

Budget, Finance and Facilities Committee

Meeting Materials December 2, 2021

FLORIDA **A&M** UNIVERSITY
Board of Trustees

Budget, Finance and Facilities Committee Meeting

Thursday, December 2, 2021

8:30 AM

Location: Grand Ballroom

Committee Members: Kimberly Moore, Chair
Otis Cliatt, Thomas Dortch, Kelvin Lawson, Belvin Perry, Craig Reed and Kenny Stone

AGENDA

- | | | |
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| I. | Call to Order | Trustee Moore |
| II. | Roll Call | Dr. Lynn B. Turner |

ACTION ITEMS

- | | | |
|-------|---|--------------------|
| III. | Minutes from the September 15, 2021 Committee Meeting | Trustee Moore |
| IV. | SGA Carryforward for Activities and Service Fees | Mrs. Rebecca Brown |
| V. | Amendment to Regulation 3.020, Waiver of Tuition and Fees | Mrs. Rebecca Brown |
| | a. Online Free Seat Program (effective fall 2021) | |
| | b. Programs of Strategic Emphasis Waiver (effective fall 2021) | |
| | c. Waiver for Resident Grandparent (effective fall 2022) | |
| VI. | Bragg Memorial Stadium Phase II Repairs / Renovation Budget Amendment | Mrs. Rebecca Brown |
| VII. | CASS Building New Parking Lot Addition Project | Mrs. Rebecca Brown |
| VIII. | FAMU School of Nursing Simulation Lab Project | Mrs. Rebecca Brown |

INFORMATION ITEMS

- | | | |
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| IX. | Vice President for Finance and Administration's Report | Mrs. Rebecca Brown |
| | a. Financial Status Report / Quarterly Budget Review | |
| | b. Report on MWBE | |
| | c. Project Updates – University Construction / Operations | |
| | i. Bragg Memorial Stadium | |
| | d. Master Plan Update | |
| | e. Compensation Study Update | |
| X. | COVID 19 Expenditure Report to Date | Dr. Erick Akins |
| XI. | Adjournment | Trustee Moore |

Supplemental Document: List of Contracts over \$100,000

ACTION ITEM:

Minutes from September 15, 2021
Committee Meeting

FLORIDA **A&M** UNIVERSITY
Board of Trustees
ACTION ITEM

Budget, Finance and Facilities Committee
Thursday, December 2, 2021
Agenda Item: III

Subject: Minutes from the September 15, 2021 Committee Meeting

Proposed Board Action:

In accordance with the Florida Statutes, a governing body shall prepare and keep minutes or make a tape recording of each open meeting of the body.

Recommendation: It is recommended that the Board of Trustees approves the September 15, 2021 minutes.

Attachments: Yes

1. Budget, Finance and Facilities Committee Meeting Minutes (September 15, 2021)

FLORIDA **A&M** UNIVERSITY
Board of Trustees

Budget, Finance and Facilities Committee Meeting

Trustee Kimberly Moore, Committee Chair
Wednesday, September 15, 2021
Location: Grand Ballroom

MINUTES

Committee Members Present: Kimberly Moore, Otis Cliatt, Thomas Dortch, Kelvin Lawson, Belvin Perry, Craig Reid, and Kenny Stone

Call to Order/Roll Call

Chair Moore called the meeting to order. Dr. Turner called the roll. A quorum was present.

ACTION ITEMS

Approval of Minutes – June 2, 2021.

There were no revisions to the minutes.

The motion to approve this action item was carried.

Approval of Minutes – August 4, 2021.

There were no revisions to the minutes.

The motion to approve this action item was carried.

Amendment to BOT Policy # 2005-23, Benefits and Leaves

Interim VP Brown introduced the topic by stating that this amendment would provide university employees with an additional fall break day on the Wednesday before Thanksgiving and add the new federal holiday, Juneteenth, as a university holiday.

The motion to approve this action item was carried.

University-Wide Service Agreements

Interim VP Brown provided an overview of the university-wide service agreements for purchase of informational technology services and equipment that are crucial to overall university operations. Based on current encumbered amounts, the threshold amount for which the President is delegated to approve will likely be exceeded this fiscal year. Since the named suppliers are currently contracted with the Department of Management Services (DMS), approval to piggyback on DMS' agreement is requested of the board to capitalize on additional discounts and savings; to eliminate the need for processing multiple contracts for the same vendor in the future; and to grant the President signature authority to enter into contracts for these service agreements with purchases not to exceed \$3 million. If the contracts approach the \$3 million threshold before the end of this fiscal year, the contracts will come to the board for approval.

