and he anticipates a clean audit for the 2015-16 year.

5. Finance Committee Report – John Hudacs

- John Hudacs gave the report at the request of Committee Chair, Brad Johnson, who was unable to attend. Mr. Hudacs advised that the committee is presently working on the refinancing of NFN and working with outside counsel to address potential legal issues that need to be resolved to move forward with the refinancing. He stated that this is a high priority for the committee. Chair Murphy asked if savings are anticipated with a refinancing. Mr. Hudacs responded yes. Mr. Castellana responded that the savings would be substantial in both the short term and long term and that, with rates at an all-time low, it makes sense to take advantage of that, noting that the timing is right.

6. Governance Committee – Karen Murphy

- Chair Murphy advised that a strategic planning session for Board members and executive staff took place on June 21st and was facilitated by Theresa Pardo, who is the Director at The Center for Technology and Government at University at Albany. She indicated that the first session focused on short term planning goals and that a follow-up session will be held to further define and clarify goals and enable FRMC to better serve SUNY Poly, the community and the State.

7. New Business – Karen Murphy

- Robert Blackman made a motion to discuss the issue of Pike, Co. walking off the Power Electronics Manufacturing Consortium (PEMC) project on the SUNY Poly Albany campus. Chair Murphy seconded the motion and asked Mr. Barber to address the issue. Mr. Barber stated that on July 26th Pike walked off of the PEMC project due to lack of payment. He advised that FRMC records indicated that approximately \$8 million of Pike invoices from 2/16 forward had been submitted to the Dormitory Authority of the State of New York (DASNY), the funding source for grants, for payment but are still under review. He stated that given the renewed urgency created by Pike suspending their work FRMC is working closely with DASNY to resolve all issues necessary to obtain the funding so that Pike can get paid and work can resume. Mr. Barber said that FRMC has obtained a list of items from DASNY that are needed to allow them to complete their review and release payments. Mr. Castellana asked if these are obligations of FRMC or DASNY. Mr. Barber stated that the obligations are with FRMC and the funding source is DASNY. Joan McDonald asked how the project schedule is impacted. Jerry Barber responded that he doesn't know the exact implications on the project schedule and that it's day to day slippage right now. John Hudacs asked if there is anything that the Board can do. After discussion, he suggested the following motion based on counsel's recommended language:

The Fuller Road Management Corporation would like to express how important the PEMC Silicon Carbide project is to supporting the SUNY Poly program with GE and express the urgency and need to pay our contractors on time to support this important program that helps to support jobs that are created through the program and to express urgency to get vendors paid on time. The Corporation would also like to emphasize the importance of working collaboratively with DASNY for concurrent review to expedite future payments.

The motion was seconded by Karen Murphy and passed unanimously.  
Vote: 6 ayes, 0 nays, 0 abstentions.

- Robert Samson made a motion to recognize FRMC President, Jerry Barber, as follows:

Jerry Barber has led Fuller Road Management and the Board of Directors with great distinction. Beyond his three years serving this board and over 36 years with the New York State Comptroller's Office he has been a dedicated public servant as evidenced by his work here and

also by his work at the NYS Comptroller's Office. The State is a better place because of Jerry's service and FRMC is a better corporation because of his contributions. Jerry is retiring in September and a search is underway for his replacement. Thank you for your service both here and to the State of New York.

Karen Murphy seconded the motion and it passed unanimously.  
Vote: 6 ayes, 0 nays, 0 abstentions.

Chair Murphy noted that two members of the Board will serve on the search committee for Mr. Barber's successor and information regarding the position will be made available on the website.

Chair Murphy stated that before the Public Comment period, she would propose a motion to concurrently adjourn the formal meeting after public comment and go into Executive Session and that there will be no further official business conducted or actions taken after the Public Comment period.

Chair Murphy then made a motion to adjourn after the Public Comment period and go into Executive Session for the purpose of information relating to and discussions regarding investigations and litigation as guided by paragraphs c and d of subdivision 1 of §105 of the New York State Open Meetings Law. The motion was seconded by Robert Blackman. Michael Castellana clarified that FRMC is not bound by the open meetings law but rather is using it as a guideline not as a requirement. CJ Kempf concurred that it is a guideline.

The motion was unanimously approved.  
Vote: 6 ayes, 0 nays, 0 abstentions.

9. Public comment period – Chair Murphy opened the floor to public comment, asking that comments be limited to one minute. Four people spoke. Chair Murphy stated because the meeting is not interactive, questions will be answered on the website.

10. Adjournment – The meeting adjourned at 4:31pm following public comment and prior to Executive Session.

Respectfully submitted,

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RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

February 22, 2017

RESOLUTION NO: 130

ADOPTION OF AUDIT COMMITTEE CHARTER AND APPOINTMENT OF DIRECTORS  
TO SERVE ON THE AUDIT COMMITTEE

WHEREAS, under Article IV, Section 1 of the Bylaws of Fuller Road Management Corporation (the "Corporation"), the Board of Directors is authorized to establish an Audit Committee governed by an Audit Committee Charter; and

WHEREAS, such Audit Committee shall consist of at least three (3) Directors, including at least one (1) Director nominated by each Member of the Corporation and one (1) at-large Director; and

WHEREAS, each Director serving on the Audit Committee shall be an "Independent Director" as defined under the New York Not-For-Profit Corporation Law and shall have the knowledge and experience appropriate and sufficient to undertake the duties and responsibilities of serving on the Audit Committee; and

WHEREAS, the Board of Directors desires to adopt an Audit Committee Charter and appointed qualified Directors to serve on the Audit Committee;

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

SECTION 1: The Corporation's Board of Directors hereby adopts the Audit Committee Charter, in the form of the Charter attached to this Resolution.

SECTION 2: The Corporation's Board of Directors hereby appoints the following qualified Directors to serve on the Audit Committee at the pleasure of the Board of Directors for a term of one (1) year and until his or her successor is elected:

1. Michael Breslin
2. Kristin Proud
3. Robert Samson
4. Kenneth Tompkins

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

CERTIFICATION

FULLER ROAD MANAGEMENT CORPORATION  
RESOLUTION NO: 130

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

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

IN WITNESS WHEREOF, I have signed this Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Name:

Title:

## **FULLER ROAD MANAGEMENT CORPORATION AUDIT COMMITTEE CHARTER**

### **PURPOSE**

The purpose of the Audit Committee (the "Committee") is to support the Board of Directors (the "Board") in fulfilling its responsibility to oversee the Fuller Road Management Corporation's (the "Corporation") financial reporting, internal control processes, audit functions, and compliance program.

### **COMMUNICATIONS**

Any and all communications or inquiries by or on behalf of the Committee shall be made by the Committee as a whole through its Chair, the Secretary, the President of the Corporation, or the President's Delegate(s) to the Committee and not by individual Committee members.

### **COMMITTEE MEMBERSHIP AND MEETINGS**

The Committee meetings shall be organized and attended by the Corporation's Compliance Officer. The Compliance Officer shall take the minutes of each Committee meeting and present those minutes to the Committee for approval at a subsequent Committee meeting. The Committee must be comprised of Directors who are independent as defined by the New York Not-for-Profit Corporation Law. The Committee shall be comprised of not less than three (3) nor more than five (5) Directors. The Committee's composition will meet the following requirements:

1. Members shall have no relationship to the Corporation that may interfere with the exercise of their independence from the Corporation and the Corporation's management ("Management");
2. Members shall be financially literate or shall gain a reasonable level of financial literacy sufficient for the Corporation's needs within a reasonable period of time after appointment to the Committee; and
3. At least one member of the Committee must have accounting or related financial expertise.

The Committee shall meet at least once annually. Regular meetings of the Committee shall be held in conjunction with the Corporation's Board meetings. Additional meetings may be held at the call of the Committee Chair or a quorum of the Committee members. Meetings may, at the discretion of the Committee, include members of Management, independent consultants, and such other persons as the Committee shall determine.

The Committee shall fix its own rules of procedure, which shall be consistent with the By-Laws of the Corporation.

### **DUTIES AND RESPONSIBILITIES**

The Committee will perform its duties in accordance with the Corporation's mission. The Committee's responsibilities shall be limited to undertaking the following:

1. Financial statements and state sponsored funds:
  - Discuss the results of the annual audits with the independent auditors, including review of the implementation plan for any recommendations provided by the independent auditors, and report these results to the Board.



2. Independent external audits:

- a. Approve the selection, compensation, other terms of engagement, and termination of the Corporation's independent auditors performing external audits of the Corporation's financial Statements; and
- b. Review the agreements with external auditors for unreasonable provisions or potential conflicts that could impair the auditor's independence.

3. Internal audits:

- a. Review internal audit reports and discuss audits with internal auditors; and
- b. Monitor if the Corporation is implementing the internal auditors recommendations in a timely manner.

