

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

MONDAY

March 23, 2020

11:30 a.m.



**New York
Transportation
Development
Corporation**

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

Meeting of the Directors

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PROPOSED AGENDA

FOR CONSIDERATION

1. New York Transportation Development Corporation – Authorization to Perform Certain Acts in Connection with the Sale and delivery of the New York Transportation Development Corporation Lease Revenue Refunding Bonds, Series 2020 (Taxable) (Fuller Road Management Corporation – Nanotechnology Facilities Project) and to Take Related Actions

ITEM 1



FOR CONSIDERATION

March 23, 2020

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: Issuance of bonds by New York Transportation Development Corporation for the benefit of Fuller Road Management Corporation to refinance certain debt obligations used to finance the construction and development of certain research and technology facilities located at the State University of New York in Albany

REQUEST FOR: Board Authorization to Perform Certain Acts in Connection with the Sale and Delivery of the New York Transportation Development Corporation Lease Revenue Refunding Bonds, Series 2020 (Taxable) (Fuller Road Management Corporation – Nanotechnology Facilities Project) and to Take Related Actions

I. INTRODUCTION

The Board is being asked to approve the operative provisions, sale terms, official statement, bond purchase agreement, related documents and related actions in connection with the sale and delivery of New York Transportation Development Corporation (the "Corporation") Lease Revenue Refunding Bonds, Series 2020 (Taxable) (Fuller Road Management Corporation – Nanotechnology Facilities Project) (the "Series 2020 Bonds"), to be issued for the benefit of Fuller Road Management Corporation (the "Borrower"). The Borrower is a private, not-for-profit corporation.

II. BACKGROUND AND PURPOSE

The Borrower has requested that the Corporation issue the Series 2020 Bonds. Proceeds of the Series 2020 Bonds (the "Series 2020 Proceeds") will be used, together with certain other available moneys, to defease or redeem all or a portion of outstanding (1) Fuller Road Management Corporation Taxable Lease Revenue Refunding Bonds (300MM North Facility Project), Series 2005A; (2) Fuller Road Management Corporation Taxable Lease Revenue Bonds (Ultra Pure Water and Wastewater Treatment System Project), Series 2005B;

(3) Fuller Road Management Corporation Multi-Mode Variable Rate Bonds, Series 2007 (NanoFab East Project – Letter of Credit Secured); (4) Construction/Term Bank Loan Facilities to Fuller Road Management Corporation from Manufacturers and Traders Trust Company (“M&T Bank”) and KeyBank National Association (“Key Bank”) as Co-Arrangers; (5) Albany County Capital Resource Corporation Multi-Mode Revenue Bonds (Fuller Road Management Corporation Project), Series 2014 A&B; and, (6) repay, in part, the Bank Credit Agreement between the Fuller Road Management Corporation and M&T Bank. Each indebtedness was previously issued or incurred to procure design and construct certain buildings and facilities on the Borrower’s Albany campus devoted to the nanotechnology industry and certain other purposes (the “Facilities”). The Series 2020 Proceeds will also be used to pay costs of issuance of the Series 2020 Bonds.

The Facilities reside on land leased by the Borrower from the State University of New York (“SUNY”) pursuant to (i) the Ground Lease dated February 1994, as amended from time to time, between SUNY for and on behalf of the State University of New York at Albany and the Corporation (the “1994 Ground Lease”); and (ii) the Ground Lease dated January 1, 2011, as amended from time to time, between the People of the State of New York acting by and through SUNY and the Corporation (the “2011 Ground Lease” and, together with the 1994 Ground Lease, the “Ground Leases”). The rental due by the Borrower under each of the Ground Leases is \$1.00 per year. Pursuant to the Ground Leases, the Borrower maintains a leasehold interest in the land upon which the Borrower has constructed the Facilities and the buildings therein.

A portion of the Facilities, which includes buildings located at 251-255 Fuller Road (the “251-255 Fuller Road Premises”) and 141 Fuller Road (the “141 Fuller Road Premises” and, together with the 251-255 Fuller Road Premises, the “Leased Premises”), has been developed as cleanroom space and has been leased by the Borrower to the Research Foundation for the State University of New York (the “Research Foundation”). The Research Foundation is a private, non-profit educational corporation. Its primary responsibility is the administration of externally funded contracts and grants for and on behalf of SUNY, as set forth in the Agreement between State University of New York and the Research Foundation, dated June 1, 1977.