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Questions/Comments re: University-Wide Service Agreements

- Trustee Moore stated that the action item is presented at this time as a proactive measure to avoid exceeding the threshold and to experience cost savings.
- Trustee Washington requested, going forward, supporting materials with the suppliers in the future to have an understanding of past encumbrances and to have an assurance that the dollar amounts being approved are not a work around.

Response: Trustee Moore confirmed that this information was provided in the materials.

The motion to approve this action item was carried.

2021-2022 University Carryforward Spending Plan and Fixed Capital Outlay Budget

Interim VP Brown presented the FY 2021-22 Carryforward Spending Plan and the Fixed Capital Outlay (FCO) Budget for all FCO Projects for approval by the board prior to submission to the Board of Governors.

The motion to approve this action item was carried.

INFORMATION ITEMS

Vice President for Finance and Administration's Report

a. Financial Status Report / Quarterly Budget Review

Interim VP Brown presented a comparison of FY 2019-20 and FY 2020-21 fourth quarter report. Overall, 87% of the budget was expended in 2019-20 versus 85% expenditures in 2020-21. The slight decrease is contributed to the negative balance in financial aid, which will be addressed as financial statements are finalized.

b. Report on MWBE

Interim VP Brown reported on dollars spent for Minority and Women-owned Business Enterprises for FY 2019-20 versus 2020-21. The report showed a slight decrease in dollars spent in FY 2020-21 with African American vendors. However, a significant increase in dollars spent was reported for American, Women-owned businesses. In 2020-21, minority vendors accounted for 18% of the facilities, planning and construction projects. For Phase I of the Bragg Stadium Project, 2% of the work was allocated to minority vendors. While there is no specific goal or threshold regarding the percentage of work for minority businesses in place at this time, the university is exerting every effort to increase opportunities.

Questions/Comments re: MWBE

- Trustee Dubose asked what is a good percentage for minority-owned businesses and how is the university partnering with the BOG and the minority-owned vendors to address the challenges?

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- Response: Interim VP Brown responded that she has been informed that 10% is a good standard. Director Hood discussed challenges such as the lack of ability for minority vendors to provide certain materials and the lack of state-certified minority vendors. She added that the university is partnering with SBDC to develop a plan to work with the suppliers with state certifications and assist them in becoming active participants in our programs. The Office of Procurement has also scheduled Supplier Expos to assist in the certification process. Interim VP Brown informed of the community outreach programs that are offered to assist the university community and expose them to opportunities available with the minority-owned vendors. AVP Hessel also stated that general contractors are encouraged to engage in business with minority-owned businesses through the competitive bidding process.*
- Trustees expressed concern for a standard of only 10% and encouraged a higher goal for recruitment of minority-owned businesses including recruitment outside the local market.
 - *Response: Trustee Moore reminded the board that law prohibits the use of the mandate.*
 - Trustee Cliatt requested General Counsel to review the verbiage to require and not encourages contractors to seek out minority businesses.
Response: Atty. Wallace informed that her office would look into the verbiage and report back to the board.
 - Trustee Lawson asked if there were ways to assist the minority-owned businesses meet the criteria and asked whether the listing was shared with SUS Peer groups.
Response: Director Hood informed that the university is working with other SUS universities and will research the funding possibilities.

c. Project Updates – University Construction / Operations

i. Bragg Memorial Stadium

With Phase I construction 100% complete, Interim VP Brown explained that Bragg Memorial Stadium Phase II is the only major project in progress at this time. Phase II design status is 12% complete and two pricing models, which are tentative and based on conceptual drawings, were provided. The first model, which includes ADA, handicap accessibility, etc. is estimated at over \$7.3 million and the second model which includes restrooms, fire sprinklers, plumbing, etc. is estimated at approximately \$3.3 million. The current remaining budget of \$5 million is insufficient to complete Phase II. The university is strategizing to secure additional funding and to reduce the cost.

Questions/Comments re: University Construction / Operations

- Trustee Cliatt expressed his concern of having a mid-October design completion date and a start date for Phase II to be November 1, within weeks.
Response: Director Talton informed that the conceptual design of the grand stand and press box is complete and that steel package is currently in progress to purchase the required material prior to the price increase on steel/aluminum. The design is on

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schedule for completion by mid-October. Director Talton also explained that the project is phased, beginning with demolition on November 1 and moving into building the grand stands and press box after the design is completed and permitted.