4. Compliance:

- a. Review the Corporation's compliance and enterprise risk management programs for consistency with industry norms and standards and regulatory requirements with the Corporation's Compliance Officer;
- b. Review the Corporation's program for effectively managing policies and procedures related to ethics, conflicts of interest, fraud, and internal controls with the Corporation's Compliance Officer;
- c. Reasonably ascertain that the Corporation has appropriate confidential mechanisms for individuals to report suspected fraud, corruption, criminal activity or conflicts of interest or abuse by directors, officers, or employees of the Corporation or any persons having business dealings with the Corporation;
- d. Reasonably ascertain that the Corporation has procedures for the receipt, retention, investigation and/ or referral of complaints or concerns such as those described in (c) above;
- e. Review the management and coordination of special investigations conducted by the Corporation's Compliance Officer or Legal staff and provide reasonable oversight as needed; and
- f. Oversee the policies governing conflicts of interest and related party transactions and management of potential conflicts of interest or related party transactions by members of the Board and the Corporation.

5. Material Litigation and Legal Matters:

Review reports of material litigation and other material legal issues presented by the Corporation's General Counsel or Management and determine whether these matters are being managed appropriately.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

February 22, 2017

RESOLUTION NO: 131

APPOINTMENT OF DIRECTORS TO SERVE ON THE FINANCE COMMITTEE

WHEREAS, under Article IV, Section 1 of the Bylaws of Fuller Road Management Corporation (the "Corporation"), the Board of Directors is authorized to establish a Finance Committee governed by a Finance Committee Charter; and

WHEREAS, such Finance Committee shall consist of at least three (3) Directors, including at least one (1) Director nominated by each Member of the Corporation and one (1) at-large Director; and

WHEREAS, the Board of Directors adopted a Finance Committee Charter on January, 26, 2009 and corrected it on August 4, 2010; and

WHEREAS, the Board of Directors desires to appoint qualified Directors to serve on the Finance Committee;

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

SECTION 1: The Corporation's Board of Directors hereby appoints the following qualified Directors to serve on the Finance Committee at the pleasure of the Board of Directors for a term of one (1) year and until his or her successor is elected:

1. Robert Blackman
2. Michael Frame
3. Franklin Hecht
4. Brad Johnson

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

CERTIFICATION

FULLER ROAD MANAGEMENT CORPORATION  
RESOLUTION NO: 131

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

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

IN WITNESS WHEREOF, I have signed this Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

February 22, 2017

RESOLUTION NO: 132

APPOINTMENT OF PRESIDENT OF THE CORPORATION

WHEREAS, under Article V, Section 1 of the Bylaws of Fuller Road Management Corporation (“the Corporation”), the Board of Directors is authorized to appoint a President; and

WHEREAS, the Corporation continues to develop, construct, and manage facilities and infrastructure in furtherance of its mission of promoting and securing educational, innovation, and commercialization operations in support of the State of New York and the State University of New York; and

WHEREAS, the Board of Directors desires to appoint a President for the Corporation and fix a salary for the President based on the recommendation of the Audit Committee as required by Article V, Section 8 of the Bylaws; and

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

SECTION 1: Robert Megna is hereby appointed by the Board of Directors to the office of President of the Corporation, effective immediately, to serve at the pleasure of the Board of Directors until such time as the Board of Directors directs otherwise. The President shall have the duties that are assigned, and the powers that are granted, under the Bylaws of the Corporation specifically to the office of the President and generally to an officer of the Corporation, in addition to such other duties and powers as may be assigned or granted to the President from time to time by the Board of Directors. The President is hereby appointed as a signatory for transactions drawn against the account or accounts of the Corporation.

SECTION 2: SECTION 2: The Board of Directors recognizes that Mr. Megna will serve as President of the Corporation and President of Fort Schuyler Management Corporation (FSMC) and, after a joint meeting of the Audit Committees of the Corporation and FSMC, each Audit Committee recommended the combined salary for President of the Corporation and FSMC of \$200,000. The Board also recognizes that Mr. Megna will work 50% time allocated equally to each Corporation and that his salary will be \$100,000, with \$50,000 to be paid by each Corporation. Based on the foregoing, the Board of Directors fixes Mr. Megna’s salary as President of the Corporation at \$50,000.

SECTION 3: EFFECTIVE DATE. This Resolution takes effect immediately.

CERTIFICATION

FULLER ROAD MANAGEMENT CORPORATION  
RESOLUTION NO: 132

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

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

IN WITNESS WHEREOF, I have signed this Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Name:

Title:

RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

FEBRUARY 22, 2017

RESOLUTION NO: 133

ADOPTION OF ACQUISITION AND DISPOSITION OF REAL PROPERTY POLICY

WHEREAS, the Board of Directors of the Fuller Road Management Corporation (the "Corporation") is charged with directing the management of the operations, property, affairs and concerns of the Corporation in a manner consistent with the Corporation's Bylaws; and

WHEREAS, in accordance with Article VIII, Section 1 of the Corporation's Bylaws, which requires the adoption of certain policies and procedures, and consistent with the responsible stewardship of the Corporation, the Board of Directors desires to adopt a policy regarding the acquisition and disposition of real property;

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

SECTION 1: The Corporation's Board of Directors hereby adopts the Guidelines and Procedures for the Acquisition and Disposition of Real Property, in the form of the policy attached to this Resolution.

SECTION 2: EFFECTIVE DATE. The Guidelines and Procedures for the Acquisition and Disposition of Real Property attached to this Resolution are effective immediately.

CERTIFICATION

FULLER ROAD MANAGEMENT CORPORATION  
RESOLUTION NO: 133

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

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

IN WITNESS WHEREOF, I have signed this Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Name:

Title:

**FULLER ROAD MANAGEMENT CORPORATION**  
**ACQUISITION AND DISPOSITION OF REAL PROPERTY POLICY**  
**GUIDELINES AND PROCEDURES FOR THE ACQUISITION**  
**AND DISPOSITION OF REAL PROPERTY**

**I. PURPOSE**

1.1 New York State and federal laws govern not-for-profit corporations' acquisition and disposition of real property, including those of Fuller Road Management Corporation ("Corporation"). These Guidelines and Procedures for the Acquisition and Disposition of Real Property ("Guidelines"), establish the procedures that detail the Corporation's policy and instructions regarding the acquisition and disposition of real property. In addition, the Guidelines provide a framework for the appointment of a contracting officer, dissemination and posting of this policy, purchase of real property, inventory and reporting of status of Corporation property, and the obligations of the Corporation with respect to pricing and method of disposition.

**II. DEFINITIONS**

2.1 **Acquire or Acquisition** means transfer of title or any other beneficial interest in real property to the Corporation in accordance with these Guidelines.

2.2 **Contracting Officer** means the officer or employee of the Corporation who shall be appointed by resolution of the Board of Directors ("Board") to be responsible for the acquisition and disposition of real property.

2.3 **Dispose or disposal** means transfer of title or any other beneficial interest in real property from the Corporation in accordance with these Guidelines.

2.4 **Fair Market Value** means the estimated dollar amount that a willing buyer would pay to a willing seller for the Property in an arms-length transaction in the appropriate marketplace and under similar circumstances.

2.5 **Property** means real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

2.6 **Relative** means a (i) spouse, ancestor, child (whether natural or adopted), grandchild, great-grandchild, sibling (whether whole or half-blood), (ii) spouse of a child (whether natural or adopted), grandchild, great-grandchild or sibling (whether whole or half-blood), or (iii) a domestic partner.

**III. DUTIES OF THE CORPORATION**



3.1 The Corporation shall have the following duties with respect to the acquisition and disposition of property:

- a) The Contracting Officer shall be responsible for the Corporation's compliance with and enforcement of these Guidelines.
- b) The Corporation's contracting activities shall comply with all applicable laws for the acquisition and disposal of property.
- c) These Guidelines shall be annually reviewed and approved by the Board.
- d) Before the thirty-first day of March in each year, the Corporation shall post the Guidelines on the Corporation's Internet website. These Guidelines shall be maintained on the Corporation's website at least until the Guidelines for the following year is posted on the Corporation's website.
- e) All property acquisitions or dispositions require Board approval in meetings that are open to the public.
- f) The Contracting Officer shall provide occasional updates of Corporation acquisitions and dispositions to the Board.

3.2 Inventory. The Corporation shall:

- a) maintain adequate inventory controls and accountability systems for all property under its control;
- b) periodically inventory such property to determine which property shall be disposed of;
- c) produce a written report of such property in accordance with subsection 3.3;
- d) transfer or dispose of such property as promptly as possible in accordance with Section V.

3.3 Reporting. The Corporation shall post on its website, not less frequently than annually, a report listing all property of the Corporation.

- a) Such report shall include a list and full description of all property acquired and disposed of during such period.
- b) The report shall contain the price paid or received by the Corporation and the name of the seller or purchaser for all such property purchased or sold by the Corporation during such period.

- c) Annual reports and updates to the Corporation's website are not be required if there are no material changes to the property of the Corporation.

#### **IV. ACQUISITION OF PROPERTY BY THE CORPORATION**

4.1 Selection of Property. The Corporation may acquire property to further the Corporation's mission. Property selection involves a review of several sites and an analysis of the best location and price for the intended use. Following the selection of a site, or if necessary, during the site selection process, the Corporation shall begin the formal appraisal of the property using the following steps:

- a) The Corporation shall solicit at least five (5) bids from a list of consultant appraisers through Request for Proposal letters;
- b) The Corporation's selection committee shall evaluate appraisal proposals and select the lowest qualified bidder, typically within thirty (30) to forty (40) days; and
- d) This committee shall inform the lowest qualified bidding appraiser of its selection and enter into a contract for deliverables, to be provided typically within forty-five (45) days.