The 251-255 Fuller Road Premises have been leased by the Borrower to the Research Foundation under the Amended and Restated Lease dated as of April 1, 2020, between the Borrower, as landlord, and the Research Foundation, as tenant (the “251-255 Fuller Road Lease Agreement”). The 141 Fuller Road Premises have been leased by the Borrower to the Research Foundation under the Amended and Restated Lease dated as of April 1, 2020, between the Borrower, as landlord, and the Research Foundation, as tenant (the “141 Fuller Road Lease Agreement” and, together with the 251-255 Fuller Road Lease Agreement, the “Lease Agreements”). The 252-255 Fuller Road Lease Agreement expires on September 30, 2035 unless terminated earlier. The 141 Fuller Road Lease Agreement expires on December 31, 2028 unless terminated earlier.

Pursuant to a Loan Agreement, dated as of April 1, 2020, between the Corporation and the Borrower (the “Loan Agreement”), the Corporation agrees to lend to the Borrower an amount equal to the principal amount of the Series 2020 Bonds. As evidence of its obligation

to repay the Bonds, the Borrower will execute and deliver to the Corporation a promissory note (the "Note"). The sole source of payment by the Borrower of amounts due under the Loan Agreement are the lease payments payable by the Research Foundation to the Borrower under the Lease Agreements.

III. SECURITY

The Series 2020 Bonds will be issued and secured under an Indenture of Trust (the "Indenture"), as of April 1, 2020 by and between the Corporation and The Bank of New York Mellon, as trustee (the "Trustee").

The Series 2020 Bonds will be special limited obligations of the Corporation, secured by and payable solely from the Trust Estate, consisting primarily of the loan payments paid or caused to be paid by the Borrower pursuant to the Loan Agreement and the Note. Nothing in the Series 2020 Bonds, the Loan Agreement, the Note, the Assignment of Rents or the Indenture pledge any other funds or assets of the Corporation.

As security for the payment of the Borrower's obligations under the Loan Agreement and the Note, the Borrower will assign to the Corporation and the Trustee (for the benefit of the Bondholders), except for certain reserved rights, the Borrower's rights to receive rents under the Lease Agreements pursuant to the Assignment of Rents, dated April 30, 2020 by and among the Borrower, the Corporation and the Trustee (the "Assignment of Rents") Pursuant to the Indenture, the Corporation will also assign its right, title, and interest under the Loan Agreement (except for certain reserved rights) and the Note to the Trustee as security for the Series 2020 Bonds.

The Series 2020 Bonds are special limited revenue obligations of the Corporation and are not payable from, or secured by, any property of the Corporation other than the trust estate pledged under the Indenture. The Series 2020 Bonds are not a debt of the State of New York ("State"), the New York Job Development Authority ("JDA"), the New York State Urban Development Corporation (d/b/a Empire State Development) ("ESD") or any other local development corporation, agency or authority of the State and none of these entities shall be liable on the Series 2020 Bonds.

After the issuance of the Series 2020 Bonds, no additional bonds may be issued under the Indenture.

As is customary in a conduit bond financing, the rights and responsibilities of the Corporation are limited under the Indenture and other financing documents described above. The Borrower has agreed to indemnify the Corporation, the State, JDA and ESD against certain liabilities or to contribute to any payments required to be made by the by the Corporation relating to such liabilities, including liabilities under the federal securities laws.

IV. OFFERING AND SALE

As part of the transaction, the Corporation will also enter into a bond purchase agreement for the initial underwriting of the Series 2020 Bonds (the "Bond Purchase Agreement"). The Corporation is being asked to delegate authority to its officers to approve the maturities, prices, yields and other terms of the Series 2020 Bonds.

The Series 2020 Bonds are expected to be issued as fixed rate bonds and to be subject to optional and mandatory redemption, in whole or in part, at the option of Borrower.

V. ENVIRONMENTAL REVIEW

Staff of the Corporation has determined that the requested authorization to prepare documents for the issuance of bonds to refinance the obligations of the Borrower for the Facilities, which have already been completed, constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VI. REQUESTED ACTION

In accordance with the attached resolution, you are hereby requested to: (1) approve the terms and authorize the sale of the Series 2020 Bonds on a negotiated or competitive basis; (2) confirm the appointment of certain professionals; (3) approve the form and content of the official statement and various other documents connected with the sale and delivery of the Series 2020 Bonds; and (4) authorize certain officers and employees of the Corporation to take all actions deemed necessary to accomplish the final sale and delivery of the Series 2020 Bonds.