- Trustee Lawson asked, outside of revisiting Blue Print, what other options are available to fill the funding gap.
Response: Dr. Robinson stated that a return to Blue Print has not been ruled out, however the most likely approach is to raise the funds.
- Trustee Dubose stated that, due to the lack of materials and drivers in the supply chain, he is concerned that there isn't enough in the \$3 million contingency.
Response: AVP Hessel restated that the university will move forward with the purchase of the aluminum package for the seating and press box, which contributes to the majority of the material. The university is looking at tax savings through direct purchases and recycling of the old aluminum.

d. Master Plan Timeline

Interim VP Brown informed that a comprehensive housing study would be conducted by Student Affairs as part of the master plan. The master plan process will consist of seven phases and the anticipated completion date of the master plan is October 2022.

Questions/Comments re: Master Plan Timeline

- Trustee Lawson asked about the alignment of the comprehensive housing study and Gibbs Hall project.
Response: Trustee Moore indicated that the Strategic Plan is aligned with the Comprehensive Housing Study by looking at a six-month window for the study.

Compensation Study (Scope and Objectives)

Interim VP Brown explained that a working group has been established to review the current classification and compensation structure for faculty, staff and administrators. The purpose is to determine if the compensation structures are equitable and competitive and to develop a framework for ensuring consistent, fair and equitable salary administration.

Questions/Comments re: Compensation Study

- Trustee Dubose asked is a consultant group engaged in the unbiased study and, if so, who are they.
Response Interim VP Brown indicated that HelioCampus has been contracted to engage in the study and that a number of stakeholder meetings have occurred.
- Trustee Washington asked for the expected completion date of the study and how does the study align with strategic planning study also conducted by HelioCampus?
Response: Interim AVP Smith-Anderson stated that the HelioCampus project is two-folded, academics-personnel management and administrative staff benchmarking. The academics-personnel management study's scheduled

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completion is at calendar year-end while the benchmarking study is scheduled for completion at the end of November. Afterwards, the university's leadership will conduct a discovery review followed by action plans.

- Trustees Cavazos and Harper asked if the scope of the study had been expanded to include a focus on faculty?
Response: Interim VP Brown stated that Provost Edington, his team and HelioCampus are working diligently in conducting the benchmarking study that focuses on faculty, staff and administrators salaries.
- Trustee Cliatt requested the university provide clear directions to the consulting firm's study regarding salary benchmarking for all university employees.

COVID 19 Expenditure Report to Date

Dr. Erick Akins presented an update of expenditures for CARES and CRRSAA funding to the university. As of April 2021, CARES Act funds are 100% expended. CRRSAA funds are 59.15% expended. The university anticipates 100% expenditure of the CRRSAA funds by the May 2022 deadline.

Questions/Comments re: COVID 19 Expenditure Report to Date

- Trustee Moore requested Director Akins to share acceptable uses of the CRRSAA funds and to share previous audit findings.
Response: Director Akins indicated that the funds are used for anything related to COVID-19 in the areas of academic success, student services, facilities and IT. He also shared that the University received a clean audit on the CARES funds and an audit is currently underway for the CRRSAA funds.
- Trustee Washington asked if the quarterly expenditure reports are being used to recruit students to the university.
Response: Director Akins re-emphasized that the CARES funds cannot be used for recruitment, however the university is promoting what is being done with the funds, i.e. vaccine promotions. The university is also providing the additional student services to assist in their educational success and safety. President Robinson also announced that \$41 million have been allocated to relieve student debt since the beginning of fall semester 2021 and will continue.

Budget, Finance and Facilities Committee Action Plan

Trustee Moore presented the Budget, Finance and Facilities Committee action plan for FY 2021-22. She noted that this is a working document and that submission dates are aligned with external stakeholder deadlines for submission.

The meeting adjourned.