4.2. Negotiation. The Corporation and the Seller shall negotiate the purchase contract. If the parties agree on the purchase contract terms and the Board approves the contract, the Corporation and the Seller may execute the contract.

4.3. Site reviews. After Board approval, the Corporation shall hire independent consultants to conduct an environmental site review of the property and survey the subject property. The Corporation shall review the results of the site reviews and property surveys and renegotiate with the Seller or terminate the purchase contract, if necessary.

4.4. Title Search. The Corporation shall hire an independent consultant to conduct a title search of the subject property.

4.5. Physical Inspection. The Corporation shall have an independent consultant conduct a physical inspection of the subject property.

4.6 Notification. The Corporation shall notify its Board of the acquisition of a property within five (5) days after closing.

#### **V. DISPOSAL OF PROPERTY BY THE CORPORATION**

5.1 Supervision and direction. Except as otherwise provided in this section, the Contracting Officer shall have supervision and direction over the disposition of property of the Corporation.

5.2 Custody and control. The custody and control of the property of the Corporation,

pending its disposition, and the disposal of such property, shall be performed by the Corporation when so authorized under this section.

5.3 Method of disposition. The Corporation may dispose of property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Contracting Officer deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. No disposition of property, however, or any interest in property, shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction. No disposition of any property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.

5.4 Validity of deed, bill of sale, lease or other instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Corporation, purporting to transfer title or any other interest in property under these guidelines shall be conclusive evidence of compliance with the provisions of these guidelines regarding concerns of title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

5.5 Bids for disposal; advertising; procedure; disposal by negotiation; explanatory statement.

- a) all disposals or contracts for disposal of property of the Corporation made or authorized by the Contracting Officer shall be made after publicly advertising for bids except as provided in subsection 5.5(c).
- b) Whenever public advertising for bids is required under subsection 5.5(a):
  - i. the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property;
  - ii. all bids shall be publicly disclosed at the time and place stated in the advertisement; and
  - iii. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Corporation, price and other factors considered; provided, that all bids may be rejected when it is in the Corporation's interest to do so.

- c) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsection 5.5(b) but subject to obtaining such competition as is feasible under the circumstances, if:
  - i. the property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
  - ii. the fair market value of the property does not exceed fifteen thousand dollars;
  - iii. bid prices after advertising are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition; or
  - iv. under the circumstances permitted by subsection 5.6; or
  - v. such action is otherwise authorized by law.
- d) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:
  - i. any property that has an estimated fair market value in excess of one hundred thousand dollars;
  - ii. any property disposed of by lease if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars;
  - iii. any property disposed of by exchange, regardless of value or any property any part of the consideration for which is property.
- e) When an appraisal is not feasible or practical, fair market value shall be determined by the Board based on the recommendation of the Contracting Officer. In making such recommendation, the Contracting Officer shall make due inquiry of values of comparable properties including, as appropriate, geographic location, use, occupancy, condition, obsolescence, outstanding debts, taxes and liens and intended future use.

## 5.6 Disposal of property for less than fair market value

- a) No asset owned, leased or otherwise in the control of the Corporation may be sold, leased, or otherwise alienated for less than its fair market value except if:
  - i. the transferee is a government or other public entity, and the terms and

conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity; or

- ii. the purpose of the transfer is within the purpose or mission of the Corporation.
- b) In the event a below fair market value asset transfer is proposed, the following information must be provided to the Board and the public:
- i. a full description of the asset;
  - ii. an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Board.
  - iii. a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated.
  - iv. a statement of the value to be received compared to the fair market value;
  - v. the names of any private parties participating in the transfer; and
  - vi. the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
- c) Before approving the disposal of any property for less than fair market value, the Board shall consider the information described in subsection 5.6(b) and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer. Approval of such a disposition shall not be made without the consent of the President and Chief Executive Officer of Empire State Development, who serves as a non-voting, non-fiduciary advisory representative.

## **VI. ETHICAL CONSIDERATIONS**

6.1 No Corporation employee who is involved in the Acquisition or Disposition of property may ask any purchaser, seller, grantor, grantee, lessor, or lessees or officers, directors or employees of such current or prospective purchaser, seller, grantor, grantee, lessor or lessee to reveal: (a) the political party affiliation of the individual, (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

6.2 No Corporation employee may take part in any Acquisition decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director, or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to this matter.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

FEBRUARY 22, 2017

RESOLUTION NO: 134

ADOPTION OF CONFLICT OF INTEREST AND RELATED PARTY  
TRANSACTION POLICY

WHEREAS, the Board of Directors of the Fuller Road Management Corporation (the “Corporation”) is charged with directing the management of the operations, property, affairs and concerns of the Corporation in a manner consistent with the Corporation’s Bylaws; and

WHEREAS, in accordance with Article VIII, Section 1 of the Corporation’s Bylaws, which requires the adoption of certain policies and procedures, and consistent with the responsible stewardship of the Corporation, the Board of Directors desires to adopt a code of conduct for directors, officers, and employees of the Corporation and a policy regarding conflicts of interest;

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

SECTION 1: The Corporation’s Board of Directors hereby adopts a Conflict of Interest and Related Party Transaction Policy, which includes a Code of Conduct, in the form of the policy attached to this Resolution.

SECTION 2: EFFECTIVE DATE. The Conflict of Interest and Related Party Transaction Policy is effective immediately.

CERTIFICATION

FULLER ROAD MANAGEMENT CORPORATION  
RESOLUTION NO: 134

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

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

IN WITNESS WHEREOF, I have signed this Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Name:

Title:



**FULLER ROAD MANAGEMENT CORPORATION**  
**CONFLICT OF INTEREST AND RELATED PARTY TRANSACTION POLICY**

The board of directors (the “Board”) of Fuller Road Management Corporation, a New York not-for-profit corporation (the “Corporation”), has adopted this Conflict of Interest and Related Party Transaction Policy (the “Policy”), dated February 22, 2017, to ensure that its directors, officers and Key Employees (if any) act in the Corporation’s best interest and comply with applicable legal requirements, including but not limited to the requirements set forth in sections 715 and 715-a of the New York State Not-for-Profit Corporation Law.

All directors, officers and Key Employees owe a duty of loyalty to the Corporation and must act in good faith in the Corporation’s best interests, rather than the interests of another entity or person and must comply with all legal requirements, including this Policy.

Directors, officers and Key Employees shall not engage in any transaction or arrangement or undertake positions with other corporations or other organizations that involve a conflict of interest, or the appearance of a conflict, except in compliance with this Policy. This Policy shall not supersede any requirement which may be applicable to any director, officer or Key Employee by virtue of such individual’s status as a state officer or employees as defined in section 73 of the Public Officers Law.

1. **Definitions**

- (a) “Affiliate” means any entity controlled by, in control of, or under common control with the Corporation.
- (b) “Conflict of Interest” means: (i) a particular transaction or arrangement in which any Related Party, has, or in the near future will have, or is perceived to have, directly or indirectly, a financial interest and in which the Corporation or any Affiliate of the Corporation is a participant; or (ii) or any other interest, financial or otherwise, direct or indirect, that could conflict, or be perceived to conflict, with the proper discharge of the duties of the director, officer or Key Employee to the Corporation. Examples of circumstances that may give rise to conflicts of interest are set forth below, but these examples are not exhaustive. Conflicts might arise in other circumstances or through other relationships. It shall be the continuing responsibility of each director, officer or Key Employee to scrutinize his or her transactions, outside businesses and personal relationships for potential conflicts and Related Party Transactions and to immediately report the same to the Board.

Directors, officers and employees must conduct themselves at all times in a manner that avoids any appearance that they can be improperly or unduly influenced, that they could be affected by the position of or relationship with any other party, or that they are acting in violation of their public trust. While it is not possible to describe or anticipate all the circumstances that might involve a conflict of interest, a conflict of interest typically arises whenever a director or employee has or will have:

- A financial or personal interest in any person, firm, corporation, or association which has or will have a transaction, agreement or any other arrangement in which the Corporation participates.

- The ability to use his or her position, confidential information or the assets of the Corporation, to his or her personal advantage.
- Solicited or accepted a gift of any amount under circumstances in which it could reasonably be inferred that the gift was intended to influence him/her, or could reasonably be expected to influence him/her, in the performance of his/her official duties or was intended as a reward for any action on his/her part.
- Any other circumstance that may or appear to make it difficult for the director or employee to exercise independent judgment and properly exercise his or her official duties.

(c) “Key Employee” means a person who is in a position to exercise substantial influence over the affairs of the Corporation.

(d) “Related Party” means (i) any director, officer or Key Employee of the Corporation or any Affiliate of the Corporation; (ii) any Relative of any director, officer or Key Employee of the Corporation or any Affiliate of the Corporation; or (iii) any entity in which any individual described in (i) and (ii) above has a 35% or greater interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%.