VII. ATTACHMENTS

Resolution with the following Exhibits: (Exhibits to Directors only)

- A. Assignments of Rents
- B. Loan Agreement
- C. Indenture
- D. Preliminary Official Statement
- E. Bond Purchase Agreement
- F. For information only:
Lease Agreements

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

RESOLUTION AUTHORIZING THE SALE AND ISSUANCE OF

**LEASE REVENUE REFUNDING BONDS, SERIES 2020 (Taxable)
(Fuller Road Management Corporation – Nanotechnology Facilities Project)**

Adopted March 23, 2020

WHEREAS, the New York Transportation Development Corporation (the "Corporation"), a local development corporation caused to be incorporated by the New York Job Development Authority pursuant to Section 1411 of the New York Not-For-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, and Section 1802, Subtitle I, Title 8, Article 8 of the New York Public Authorities Law (collectively, the "Act"), is authorized by the Act and its by-laws to issue lease revenue refunding bonds; and

WHEREAS, Fuller Road Management Corporation (the "Borrower") has requested that the Corporation issue its Lease Revenue Refunding Bonds, Series 2020 (Taxable) (Fuller Road Management Corporation – Nanotechnology Facilities Project) (the "Series 2020 Bonds") and permit the application of the proceeds of the Series 2020 Bonds (the "Series 2020 Proceeds"), together with certain other available moneys of the Borrower, to (i) defease or redeem all or a portion of outstanding debt obligations of the Borrower previously issued or incurred to procure design and construct certain buildings and facilities on the Borrower's Albany campus devoted to the nanotechnology industry and certain other purposes (the "Facilities") and (ii) pay costs of issuance of the Series 2020 Bonds.; and

WHEREAS, the Facilities reside on land leased by the Borrower from the State University of New York ("SUNY"); and

WHEREAS, a portion of the Facilities have been leased by the Borrower to the Research Foundation for the State University of New York (the "Research Foundation") pursuant to certain Lease Agreements (the "Lease Agreements"); and

WHEREAS, as security for the payment of the Borrower's obligations under the Loan Agreement and the Note, the Borrower will assign to the Corporation and The Banks of New York Mellon (the "Trustee") (for the benefit of the Bondholders), except for certain reserved rights, the Borrower's rights to receive rents under the Lease Agreements pursuant to an Assignment of Rents (the "Assignment of Rents") by and among the Borrower, the Corporation and the Trustee, a copy of which is annexed to this Resolution as Exhibit A; and

WHEREAS, the proceeds of the Series 2020 Bonds will be loaned to the Borrower; and

WHEREAS, the duly authorized officers of the Corporation have caused to be prepared a Loan Agreement (the "Loan Agreement") by and between the Corporation and the Borrower, a copy of which is annexed to this Resolution as Exhibit B, pursuant to which the Corporation will loan the proceeds of the Series 2020 Bonds to the Borrower; and

WHEREAS, the Borrower will execute a Note in connection with the Loan Agreement (the "Note"); and

WHEREAS, the Series 2020 Bonds will be issued and secured under an Indenture of Trust (the "Indenture") by and between the Corporation and the trustee, a copy of which is annexed to this Resolution as Exhibit C; and

WHEREAS, in addition to the Assignment of Rents, the Corporation will assign certain of its rights under the Loan Agreement and the Note to the Trustee pursuant to the Indenture as security for the Series 2020 Bonds; and

WHEREAS, the sole source of payment by the Corporation under the Loan Agreement is the lease payments from the Research Foundation to the Corporation pursuant to the Lease Agreements; and

WHEREAS, the Series 2020 Bonds will not be secured by any mortgage lien on, or security interest or other interest in, the Leased Premises, except for the Assignment of Rents; and