ACTION ITEM:

SGA Carryforward for Activities and Service Fees

FLORIDA **A&M** UNIVERSITY
Board of Trustees
ACTION ITEM

Budget, Finance and Facilities Committee

Thursday, December 2, 2021

Agenda Item: IV

Subject: SGA Carryforward for Activity and Service Fees
(Approval of Amendment to the FY 2021-2022 Operating Budget)

Proposed Board Action:

Additional Budget Authority is requested in the following budget entity: Fund 117 Student Activities - Florida Statutes 1009.24(10)(b) states: "Unexpended funds and undisbursed funds remaining at the end of a fiscal year shall be carried over and remain in the student activity and service fund and be available for allocation and expenditure during the next fiscal year." Additional budget authority for unexpended funds, in the amount of \$200,000, is being requested.

Recommendation: It is recommended that the Board of Trustees approves the \$200,000 in budget authority for SGA Carryforward for Activities and Service Fees for FY 2021-2022.

Attachments: No

ACTION ITEM:

Amendment to Regulation 3.020,
Waiver of Tuition and Fees

FLORIDA **A&M** UNIVERSITY
Board of Trustees
ACTION ITEM

Budget, Finance and Facilities Committee

Thursday, December 2, 2021

Agenda Item:

Subject: Amendment to Regulation 3.020, Waiver of Tuition and Fees

Proposed Board Action:

This regulation is being amended as a result of the legislative passage of **House Bill 1261** to incorporate the following new student waivers:

- **Online Free Seat Program** – State universities shall waive the tuition and fees for one online course for students enrolled in an online baccalaureate degree program, as well as provide discounted tuition and tuition differential for all other courses in the program, for resident students that meet certain eligibility requirements, including veterans, active duty members of the U.S. Armed Forces, active drilling members of the Florida National Guard, and nontraditional students. This waiver is effective fall of 2021.
- **Programs of Strategic Emphasis Waiver** – For every student enrolled in a Program of Strategic Emphasis, a state university shall waive 100 percent of the tuition and fees for an equivalent course in such program for Florida residents who meet certain criteria. This waiver is effective fall of 2021.
- **Waiver for Resident Grandparent** – Beginning with the 2022-2023 academic year, state universities shall waive the out-of-state fee for a student who has a grandparent that is a legal Florida resident for tuition purposes and if certain eligibility conditions are met.

This regulation is also being amended to incorporate the following Board of Governors waivers:

- **Veterans** – The University shall waive out-of-state fees for honorably discharged veterans of the United States Armed and Reserve Forces (Air Force, Army, Coast Guard, Marines, and Navy) and the National Guard (Army and Air) who physically reside in Florida while enrolled at a university.
- **Active Duty** – The University shall waive out-of-state fees for a person who is an active duty member of the Armed Forces of the United States residing or stationed outside of the state. Tuition and fees charged to a student who qualifies for the out-of-state fee waiver may not exceed the tuition and fees charged to a resident student.

Board of Trustees**ACTION ITEM**

- **Veterans, Active Duty, Spouses and Dependents** – The University shall waive the transcript fee for a person who is an active duty member or an honorably discharged veteran of the United States Armed Forces and his or her spouse and dependents.

Recommendation: Approval of the amendment to Regulation 3.020– Waiver of Tuition and Fees for notice and adoption in accordance with the Board of Governors Regulation Development Procedure after the 30-day notice period, provided there are no public comments.

Attachments: *Yes*

1. Proposed Regulation 3.020- Waiver of Tuition and Fees

Florida A&M University Regulation



3.020 Waiver of Tuition and Fees.

(1) The Florida A&M University Board of Trustees (University) is authorized to waive tuition, non-resident tuition and associated fees for purposes that support and enhance the mission of the university. Pursuant to Board of Governors Regulations, the University is authorized to waive the following tuition, non-resident tuition and associated fees as follows:

(2) Sponsored Credit Institutes and Programs – The University is authorized to waive tuition, associated fees and material and supply fees for participants in sponsored credit institutes and programs.

(a) Sponsored credit institutes and programs are entities where substantially all the direct costs are paid by the external sponsoring entity, where there is no direct expenditure of Educational and General funds for the conduct of the programs, and where no fees or other assessments are collected from students by the sponsoring entity, the university, or any other entity.

(b) In determining whether the direct costs are paid by the sponsoring entity, funds paid directly to the participants in a form such as, but not limited to, stipends, travel, or book allowances should not be taken into account. “Direct costs” refer to the costs associated with the instruction or training which a participant receives. All funds collected from sponsored credit institutes will be remitted to the university’s contract and grants trust fund and/or auxiliary trust funds.

(c) Funds collected from courses offered through continuing education should be budgeted in the Auxiliary Trust Fund,

(d) Neither the number of participants nor student credit hours in these institutes and programs may be counted for state-funding purposes.