(e) “Related Party Transaction” means any transaction, agreement or any other arrangement in which a Related Party has a financial interest and in which the Corporation or any Affiliate of the Corporation is a participant.

(f) “Relative” means a (i) spouse, ancestor, child (whether natural or adopted), grandchild, great-grandchild, sibling (whether whole or half-blood), (ii) spouse of a child (whether natural or adopted), grandchild, great-grandchild or sibling (whether whole or half-blood), or (iii) a domestic partner.

## 2. **Duty to Disclose Conflicts**

All material facts related to the conflicts of interest (including the nature of the interest and information about any conflicting Related Party Transaction) shall be disclosed in good faith and in writing to the General Counsel and/or Ethics Officer. Such written disclosure shall be made part of the official records of the proceedings of the Corporation.

## 3. **Determining Whether a Conflict of Interest Exists**

The General Counsel and/or Ethics Officer shall advise the individual who appears to have a conflict of interest how to proceed. The existence and resolution of a potential Conflict of Interest shall be documented in the Corporation's records, including in the minutes of any meeting at which the conflict was discussed or voted upon.

## 4. **Recusal and Abstention**

Any director, officer, Key Employee or any Related Party having a potential conflict of interest or an interest in a Related Party Transaction shall not (i) be present at or participate in

Board or committee deliberation or vote on the matter giving rise to such conflict or transaction (except that relevant information at a Board meeting prior to commencement of deliberations or voting thereon), or (ii) attempt to influence improperly the deliberation or voting on the matter giving rise to such conflict or transaction.

With respect to any Related Party Transaction in which a Related Party has a substantial financial interest, the Corporation may enter into a transaction or arrangement only if: (i) the Board has considered alternative transactions to the extent available; (ii) at a duly held meeting of the Board, a majority of those directors who have no interest in the transaction or arrangement approve the transaction or arrangement after determining, in good faith and after reasonable inquiry, that the transaction is fair and reasonable to the Corporation and in its best interests; and (iii) the Board documents in writing the basis for the decision including its consideration of alternative transactions, if any.

5. **Records of Conflicts of Interests**

The minutes of the Corporation's meetings during which a perceived or actual conflict of interest is disclosed or discussed shall reflect the name of the interested person, the nature of the conflict, and a description of how the conflict was resolved.

6. **Reporting of Violations**

Directors and employees should promptly report any violations of this policy to his or her supervisor, or to the Corporation's General Counsel and/or Ethics Officer, or human resources representative in accordance with the Corporation's Whistleblower Policy and Procedures.

7. **Annual Disclosure and Acknowledgement**

Each director, prior to his or her initial election and annually thereafter, shall complete and sign an Annual Disclosure Statement identifying, to the best of the director's knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Corporation has a relationship, and any transaction in which the Corporation is a participant and in which the director might have a conflicting interest. The Annual Disclosure Statement shall be submitted to the secretary of the Corporation (the "Secretary"). The Secretary shall provide a copy of each completed Questionnaire, and any updates, to the Chair of the Audit Committee and the General Counsel, who will evaluate the disclosures to determine whether they involve a conflict of interest.

Each officer and Key Employee shall complete and sign an annual written statement (the "Acknowledgement") acknowledging that such officer or Key Employee has received, read and understood the Conflict of Interest and Related Party Transactions Policy of the Corporation and agree that such officer or Key Employee has and will continue to abide by such Policy. The Secretary shall maintain a copy of each completed Acknowledgement and any updates.

8. **Future Employment**

Directors, officers, and Key Employees are prohibited from discussing possible future employment which any entity that has had a specific matter pending before them unless 30 days or more has passed since the matter closed. Directors should recuse themselves from all matters related to entities with which they are engaged in employment negotiations.

9. **Penalties**

If the Board has reasonable cause to believe that a director, officer or Key Employee has failed to comply with this Policy, the Board may make such further investigation as may be warranted in the circumstances and if the Board determines that the director, officer or Key Employee has in fact failed to comply with this Policy, it shall take appropriate action in accordance with law and the Corporation's certificate of incorporation and bylaws, which may include removal from office. Any director or employee that fails to comply with this policy may be penalized in the manner provided for in law, rules or regulations.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

FEBRUARY 22, 2017

RESOLUTION NO: 135

ADOPTION OF PROCUREMENT GUIDELINES POLICY

WHEREAS, the Board of Directors of the Fuller Road Management Corporation (the "Corporation") is charged with directing the management of the operations, property, affairs and concerns of the Corporation in a manner consistent with the Corporation's Bylaws; and

WHEREAS, in accordance with Article VIII, Section 1 of the Corporation's Bylaws, which requires the adoption of certain policies and procedures, and consistent with the responsible stewardship of the Corporation, the Board of Directors desires to adopt a policy regarding the procurement and administration of contracts;

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

SECTION 1: The Corporation's Board of Directors hereby promulgates Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Contracts in the form of the policy attached to this Resolution.

SECTION 2: EFFECTIVE DATE. The Procurement Guidelines Policy attached to this Resolution is effective immediately.

CERTIFICATION

FULLER ROAD MANAGEMENT CORPORATION  
RESOLUTION NO: 135

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

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

IN WITNESS WHEREOF, I have signed this Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Name:

Title:

# **FULLER ROAD MANAGEMENT CORPORATION**

## **PROCUREMENT GUIDELINES POLICY**

### **Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Contracts**

#### **1. PURPOSE**

The following guidelines (the “Guidelines”) apply to the use, awarding, monitoring and reporting of Procurement Contracts, as defined herein, by the Fuller Road Management Corporation (“FRMC” or the “Corporation”).

In these Guidelines, a person, firm or corporation who wishes to provide goods and/or services to FRMC may be called a “vendor” or “offerer” or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming a FRMC vendor, a “respondent.”

#### **2. DEFINITIONS**

- A. “Procurement Contracts” are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the FRMC office, facilities, operations and maintenance and capital projects, including but not limited to goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2.C below. Loans and grants are not Procurement Contracts.
- B. “Non-Procurement Contracts” include direct placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which FRMC participates.
- C. “Services Contracts” are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships or firms who are not and do not employ officers or employees of FRMC) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by a consultant for FRMC) and construction management. Non-Personal Services include, but are not limited to: skilled or unskilled temporary personnel,

including clerical office staff, technicians or engineers working under FRMC supervision; maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services.

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient FRMC staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of these factors.

- D. “Goods” include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as “Equipment,” where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies.
- E. “Evaluation of Proposals,” as further set forth in Section 4 below, includes as evaluating factors FRMC’s consideration of a bidder’s skill, judgment and business integrity.
- F. “Contact” is any oral, written or electronic communication with FRMC under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.
- G. “Relative” is any person living in the same household as the FRMC employee or any person who is a direct descendant of the FRMC’s employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines.
- H. “Minority and Women-owned Business Enterprise” (“M/WBE”) is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in N.Y. Executive Law Article 15-A, and pursuant to the definition found in N.Y. Executive Law § 310.
- I. “Small Business” is a business that is resident in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.
- J. “Single Source” is a procurement in which FRMC, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offerer over another that can supply the goods or services.
- K. “Sole Source” is a procurement in which only one offerer is capable of supplying the required goods or services.



### **3. SOLICITATION REQUIREMENTS**

- A. Preparation of the solicitation of proposals for Procurement Contracts is the responsibility of the initiating department. Except as otherwise authorized by these Guidelines, quotes should be solicited from a minimum of three providers and/or firms (if available) for Procurement Contracts valued under \$25,000 and a minimum of five providers and/or firms (if available) for Procurement Contracts valued at \$25,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation. In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder's skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. FRMC may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to FRMC does so at its own cost or expense and will not be reimbursed by FRMC for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized FRMC representative.
- D. In order to promote the use of Minority and Women-owned Business Enterprises ("M/WBEs"), FRMC will endeavor to solicit offers from M/WBEs known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definition of a NYS-certified M/WBE is in Section 2.H.
- E. To foster increased use of M/WBEs, small businesses and recycled or remanufactured commodities, a single proposal may be sought, negotiated and accepted for purchases not exceeding \$200,000, in the aggregate including all amendments, of (i) goods and/or services from a NYS-certified M/WBE (as defined in Section 2.H) or Small Business (as defined in Section 2.I) or (ii) goods and/or technology products that are recycled or remanufactured, where such vendors offer a reasonable price for such goods and/or services. The award of such proposal requires the written approval of the CFO's designee for procurement. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the CFO's designee for procurement. Furthermore, the award of such procurement contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.
- F. It is the policy of FRMC to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. In furtherance of this goal, the following definitions and actions apply:
  - 1. "New York State Business Enterprise" is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form

of exchange, goods sought by FRMC that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by FRMC that are substantially performed within New York State as further described in Public Authorities Law § 2879.