WHEREAS, the duly authorized officers of the Corporation have caused to be prepared a Preliminary Official Statement, a form of which is annexed to this Resolution as Exhibit D, and will cause to be prepared an Official Statement to be used in connection with the issuance and sale of the Series 2020 Bonds (collectively, the "Official Statement") and have negotiated a purchase contract for sale of the Series 2020 Bonds (the "Bond Purchase Agreement") by and between the Corporation and Goldman, Sachs & Co. LLC, as representative of the underwriters named therein (collectively, the "Underwriters"), a copy of which is annexed to this Resolution as Exhibit E; and

NOW, therefore, the Board of Directors of the Corporation, in accordance with the materials presented at this meeting, including the Board Memorandum and the Exhibits annexed to this Resolution (collectively, the "Materials"), upon motion duly made and seconded, duly adopts the following Resolution:

RESOLVED, that copies of the Materials are hereby ordered to be filed with the records of the Corporation and are deemed to be incorporated herein by reference; and further

RESOLVED, that the Assignment of Rents, the Loan Agreement, the Indenture and the Bond Purchase Agreement, in substantially the forms presented to this meeting, are hereby approved, and any Authorized Officer (as hereinafter defined) is hereby authorized and directed to execute and deliver the same on behalf of the Corporation, in such forms as are

approved with such changes, supplements and amendments thereto as any Authorized Officer executing the same may approve, such approval to be conclusively evidenced by such Authorized Officer's execution thereof; and further

RESOLVED, that the Official Statement, in substantially the form presented in this meeting, is hereby approved, and the distribution of the Official Statement in connection with the sale of the Series 2020 Bonds, with such changes, supplements and amendments thereto as may be necessary or appropriate to reflect the documents and the matters described therein or as may be approved by an Authorized Officer, such approval to be conclusively evidenced by the execution of the final Official Statement, is hereby authorized, and any Authorized Officer is hereby authorized and directed to execute the same on behalf of the Corporation; and further

RESOLVED, that the amount, maturities, prices and yields, if any, and other terms of or relating to the Series 2020 Bonds insofar as set forth in the Indenture, are hereby approved, with the understanding that such Terms will be finalized in connection with the sale of the Series 2020 Bonds, which is expected to occur in April, 2020, subject to the final approval of any Authorized Officer, such approval to be evidenced by such Authorized Officer's execution of each of the Indenture and the Bond Purchase Agreement and that all other documents relating to the Series 2020 Bonds shall similarly, as appropriate, be conformed thereto; provided that the aggregate principal amount of the Series 2020 Bonds shall not exceed \$360,000,000, the final maturity shall not extend past September 1, 2036 and the interest rates to be borne by the Series 2020 Bonds shall not exceed a net interest cost of 7.5%; and further

RESOLVED, that in connection with the issuance of the Series 2020 Bonds, the Corporation hereby appoints The Bank of New York Mellon as Trustee under the Indenture; and further

RESOLVED, that, subject to the conditions set forth in the Bond Purchase Agreement, the Corporation shall sell and award the aggregate principal amount of the Series 2020 Bonds to the Underwriters; and further

RESOLVED, that the Corporation shall offer for sale, sell, issue and deliver the Series 2020 Bonds pursuant to the Bond Purchase Agreement and the Indenture and shall apply the proceeds thereof in accordance with the Indenture and certain documents and certificates to be delivered upon the issuance of the Series 2020 Bonds; and further

RESOLVED, that each of the President – Chief Executive Officer, Executive Vice President – Legal and General Counsel, Chief Financial Officer and Treasurer of the Corporation, and any other person duly authorized to act in such capacity, is designated an "Authorized Officer;" and further

RESOLVED, that each of the Authorized Officers is hereby authorized and directed to approve and execute such documents, instruments and certificates, make any changes to the forms of the Assignment of Rents, the Loan Agreements (including any exhibits thereto), the Indenture, the Bond Purchase Agreement, the Official Statement and all other related

documents as he or she may reasonably deem necessary, desirable or appropriate to consummate the transactions authorized hereby and thereby, make such payments and take such other actions in the name of the Corporation and on its behalf, as he or she may reasonably deem necessary, desirable or appropriate to carry out the foregoing resolutions, including without limitation the execution, sale and delivery of the Series 2020 Bonds, the execution and delivery of any and all papers, instruments, opinions, certificates, affidavits, agreements and other documents necessary, desirable or appropriate to carry out the foregoing resolutions and that all actions heretofore taken in connection with the offering, sale and issuance of the Series 2020 Bonds by any Authorized Officer or his or her designee are hereby ratified and approved.

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