(3) Deceased Law Enforcement, Correctional, or Correctional Probation Officers Employed by the State or Political Subdivision thereof – The University shall waive certain educational expenses that the child or spouse of the deceased officer incurs while obtaining an undergraduate education or a postgraduate education if a law enforcement, correctional, correctional probation officer is accidentally killed or receives accidental bodily injury which results in the loss of the officer’s life while engaged in the performance of the officer’s law enforcement duties on or after June 22, 1990, or is unlawfully and intentionally killed or dies as a result of such unlawful and intentional act on or after July 1, 1980, while the officer was employed by a political subdivision of the state.

(a) The amount waived by the university shall be an amount equal to the cost of tuition and associated fees for a total of 120 credit hours. The child or spouse may

attend on either a full-time or part-time basis. The benefits provided to a child under this section shall continue until the child's 25th birthday. The benefits provided to spouse under this subsection must commence within five (5) years after the death occurs, and entitlement thereto shall continue until the 10th anniversary of that death.

(b) Upon failure of any child or spouse benefited by the provisions of this subsection to comply with the ordinary and minimum requirements of the institution attended, both as to discipline and scholarship; the benefits shall be withdrawn as to the child or spouse and no further moneys may be expended for the child's or spouse's benefits so long as such failure or delinquency continues.

(c) Only a student in good standing at the university may receive benefits.

(d) A child or spouse receiving benefits under this subsection must be enrolled according to the customary rules and requirements of the university.

(4) Deceased Firefighters Employed by the State or a Political Subdivision thereof – The University shall waive certain educational expenses that the child or spouse of the deceased firefighter incurs while obtaining an undergraduate education or a postgraduate education if a firefighter is accidentally killed or receives accidental bodily injury which results in the loss of firefighter's life while engaged in the performance of the firefighter's duties on or after June 22, 1990, or is unlawfully and intentionally killed or dies as a result of such unlawful and intentional act on or after July 1, 1980, while the firefighter was employed by a political subdivision of the state.

(a) The amount waived by the university shall be an amount equal to the cost of tuition and associated fees for a total of 120 credit hours. The child or spouse may attend on either a full-time or part-time basis. The benefits provided to a child under this section shall continue until the child's 25th birthday. The benefits provided to spouse under this subsection must commence within five (5) years after the death occurs, and entitlement thereto shall continue until the 10th anniversary of that death.

(b) Upon failure of any child or spouse benefited by the provisions of this subsection to comply with the ordinary and minimum requirements of the university, both as to discipline and scholarship; the benefits shall be withdrawn as to the child or spouse and no further moneys may be expended for the child's or spouse's benefits so long as such failure or delinquency continues.

(c) Only a student in good standing at the university may receive benefits.

(d) A child or spouse receiving benefits under this subsection must be enrolled according to the customary rules and requirements of the university.

(5) Acceleration – The University shall waive tuition and associated fees for students who earn credit in courses towards both a Florida high school diploma and an associate or baccalaureate degree, or students enrolled in a dual enrollment or early admission program.

(6) Florida department of Children and Family Service Adoptions – The University shall waive tuition and associated fees for any student who is or was at the time he or she reached the age of 18 in the custody of the Department of the Department of Children and Family Services or a relative under s. 39.5085; who was adopted from the Department of Children and Family Services after May 5, 1997; or was placed in a guardianship by a court after

spending at least six (6) months in the custody of the Department after reaching 16 years of age. Additionally, material and supply fees and fees associated with enrollment in career-preparatory communication and computation skills testing programs shall be waived. Any student requesting such a waiver must provide certification of eligibility from the Department of Children and Family Services to the university. This waiver shall remain valid up until the time the student reaches the age of 23, and shall be limited to undergraduate degree programs, and shall not exceed 120 credit hours.

(7) School Psychology Training Program - The University shall waive tuition and associated fees for internship credit hours applicable to an internship in the public school system under the supervision of the Florida Department of Education certified school psychologist employed by the school system for any graduate student.

(8) Florida National Guard – Certain members of the active Florida National Guard pursuant to Board of Governors Regulations 7.015.

(9) Florida Linkage Institutes – The University shall exempt from non-resident tuition and non-resident financial aid fee up to 25 full-time equivalent students per year enrolled through the Florida Linkage Institutes Program.