2. “New York State resident” is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
  3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by FRMC that are substantially produced outside New York State, or services other than construction services, sought by FRMC that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
  4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.
  5. FRMC shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by FRMC’s President and CEO if the CEO determines in writing that it is in the best interests of FRMC to do so.
- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; milestone dates; all other applicable FRMC requirements and any special methods or limitations that FRMC chooses to govern the work.
- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), FRMC will, prior to soliciting proposals, submit the following information for publication on the New York State *Contract Reporter* website, ([www.nyscr.ny.gov](http://www.nyscr.ny.gov)) (unless such posting would serve no useful purpose): (1) FRMC’s name and address; (2) the solicitation number; (3) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (4) the address where bids or proposals are to be submitted; (5) the due date for bids or proposals; (6) a description of any eligibility or qualification requirements or preferences, as applicable; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture or coproduction

arrangement; (8) any other information deemed useful to potential contractors, as applicable; (9) the name, address, and phone number of the person to be contacted for additional information and (10) a statement as to whether the goods and/or services sought have, in the immediately preceding three-year period, been supplied by a Foreign Business Enterprise. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the Contract Reporter website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, FRMC will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on the Contract Reporter website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.K, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the above-described advertising requirements subject to the approval of the CFO's designee for procurement, and/or the head of the initiating department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by FRMC.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the Contract Reporter website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such contracts not exceeding \$200,000 awarded to Small Businesses or NYS-certified M/WBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured. Such notice shall specify the name of the awardee.

- I. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an FRMC representative, a "competitive search" will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The initiating department will gather information from potential sources, that will include a description of the consultant/firm's qualifications, résumés of key personnel, past experience and proposed billing rates.

- J. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
  2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
  3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
  4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
  5. The contract is awarded to a Small Business or to a NYS-certified M/WBE firm for purchases not exceeding \$200,000, pursuant to Section 3.E.
  6. The contract is for the purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$200,000, subject to the approvals stated in Section 3.E.
- K. A Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:
1. A threat to the health or safety of the public or FRMC employees or workers.
  2. Proper functioning of FRMC facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- L. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the head of the department will provide a written statement for the procurement record explaining the reasons therefor. The award of such Procurement Contracts, regardless of value, requires the written approval of the Chief Compliance Officer, except as noted in Section 3.H.
- M. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the President and CEO or the COO prior to processing by the Procurement Department.
- N. When a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of FRMC stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for

property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the CFO's designee for procurement.

- O. It is the policy of FRMC to discourage improper communications intended to influence an FRMC procurement. To that end, FRMC shall designate a person or persons who may be contacted with respect to each FRMC procurement. The bidders/contractors or persons acting on their behalf, shall only contact FRMC's designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period. The "Restricted Period" is the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from bidders/contractors intending to result in a procurement contract with FRMC and ending with the final contract award.
- P. In furtherance of FRMC's commitment to ensure transparency and accountability of its operations, every member, officer or employee of FRMC who is contacted by a lobbyist is required to make a contemporaneous record of such contact.
- Q. FRMC shall record in a database certain appearances between FRMC and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal "Restricted Period." Covered individuals at FRMC means an individual at FRMC who has the power to exercise discretion or advises someone who exercises discretion. A covered individual outside of FRMC means both "external" (e.g., a lobbyist) and "internal" (e.g., sales representative) representatives of an entity, individuals appearing on behalf of him/herself, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to FRMC's Compliance Office for recording in the database.

#### **4. EVALUATION OF PROPOSALS**

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not limited to, the bidder's skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the CFO's designee for procurement. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the CFO's designee for procurement or equivalent(s) or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are, where applicable to the procurement: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the FRMC work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder's skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet M/WBE goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.
- C. For Services Contracts (as defined in Section 2.C of these Guidelines), cost, the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract.
- D. For Procurement Contracts other than Personal Services (as defined in Section 2.C of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents.
- E. FRMC shall not award a Procurement Contract (as defined in Subsection 2.A of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of FRMC's policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor.

More than one determination of non-responsibility in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management, and should be based on such a proposal providing a clear advantage to FRMC over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; and overall, the bidder's skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, FRMC may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, FRMC deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

## **5. RECOMMENDATION OF AWARD**

A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:

1. Lump sum and/or unit prices for equipment and construction work.
2. Hourly or daily rates for personnel.
3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.

5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any.

## 6. **AWARD OF CONTRACT**

- A. Services Contracts to be performed for a period of more than 12 months are approved and reviewed annually by the FRMC Board. Services Contracts for a period of less than 12 months are approved by authorized designees. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Board at the request of the initiating department and will be reviewed by the Board annually. Extending a contract for services, that has previously been approved by the Board, for a cumulative term of more than 12 months requires further Board approval. Extending a contract, previously approved by the Board, for 12 months or less requires approval by an authorized designee and concurrence by the CFO's designee for procurement.
- B. For Services Contracts to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Board meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total value, such contract must be approved by the appropriate management. Such contract is subject to the Board's approval, at the next quarterly Board meeting. If such approval is not granted, the contract will be terminated immediately.
- C. A contract or contract task is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Board-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved.
- D. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions.
- E. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed \$100,000, the initiating department Head, with the prior



concurrence of the CFO's designee for procurement, may authorize extending such contract, subject to the Board ratifying such action as soon as practicable.

- F. When the total estimated contract value or the value of the extension exceeds \$250,000, interim approval by the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Board ratifying such action as soon as practicable.
- G. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds \$250,000, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the CFO's designee for procurement, may authorize the commencement of such services. The initial compensation limitation may not exceed \$250,000. Such contracts will be subject to Board approval, which will be solicited at their next scheduled Board meeting.
- H. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution.

## **7. CONTRACT PROVISIONS**

- A. The following standard forms of contracts shall be maintained by the CFO's designee for procurement: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.  

FRMC departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the CFO's designee for procurement, who is solely responsible for requesting proposals.
- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.

1. Schedule of Services or Specifications
2. Time of Completion
3. Compensation or Itemized Proposals
4. Relationship of Parties
5. Delays
6. Termination
7. Changes in the Work
8. Claims and Disputes
9. Warranty
10. Insurance
11. Records, Accounts, Inspection and Audit
12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. Entire Agreement

#### Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications

C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services. The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal; or
3. The originating FRMC department determines in writing that the restrictions are not in the best interests of FRMC. Such originating department shall obtain the approval of the applicable Business Unit Head or equivalent(s), the CFO's designee for procurement, General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

## **8. CHANGE ORDERS**

- A. Change Orders to existing contracts are justified in the following cases:
1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
  2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
  3. To accommodate emergency conditions, defined in Section 3.K herein, that require the immediate performance of work by a firm already under contract; and
  4. When rebidding would not be practical or in the best interests of FRMC's customers.
- B. All Change Orders must be approved by the contract initiator, and should include specific schedules for completion of work at the earliest possible time.

## **9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES**

- A. Former FRMC officers and employees are eligible to be considered for employment as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines and as set forth in this Section 9.
- B. No FRMC officer or employee is eligible, within a period of two years after the termination of FRMC employment to appear or practice before FRMC or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before FRMC.
- C. No FRMC officer or employee is eligible, at any time after the termination of FRMC employment, to appear, practice, communicate or otherwise render services before FRMC or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of employment, or which was under his or her active consideration.
- D. No FRMC employee who is involved in the award of FRMC grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or

candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

- E. No FRMC employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- F. No FRMC employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which the FRMC employee or a Relative of such FRMC employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
- G. For purposes of this Section 9.E, the term "Relative" is defined in Section 2.G of these Guidelines ("Definitions").

## **10. PROCUREMENT RECORD AND REPORTING**

### **A. Procurement Record**

FRMC must maintain records of Procurement Contracts, including bidders' names, the selection processes used and the status of existing contracts, including goods provided and/or services performed and fees earned, billed and paid.

A statement describing the basis for a determination of a bidder's/contractor's non-responsibility and FRMC's decision not to award a bidder/contractor the Procurement Contract must be included in the procurement record. All forms entitled "Record of Contact" shall be included in the respective procurement record. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the procurement record.

**B. Procurement Report**

After the end of each calendar year, the CFO's designee for finance will prepare and submit an annual report to the Board for its approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A list of fees, commissions or other charges paid;
5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified M/WBE designation (if any) of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
6. The type of contract (equipment, services, personal services or construction);
7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
8. The reasons why any procurements with a value greater than \$50,000 were not noticed in the Contract Reporter; and
9. The number of bids received.

The annual procurement report shall be posted on FRMC's website and copies shall be made available to the public upon reasonable written request therefor.