(10) Deceased Teacher or School Administrator Employed by a Florida District School Board – The University shall waive certain educational expenses that the child of the deceased teacher or school administrator incurs while obtaining an undergraduate education or a postgraduate education if the teacher or school administrator is killed or is injured and dies as a result of an unlawful and intentional act, provided such killing or injury inflicted by another person and the motivation for the act is related in whole or part to the fact that the individual is a teacher or school administrator, or such act is inflicted while he or she is engaged in the performance of teaching duties or school administration duties while employed by a Florida district school board. The amount waived by the university shall be an amount equal to the cost of tuition and associated fees for a total of 120 credit hours at a university. The child may attend on either a full time or part-time basis. The benefits provided under this paragraph shall continue until the child's 25th birthday.

(11) Homeless – The University shall waive tuition and associated fees for a total of 120 credit hours for any student who lacks a fixed, regular, and adequate nighttime residence or whose primary nighttime residence is a public or private shelter designed to provide temporary residence for individuals intended to be institutionalized, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(12) Purple Heart Recipients – The University shall waive undergraduate tuition and associated fees for each recipient of a Purple Heart, or another combat decoration superior in precedence which was awarded for valor, and who:

- (a) Is enrolled as a full-time, part-time, or summer-school student in an undergraduate program that terminates in a degree or certificate;

(b) Is currently, and was at the time of the military action that resulted in the awarding of the Purple Heart or other combat decoration superior in precedence, a resident of this state; and

(c) Submits to the university the DD-214 form issued at the time of separation from service as documentation that the student has received a Purple Heart or another combat decoration superior in precedence. In situations where admissions or financial aid application deadlines preclude providing a DD-214 in time to meet such a deadline, the official (service specific) transmitting correspondence that would normally accompany such an award to a previously discharged service member would suffice until an updated DD-214 could be obtained and presented to the university. However, the updated DD-214 must be submitted to the university by the start of the student's next term of enrollment for continued eligibility for the waiver. In situations where a service member is on active duty and has not been issued a DD-214, the official (service specific) transmitting correspondence that would normally accompany such an award or a certification of the appropriate combat award by the service specific administrative record holder [e.g. Adjutant, G-1 (general staff officer – personnel) or JAG (Judge Advocate General)] would meet the documentation requirement.

(d) A waiver for a Purple Heart recipient or recipient of another combat decoration superior in precedence shall be applicable for 110 percent of the number of required credit hours of the degree or certificate program for which the student is enrolled. This waiver is considered "countable aid" for student financial aid purposes. Therefore, if this waiver is administered by an office other than the university financial aid office, university officials must notify the Director of Financial Aid that a student has qualified for the waiver. The waiver covers only tuition and fees associated with credit hour instruction provided directly by the university and does not include any additional fees that may be charged for specialized programs or by external organizations. This includes, but is not limited to, flight school, study abroad travel and living expenses and courses taken elsewhere as a transient student.

(13) State Employees – The University shall waive tuition and associated fees for up to six (6) credit hours per term on a space available basis for state employees.

(14) University Employees – The University may allow full-time university employees to enroll up to six (6) credit hours of tuition-free courses per term on a space available basis.

(15) Florida residents 60 years or older – The University may waive any or all application, tuition, and associated fees for persons 60 years of age or older who are residents of this state and who enroll to audit courses being offered for college credit. No academic credit shall be awarded for attendance in classes for which fees are waived under this subsection. This privilege may be granted only on a space-available basis, if such classes are not filled as of the close of registration. The university may limit or deny the privilege for courses which are in programs for which the Board of Governors has established selective admissions criteria. Persons paying full fees and state employees taking courses on a space-available

basis shall have priority over those persons whose fees are waived in all cases where classroom spaces are limited.

(16) Intern Supervisors – Person who supervise interns for the university may be given one non-transferable certificate (fee waiver) for each full academic term during which the person serves as an intern supervisor. This certificate shall provide for waiver of basic fee (as defined in Board of Governors Regulation 7.001).

(a) Certificate holders are entitled to a waiver of tuition for a maximum of six (6) hours credit instruction (including credit through continuing education) during a single term.

(b) Certificates shall be valid for three years from the date of issuance.

(c) The following persons may be identified by the university as eligible to receive Intern Participation Certificates:

1. Persons who engage in the direct supervision of at least one university intern for 300 contact hours, which may be accumulated over multiple semesters, provided at least 100 contact hours of direct supervision is provided per semester.