**11. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS**

- A. These Guidelines are intended for the guidance of officers and employees of FRMC only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

## **12. ADMINISTRATION OF CONTRACTS**

FRMC staff shall implement procedures for the administration of all contracts of the Corporation. FRMC contract administration procedures must:

- A. Ensure funds are available to FRMC to cover the expected contract costs prior to FRMC entering into any contract.
- B. Ensure contractor's compliance with contract provisions.
- C. Ensure services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract.
- D. Ensure that all work is completed and accepted by FRMC before the contract expires.
- E. Assess and request amendments, renewals, or new contracts as required allowing sufficient time to process, and execute such changes before the contract expires to prevent a lapse in service.
- F. Ensure that contracts are amended subsequent to any grant agreement revisions that affects the contract terms.
- G. Review and approve invoices for payment in order to ensure that payments are made in accordance with contract terms, costs are budgeted and allowable, and work has been performed.
- H. For contracts funded by New York State or its agencies, authorities or related entities, ensure that invoices are reviewed, approved and submitted for payment in accordance with protocols approved by Empire State Development.
- I. Monitor contract expenditures to ensure that there are sufficient funds to pay for all services rendered as required by the contract.
- J. Verify all requirements of the contract are fulfilled before the final invoice is paid, in accordance with the terms of the contract, and the contract is closed.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

FEBRUARY 22, 2017

RESOLUTION NO: 136

ADOPTION OF RECORDS ACCESS POLICY

WHEREAS, the Board of Directors of the Fuller Road Management Corporation (the "Corporation") is charged with directing the management of the operations, property, affairs and concerns of the Corporation in a manner consistent with the Corporation's Bylaws; and

WHEREAS, in accordance with Article VIII, Section 1 of the Corporation's Bylaws, which requires the adoption of certain policies and procedures, and consistent with the responsible stewardship of the Corporation, the Board of Directors desires to adopt a policy regarding access to the records of the Corporation;

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

**SECTION 1:** The Corporation's Board of Directors hereby promulgates a Records Access Policy in the form of the policy attached to this Resolution.

**SECTION 2: EFFECTIVE DATE.** The Records Access Policy attached to this Resolution is effective immediately.

CERTIFICATION

FULLER ROAD MANAGEMENT CORPORATION  
RESOLUTION NO: 136

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

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

IN WITNESS WHEREOF, I have signed this Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Name:

Title:



# FULLER ROAD MANAGEMENT CORPORATION

## RECORDS ACCESS POLICY

### 1. Purpose

The purpose of this policy is to set forth the methods and procedures governing the availability, location and nature of Fuller Road Management Corporation [the “Corporation”] records in conformance with Article 6 of the Public Officers Law, known as the Freedom of Information Law.

### 2. Definitions

- (a) The term *record* means any information kept, held, filed, produced or reproduced by or for the Corporation.
- (b) The term *records access officer* means the Corporation employee designated as such pursuant to section 3.
- (c) The term *records access appeals officer* means the Corporation employee designated as such pursuant to section 7.
- (d) The term *business day* means the hours between 9 a.m. and 5 p.m. any day except Saturday, Sunday, a public holiday or a day on which the Corporation is otherwise closed for general business.

### 3. Designation of records access officer

- (a) The Corporation’s records access officer is the Corporation employee who is designated as such by the Corporation’s general counsel. Contact information for the records access officer, including e-mail address, shall be posted on the Corporation’s website.

### 4. Location and hours for public inspection and copying

The Corporation’s website shall set forth the title, name and business address of the records access officer and records access appeals officer, consistent with Section 9 below, to whom requests must be submitted. Records for public inspection and copying may be made available upon a pre-arranged appointment with the records access officer.

### 5. Subject matter list

The records access officer shall maintain and post on the Corporation’s website a reasonably detailed current list, by subject matter, of all records in the possession of the Corporation. The posting shall be reviewed for any updates annually and shall include, on the first page, the date of the most recent review and a link to the website of the Committee on Open Government.

## **6. Requests for public access to records**

(a) Any person wishing to inspect and/or obtain a copy of any Corporation record must submit to the records access officer a written request reasonably describing the records sought. Requests may be submitted to the records access officer by hand delivery, regular mail, fax, or e-mail.

(b) Upon receipt of a written request for records, the records access officer shall:

- (1) furnish a written acknowledgment of the receipt of such a request and a statement of the approximate date when such request will be granted or denied within five business days of receipt of the request;
- (2) conduct or coordinate a search for the records requested;
- (3) review those records, if any are found; and
- (4) respond to the person requesting the records in accordance with the provisions of Article 6 of the Public Officers Law.

## **7. Appeals**

A records access appeals officer shall be designated by the Corporation's general counsel. Any person denied access to a record may appeal such denial in writing to the records access appeals officer within the timeframes established by Article 6 of the Public Officers Law. An appeal may be submitted to the records access appeals officer by hand delivery, regular mail, fax, or email. Upon receipt of an appeal, the records access appeals officer shall forward a copy of the appeal to the Committee on Open Government. Within the timeframe established by Article 6 of the Public Officers Law, the records access appeals officer shall inform the person requesting the record of his or her appeal determination in writing and shall provide a copy of such appeal determination to the Committee on Open Government.

## **8. Fees**

The fee for letter- or legal-sized photocopies of records shall be 25 cents per photocopy. The fees for all other records shall be such reasonable amounts as the records access officer shall establish, which shall not exceed the actual reproduction costs. The records access officer may, in his or her discretion, waive all or any portion of the fees for any record or class of records.

## **9. Public notice**

A notice containing the title, name and business address of the records access officer and records appeals officer, and the location where records can be seen or copied shall be posted conspicuously on the Corporation's website.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

FEBRUARY 22, 2017

RESOLUTION NO: 137

ADOPTION OF WHISTLEBLOWER POLICY AND PROCEDURES

WHEREAS, the Board of Directors of the Fuller Road Management Corporation (the "Corporation") is charged with directing the management of the operations, property, affairs and concerns of the Corporation in a manner consistent with the Corporation's Bylaws; and

WHEREAS, in accordance with Article VIII, Section 1 of the Corporation's Bylaws, which requires the adoption of certain policies and procedures, and consistent with the responsible stewardship of the Corporation, the Board of Directors desires to adopt a policy regarding whistleblowers;

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

SECTION 1: The Corporation's Board of Directors hereby adopts Whistleblower Policy and Procedures in the form of the policy attached to this Resolution.

SECTION 2: EFFECTIVE DATE. The Whistleblower Policy and Procedures attached to this Resolution are effective immediately.

CERTIFICATION

FULLER ROAD MANAGEMENT CORPORATION  
RESOLUTION NO: 137

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

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

IN WITNESS WHEREOF, I have signed this Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Name:

Title:

**FULLER ROAD MANAGEMENT CORPORATION**  
**WHISTLEBLOWER POLICY AND PROCEDURES**

**Purpose**

It is the policy of Fuller Road Management Corporation (“Corporation”), a New York State not-for-profit corporation, to afford certain protections to individuals who in good faith report violations of New York State and federal laws, the Corporation’s Conflict of Interest Policy, or other instances of potential wrongdoing within the Corporation. This Whistleblower Policy and Procedures set forth below are intended to encourage and enable employees to raise concerns in good faith within the Corporation and without fear of retaliation or adverse employment action.

**Definitions**

"Good Faith": Information concerning potential wrongdoing is disclosed in "good faith" when the individual making the disclosure reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing.

"Employee": All board members, officers, and staff employed at this Corporation, and employees of affiliates of the Corporation working on projects in conjunction with the Corporation, whether full-time, part-time, employed pursuant to contract, employees on probation and temporary employees.

“Retaliation”: Punitive action against a Whistleblower for reporting wrongdoing. This may include any material alteration to existing terms, conditions and privileges of employment including, without limitation, dismissal, demotion, suspension, compulsory leave, disciplinary action, negative performance evaluation, harassment, threats, any action resulting in loss of staff, office space or equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected employee.

"Whistleblower": Any Employee (as defined herein) who in good faith discloses information concerning wrongdoing by another Corporation employee, or concerning the business of the Corporation itself.

"Wrongdoing": Any alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, intentional reporting of false or misleading information, or abuse of the Corporation engaged in by an Employee (as defined herein) that relates to the Corporation.

"Personnel action": Any action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

**1. Reporting Wrongdoing**

All Employees who discover or have knowledge of potential wrongdoing concerning board members, officers, or employees of this Corporation; or a person having business

dealings with the Corporation; or concerning the Corporation itself, shall report such activity in accordance with the following procedures:

- a) The Employee shall disclose any information concerning wrongdoing either orally or in a written report to his or her supervisor, or to the Corporation's compliance officer, general counsel or human resources representative.
- b) All Employees who discover or have knowledge of wrongdoing shall report such wrongdoing in a prompt and timely manner.
- c) The identity of the Whistleblower and the substance of his or her allegations will be kept confidential to the best extent possible.
- d) The individual to whom the potential wrongdoing is reported shall investigate and handle the claim in a timely and reasonable manner, which may include referring such information to an appropriate law enforcement agency where applicable.
- e) Should an Employee believe in good faith that disclosing information within the Corporation pursuant to Section 1(a) above would likely subject him or her to adverse personnel action or be wholly ineffective, the Employee may instead disclose the information to an appropriate law enforcement agency, if applicable.

## **2. No Retaliation or Interference**

No Employee shall retaliate against any Whistleblower for the disclosure of potential wrongdoing, whether through threat, coercion, or abuse of authority; and, no Employee shall interfere with the right of any other Employee by any improper means aimed at deterring disclosure of potential wrongdoing. Any attempts at retaliation or interference are strictly prohibited and:

- a) No Employee who in good faith discloses potential violations of New York State and federal laws, the Corporation's Conflict of Interest Policy, or other instances of potential wrongdoing within the Corporation, shall suffer harassment, retaliation or adverse personnel action.
- b) All allegations of retaliation against a Whistleblower or interference with an individual seeking to disclose potential wrongdoing will be thoroughly investigated by this Corporation.
- c) Any Employee who retaliates against or had attempted to interfere with any individual for having in good faith disclosed potential violations of New York State and federal laws, the Corporation's Conflict of Interest Policy, or other instances of potential wrongdoing is subject to discipline, which may include termination of employment.