(d) To be eligible for a Certificate, the internship program must be an essential part of the course of instruction and must be required as part of the degree.

(e) The university shall develop procedures and policies to govern the issuance, distribution, security, and redemption of certificates.

(f) The university shall maintain accurate data on Intern Participation Certificates and annually submit a report of certificate activity to the Board of Governors according to a prescribed format.

(17) Non-resident students – Non-resident students who are non-degree seeking may be entitled to a waiver of the out-of-state fee if the credit hours generated by such students are non-state fundable and the cost for the program of study is recovered from the fees charged to all students.

(18) Admissions Deposit – The University must adopt policies that provide for the waiver of this deposit on the basis of financial hardship.

(19) Wrongfully Incarcerated – The University shall waive tuition and associated fees for up to 120 hours of instruction if the wrongfully incarcerated person meets and maintains the regular admission requirement of the university; remains registered and makes satisfactory academic progress as defined by the university. A wrongfully incarcerated person is someone who has had a felony conviction and sentence vacated by a court and the original sentencing court has issued its order finding that the person neither committed the act, nor did not aid, abet or act as an accomplice or accessory to the act or offense.

(20) Veterans – The University shall waive out-of-state fees for honorably discharged veterans of the United States Armed and Reserve Forces (Air Force, Army, Coast Guard, Marines, and Navy) and the National Guard (Army and Air) who physically reside in Florida while enrolled at a university.

Persons who are entitled to and uses educational assistance provided by the United States Department of Veterans Affairs also qualify for this waiver if they physically reside in Florida while enrolled at the university in any term beginning after July 1, 2015. Tuition and fees charged to a veteran or person who qualifies for the out-of-state fee waiver under this subsection may not exceed the tuition and fees charged a resident student enrolled in the same course.

(21) Active Duty – The University shall waive out-of-state fees for a person who is an active duty member of the Armed Forces of the United States residing or stationed outside of the state. Tuition and fees charged to a student who qualifies for the out-of-state fee waiver may not exceed the tuition and fees charged to a resident student.

(22) Veterans, Active Duty, Spouses and Dependents – The University shall waive the transcript fee for a person who is an active duty member or an honorably discharged veteran of the United States Armed Forces and his or her spouse and dependents.

(23) Online Free Seat Program – The University shall waive the tuition and fees for one online course for eligible veterans, active duty members of the United States Armed Forces, active drilling members of the Florida National Guard, and nontraditional students who enroll in an online baccalaureate degree program at the University.

(a) A student whose tuition and fees are waived under this program must be a resident for tuition purposes under s. 1009.21, F.S., must not have previously earned a bachelor’s degree, and must be enrolled in an online baccalaureate degree program as defined in paragraph 2, provided the student meets one of the following eligibility requirements:

1. Is a veteran as defined in s. 1.01(14), F.S.;
2. Is an active duty member of the United States Armed Forces;
3. Is an active drilling member of the Florida National Guard; or
4. Is a nontraditional student, defined for the purposes of this program as a student who has been out of high school or its equivalent for at least 5 years and has not been enrolled in a postsecondary institution in the last 5 years.

(b) For purposes of this program, an online baccalaureate program is defined as an online baccalaureate major that is included in the Board of Governors Online Programs (Majors) Inventory.

(<https://prod.flbog.net:4445/pls/apex/f?p=136:200:3012543873555::NO::>)

(c) For all other courses in the online program, the University may not charge a student described in sub-paragraph (1) more than 75 percent of the tuition rate as specified in s. 1009.24(4), F.S., and 75 percent of the tuition differential pursuant to s. 1009.24(16), F.S., if the student remains enrolled at least part-time in the program during each academic year. A student who qualifies for this tuition discount is eligible to receive the discount for up to 110 percent

of the number of required credit hours of the degree program for which the student is enrolled.

(d) For purposes of this program, fees shall be those associated fees specified in Board Regulation 7.001 Tuition and Associated Fees and the distance learning fee defined in Board Regulation 7.003 Fees, Fines and Penalties.

(e) Fee waivers granted pursuant to this subsection may not exceed 1,000 students system-wide each academic year. The Chancellor will determine the maximum number of waivers for this program per institution.