- d) Any allegation of retaliation or interference will be taken and treated seriously and irrespective of the outcome of the initial complaint, will be treated as a separate matter.

### **3. Other Legal Rights Not Impaired**

The Whistleblower Policy and Procedures set forth herein are not intended to limit, diminish or impair any other rights or remedies that an individual may have under the law with respect to disclosing potential wrongdoing free from retaliation or adverse personnel action.

- a) Specifically, these Whistleblower Policy and Procedures are not intended to limit any rights or remedies that an individual may have under the laws of the State of New York.
- b) Any employee who wishes to preserve rights pursuant to New York Whistleblower protection law shall, prior to disclosing information to a government body, have made a good faith effort to provide the Corporation with the information to be disclosed and shall provide the Corporation with a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

FEBRUARY 22, 2017

RESOLUTION NO: 138

ADOPTION OF RISK MANAGEMENT AND INSURANCE POLICY

WHEREAS, the Board of Directors of the Fuller Road Management Corporation (the "Corporation") is charged with directing the management of the operations, property, affairs and concerns of the Corporation in a manner consistent with the Corporation's Bylaws; and

WHEREAS, in accordance with Article VIII, Section 1 of the Corporation's Bylaws, which requires the adoption of certain policies and procedures, and consistent with the responsible stewardship of the Corporation, the Board of Directors desires to adopt a policy regarding risk assessment and risk mitigation;

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

**SECTION 1:** The Corporation's Board of Directors hereby adopts a Risk Management and Insurance Policy in the form of the policy attached to this Resolution.

**SECTION 2: EFFECTIVE DATE.** The Risk Management and Insurance Policy attached to this Resolution is effective immediately.



CERTIFICATION

FULLER ROAD MANAGEMENT CORPORATION  
RESOLUTION NO: 138

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

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

IN WITNESS WHEREOF, I have signed this Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Name:

Title:

# **FULLER ROAD MANAGEMENT CORPORATION**

## **RISK MANAGEMENT AND INSURANCE POLICY**

### **1. BACKGROUND & PURPOSE**

- A. The policy of Fuller Road Management Corporation (“FRMC”) is to be proactive about risk management and to transfer risk or identifiable hazards, where appropriate, to insurers through the purchase of comprehensive insurance coverage. These practices are integrated into the operations of FRMC. The FRMC Board of Directors (“FRMC Board”) recognizes risk management as an essential FRMC practice. FRMC Board is responsible for reviewing and approving FRMC’s insurance program and ensuring adequate insurance coverage to mitigate potential losses.

This document is intended to reduce or eliminate risks and losses to which FRMC may be exposed, while preserving its assets and earning power to fulfill its mission.

### **2. POLICY**

- A. General. FRMC Board recognizes its role of stewardship over FRMC and its assets. This responsibility requires due concern for the safety of the public and those involved with FRMC services, projects, or programs with FRMC sponsorship or participation, combined with a need to ensure that maximum protection be accorded its resources.
- B. Limited Loss Retention. FRMC recognizes its ability to budget and self-fund limited and predictable risks of financial loss. It is not FRMC’s practice to attempt to insure such foreseeable and bearable expenses if alternatives can be achieved with sound business practices. Self-insuring certain risk and/or purchase of property and casualty insurance with appropriate deductibles shall be determined by the Chief Financial Officer (“CFO”), with due recognition of insurance market conditions.
- C. Insurance Acquisition. FRMC is not obliged by operation of any statutes or regulation to award contracts for insurance to any insurance underwriter, broker, agent, risk retention group or other similar group or organization. FRMC will continue to purchase insurance from insurers that are financially sound, with proven administrative ratings. Premium costs are an essential element of evaluating any proposal.

### **3. POLICY IMPLEMENTATION**

- A. Management of Risks. The management of risks of loss to FRMC under the above policy will be the responsibility of the CFO or designee. The CFO also is responsible for identifying risks, and determining the means of eliminating, abating, transferring, or retaining these risks after consultation with appropriate staff, counsel and risk management consultants.

When FRMC cannot eliminate or economically retain a risk of loss, it shall be transferred by purchase of insurance when available. The form and sufficiency of various policy limits for protection of the FRMC shall be determined by the CFO or designee.

- B. Management Standards/Guidelines. The CFO is authorized to implement a comprehensive risk management and insurance program consistent with this policy statement. Written program guidelines may include criteria to identify hazards and risks for analysis, including:

- Quantification of activities, services and support in which FRMC is involved;
- Minimum insurance coverage and limits by type of authorized activities;
- Activity relationships in which there is/may be shared responsibility and liability with respect to contracts, employment, occupancy of premises or oversight of facilities, programs or services between FRMC and another entity; and
- The exclusion of risks or activities that FRMC is clearly unwilling to undertake, under any and all conditions, including those that may be prohibited or pose such a high degree of risk as to jeopardize the feasibility of the activity, or constitute a threat to the corporation.

The guidelines shall also formalize FRMC Risk Management and Property/Casualty Insurance Coverage Program by integrating the following program elements into the organization's operations:

- Reviewing the scope of coverage and the limits of insurance policies in relation to activities and liability exposure;
- Evaluating the ability to partially or entirely self-fund risk;
- Monitoring insurance coverage and claims;
- Conducting routine inspections of property;
- Identifying areas and activities involving joint/shared risk;
- Observing safe practices in all areas;

- Conducting an ongoing safe practice/risk avoidance training and reinforcement effort with employees covering all risks; and
  - Instituting disciplinary measures consistent with the personnel policies to insure that the practice of risk management is implemented.
- C. Program Practices. FRMC management shall establish and maintain documented risk management practices as an essential part of the program, including:
- Assessment of new activities (especially assumption of contractual liability) in terms of risk;
  - A periodic review of risks, exposures, activities and properties;
  - A formal review process for assessing risk exposures on premises, in operations, through contracts, and with avoidance/prevention efforts;
  - An accident/loss monitoring process that identifies where accidents and/or losses are occurring or will likely occur;
  - A systematic claims assessment process to insure that claims are being properly administered and that the activity sponsor is fully aware of the types of risks being assumed;
  - A practice of including risk management as a component of management performance evaluations; and
  - Development of preparedness plans for disasters.
- D. Program Organization. The CFO, through management guidelines, shall clearly identify how the Risk Management Program is to be organized, including:
- Delegated authority;
  - Performance of program duties and task assignment;
  - Role and relationship of Claims Management Firm and agents; and
  - Relationships of risk management program/staff to safety, security, legal and employee relation functions.
- E. Program Review. FRMC Board will provide periodic review of all insurance coverage, as needed.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
FULLER ROAD MANAGEMENT CORPORATION

FEBRUARY 22, 2017

RESOLUTION NO: 139

ADOPTION OF DEBT MANAGEMENT POLICY

WHEREAS, the Board of Directors of the Fuller Road Management Corporation (the "Corporation") is charged with directing the management of the operations, property, affairs and concerns of the Corporation in a manner consistent with the Corporation's Bylaws; and

WHEREAS, in accordance with Article VIII, Section 1 of the Corporation's Bylaws, which requires the adoption of certain policies and procedures, and consistent with the responsible stewardship of the Corporation, the Board of Directors desires to adopt a policy regarding debt management;

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

SECTION 1: The Corporation's Board of Directors hereby adopts a Debt Management Policy in the form of the policy attached to this Resolution.

SECTION 2: EFFECTIVE DATE. The Debt Management Policy attached to this Resolution is effective immediately.

CERTIFICATION

FULLER ROAD MANAGEMENT CORPORATION  
RESOLUTION NO: 139

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

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

IN WITNESS WHEREOF, I have signed this Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Name:

Title:

# FULLER ROAD MANAGEMENT CORPORATION

## DEBT MANAGEMENT POLICY

### 1. **Purpose**

To create and maintain a high quality debt management program, the Fuller Road Management Corporation (“FRMC”) has adopted the guidelines and policies set forth in this document titled “Debt Management Policy” (the “Policy”). The purpose of the Policy is to establish FRMC’s debt management objectives and practices.

The Policy is intended to guide current and future decisions related to debt issued by FRMC. FRMC Board of Director’s (“Board”) approval is required to waive or modify any of the policies included herein.

Since the Policy guidelines require regular updating to maintain relevance and to respond to the changes inherent in the capital markets, FRMC will have the Board re-adopt this Policy annually within 90 days after fiscal year-end.

### 2. **Policy Statement**

This Policy shall govern the issuance and management of all FRMC bonds and other forms of indebtedness, together with any credit, liquidity, or other security instruments and agreements that may be executed in connection with the issuance of bonds and other forms of indebtedness. The Policy formally establishes parameters for issuing debt which considers FRMC capital needs, ability to repay financial obligations, and the existing legal, economic, and capital markets conditions.

By implementing this Policy, FRMC expects to realize financial benefits such as debt service savings and efficiencies.

All financings require FRMC Board approval.

### 3. **Goals & Objectives**

Debt management policies and procedures are tools which ensure that financial resources are adequate to meet FRMC long-term planning objectives and financial obligations. In addition, the Policy helps to ensure that financings undertaken by FRMC satisfy certain clear objective standards which allow FRMC to protect its financial resources to meet its long-term capital needs. The adoption of clear and comprehensive financial policies enhances the internal financial management of FRMC.

Specifically, the policies outlined in this document are intended to assist as following:

- a. Promote cooperation and coordination with all parties in the financing and delivery of services by:
  - Seeking the lowest cost of capital reasonably available and minimizing financing costs for capital projects and other debt issuances;

- Establishing criteria to determine use of financing sources, including bank loans, bonds, grants and other forms of financing;
  - Evaluating debt issuance options including the amount and type of debt; and.
  - Minimizing the use of unplanned, short-term cash flow borrowings by maintaining adequate working capital and authorizing the minimum amount required to offset mismatches between available cash and cash outflows determined by cash flow analysis.
- b. Promote sound financial management to maximize and best utilize future debt capacity by:
- Maximizing administrative and operating flexibility;
  - Minimizing legal and financial risk to current and future budgets;
  - Maintaining an appropriate level of operating cash reserves. ;
  - Maintaining reasonable and justifiable levels of rates and fees that address the current and future needs of FRMC; and
  - Improving the quality of decisions and parameters for justification on debt structure

#### 4. Types of Debt

When FRMC determines that financing is required, the following criteria will be utilized to evaluate the type of debt to be issued:

- a. **Long-Term Debt.** FRMC may issue long-term debt when it is deemed that capital needs will not be financed from current revenues. Long-term borrowing will not be used to finance current operations or normal maintenance. Long-term debt will be self- supporting and structured such that financial obligations do not exceed the expected useful life of the project.
- b. **Short-Term Debt.** Short-term borrowing may be utilized subject to the following policies:
- i. **Bond Anticipation Notes (BANs)** may be issued instead of capitalizing interest to reduce the debt service during the construction period of a project or facility. The BANs may not mature more than three years from the date of issuance or will mature 60 days after the date of issuance of the long-term municipal security that will finance the project or facility, whichever comes first.
  - ii. **Other Short-Term Debt**, including bank loans and bank lines of credit, may be used when it provides an interest rate advantage or as interim financing until market conditions are more favorable. FRMC will determine and utilize the least costly method for short-term borrowing. FRMC may issue short-term debt when there is a defined repayment source. Such debt will not have a term of more than one year.
- c. **SWAPS.** If FRMC is considering the use of swaps in connection with a debt issue, a swap policy must first be evaluated/endorsed by FRMC Registered Municipal Advisor and then approved by the Board.
- d. **Variable Rate Debt.** If FRMC is considering the use of variable rate debt, it must first be evaluated and recommended by FRMC Registered Municipal Advisor.



## 5. Debt Issuance Guidance

- a. To the extent practicable, FRMC should annually identify projects within its five-year Capital Plan and determine the funding source for each project. In order to develop a funding plan, FRMC should:
  - i. Determine the timing and amount of each project to be funded; and
  - ii. Develop a funding analysis which will allocate the project costs and debt service payments accordingly.
- b. FRMC should determine what funding sources best meet its budget requirements.
- c. Prior to issuing debt, FRMC will establish the criteria to determine how the proposed sources of funding will impact current and future budgets and identify how the costs will be allocated.
- d. Prior to issuing debt for specific projects, FRMC will have an independent analysis performed to demonstrate the ability of FRMC to repay the estimated debt service payments or meet the annual revenue financed capital allocation.

## 6. Bond Structure

The following will serve as bond requirements:

- a. **Term.** All capital improvements financed through the issuance of debt will be financed for a period not to exceed the useful life of the improvements, but in no event will the term exceed forty (40) years.
- b. **Capitalized Interest.** From time to time certain financings may benefit from the use of capitalized interest from the issuance date until FRMC has beneficial use and/or occupancy of the financed project. Interest may not be funded (capitalized) beyond three years.
- c. **Debt Service Structure.** Debt issuance will be planned to achieve relatively level debt service while still matching debt service to the useful life of facilities. FRMC may only consider other debt service structures if a demonstrated benefit can be achieved.
- d. **Call Provisions.** In general, FRMC securities will include a call feature unless otherwise recommended by FRMC Registered Municipal Advisor. FRMC will avoid the sale of non-callable bonds absent careful evaluation by FRMC with respect to the value of the call option.
- e. **Original Issue Discount and Premium Bonds.** Discount and premium bonds are permitted if FRMC determines that such discount or premium bonds, including the impact on call option value, will result in a lower interest cost on the bonds.
- f. **Debt Service Reserve Fund (the “DSRF”):** FRMC will consider providing a DSRF as market conditions dictate, if a funded DSRF will reduce the overall borrowing cost of FRMC. A DSRF can be established to support each individual series of bonds or as a common reserve that can support more than one series of the bond’s debt service. The DSRF may be funded with bond proceeds at the time of issuance, cash, Letter of Credit, or Surety Bonds.

- g. **Call Option:** A 10-year call option should be standard, but other call options including non-callable bonds will be considered if determined to be economically advantageous by FRMC's advisor.

## 7. **Underwriter Selection**

**Senior Manager Selection.** FRMC will select the senior manager for a proposed negotiated sale based on a Request for Proposal ("RFP") process that will comply with FRMC's procurement policies. The selection criteria will include, but not be limited to, the following:

- The firm's ability and experience in managing comparable transactions;
- Prior knowledge and experience with FRMC, if applicable;
- The firm's willingness to risk capital and demonstration of such risk;
- Quality and experience of personnel assigned to FRMC engagement;
- Financing plan presented; and
- Underwriting fees.

**Co-Manager Selection.** Co-managers will be selected on the same basis as the senior manager. In addition to their qualifications, co-managers appointed to specific transactions will be a function of transaction size and the necessity to ensure maximum distribution of FRMC bonds.

**Selling Groups.** FRMC may establish selling groups in certain transactions in order to broaden the reach to potential investors.

**Underwriter's Counsel.** In any negotiated sale of FRMC debt in which legal counsel is required to represent the underwriter, the appointment will be made by the Senior Manager, in consultation with FRMC, while also being acceptable to FRMC.

**Underwriter's Discount.** FRMC Registered Municipal Advisor will evaluate the proposed underwriter's discount against comparable issues in the market. If there are multiple underwriters in the transaction, the Chief Financial Officer ("CFO") will determine the allocation of liabilities and fees among the underwriters, with input from FRMC Registered Municipal Advisor.

All fees and allocation of liability and fees will be determined prior to the sale date; a cap on management fee (if any), expenses and underwriter's counsel will be established and communicated to all parties by the CFO or FRMC Registered Municipal Advisor. The Senior Manager will submit an itemized list of expenses charged to members of the underwriting group. Any additional expenses must be substantiated.

**Syndicate Policies.** For each negotiated transaction, the CFO will, with input and advice from FRMC Registered Municipal Advisor, approve a syndicate policy that will describe the designation policies governing the upcoming sale.

**Designation Policies.** To encourage the pre-marketing efforts of each member of the underwriting team, orders for FRMC bonds should be net designated whenever practical,

unless otherwise expressly recommended by FRMC Registered Municipal Advisor. FRMC will require the Senior Manager to:

- Equitably allocate bonds to other managers and the selling group;
- Comply with MSRB regulations governing the priority of orders and allocations;
- Within ten working days after the sale date, submit to the CFO, and FRMC Registered Municipal Advisor, detail of orders, allocations and other relevant information pertaining to FRMC sale.

**Evaluation of Underwriter Performance.** FRMC will evaluate each bond sale after completion to assess the following: costs of issuance including underwriters' compensation, pricing of the bonds in terms of the overall interest cost and on a maturity-by-maturity basis and spreads to relevant benchmarks, the distribution of bonds, and secondary market trading activity. Following each sale, the CFO or FRMC Registered Municipal Advisor will provide a report to the Board on the results of the sale.

## **8. Consultants**

Subject to board approval, FRMC's consultants and advisors will provide objective advice and analysis, maintain the confidentiality of FRMC financial plans, and be free from any conflicts of interest. The consultants shall include, but not be limited to, the following:

**Registered Municipal Advisor.** FRMC may retain a Registered Municipal Advisor (or advisors) chosen from an RFP process to provide FRMC with a comprehensive analysis of financing options available to FRMC for debt issuance. The Financial Advisor(s) will advise on the structuring and execution of all debt and debt-related transactions and provide other services as defined by approved contracts. FRMC shall publicly post a letter that complies with the SEC Municipal Advisor Rules.

**Bond Counsel.** FRMC may retain Bond Counsel chosen from an RFP process to issue an opinion as to the legality and tax status of all debt obligations. FRMC may also seek the advice of Bond Counsel on other types of financing and on any other questions involving local, state or federal law. Bond Counsel is also responsible for the preparation of the resolution authorizing the issuance of obligations, certain bond and closing documents necessary for the execution of the debt issuance, and the performance of other services as defined by contract approved by FRMC.