(24) Programs of Strategic Emphasis Waiver – For every course in a Program of Strategic Emphasis, as identified in sub-paragraph 3, in which a student is enrolled, the University shall waive 100 percent of the tuition and fees for an equivalent course in such program for a student who:

(a) Is a resident for tuition purposes under s. 1009.21, F.S.;

(b) Has earned at least 60 semester credit hours towards a baccalaureate degree within two academic years after initial enrollment at a Florida public postsecondary institution;

(c) Enrolls in one of eight Programs of Strategic Emphasis as adopted by the Board of Governors. The Board of Governors shall adopt eight Programs of Strategic Emphasis in science, technology, engineering, or mathematics for which a student may be eligible to receive the tuition and fee waiver authorized by s. 1009.26(18), F.S. The programs identified by the board must reflect the priorities of the state and be offered at a majority of state universities.

(d) A waiver granted under this subsection is applicable only for upper level courses and up to 110 percent of the number of required credit hours of the baccalaureate degree program for which the student is enrolled.

(e) For purposes of this program, fees shall be those associated fees specified in Board Regulation 7.001 Tuition and Associated Fees.

(25) Waiver for Resident Grandparent – The University shall waive the out-of-state fee for a student who:

(a) Has a grandparent who is a legal resident as defined in s. 1009.21(1), F.S. For purposes of this subsection, the term “grandparent” means a person who has a legal relationship to a student’s parent as the natural or adopted parent or legal guardian of the student’s parent.

(b) Earns a high school diploma comparable to a Florida standard high school diploma, or its equivalent, or completes a home education program.

(c) Achieves an SAT combined score no lower than the 89th national percentile on the SAT;

(d) Achieves an ACT score concordant to the required SAT score in sub-subparagraph (a), using the latest published national concordance table developed jointly by the College Board and ACT, Inc.; or

1. If the University accepts the Classic Learning Test (CLT) for admission purposes, achieves a CLT score concordant to the required SAT score specified in sub-subparagraph (a), using the latest published scoring comparison developed by Classic Learning Initiatives.

(e) Beginning with the students who initially enroll in the 2022 fall academic term and thereafter, enrolls as a full-time undergraduate student at the University in the fall academic term immediately following high school graduation.

1. The waiver under this subsection is applicable for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled.

2. Before waiving the out-of-state fee, the University shall require the student or the student's parent, if the student is a dependent child, to provide a written declaration pursuant to s. 92.525(2), F.S., attesting to the student's familial relationship to a grandparent who is a legal resident and any other corroborating documentation required by the Board of Governors. The University is not required to independently verify the statements contained in each declaration if the signatory declares it to be true under the penalties of perjury as required by s. 92.525(2), F.S. However, the University may refer any signed declaration suspected of containing fraudulent representations to law enforcement.

3. Beginning with students who initially enroll for the 2022-2023 academic year or thereafter, the University shall, within the nonresident student enrollment system-wide, prioritize the enrollment of a student who is granted a fee waiver under this subsection over an out-of-state student who is not eligible for an out-of-state fee waiver if the students have substantially similar academic and other credentials used in determining admission to the University.

4. Fee waivers granted pursuant to this subsection may not exceed 350 students system-wide each academic year; the Chancellor will determine the maximum number of waivers for this program per institution.

1.5. For purposes of this program, fees shall be those associated fees specified in Board Regulation 7.001 Tuition and Associated Fees.

~~(269)~~ The University may waive the tuition differential for students who meet the eligibility requirements for the Florida Public Assistance Grant.

~~(272)~~ The University shall report the purpose, number, and value of all fee waivers granted annually in a format prescribed by the Board of Governors.

Specific Authority: ~~Board of Governors Regulation Development Procedure Dated July 21, 2005. Law Implemented: Section 7(d), Art. IX, Fla. Const.; Board of Governors Resolution 1-7-03; Board of Governors Regulations 1.001, 7.001, 7.008 and 7.015, Sections 112.191,~~

112.1915, 250.10, 1009.24, 1009.26, and 1009.265 Florida Statutes, *History-New 6-22-10; Amended 1-xx-22.*

ACTION ITEM:

Bragg Memorial Stadium Phase II Repairs /
Renovation Budget

FLORIDA **A&M** UNIVERSITY
Board of Trustees
ACTION ITEM

Budget, Finance and Facilities Committee

Thursday, December 2, 2021

Agenda Item: VI

Subject: Bragg Memorial Stadium Phase 2A Repairs / Renovation Budget Amendment

Proposed Board Action:

Approve the budget amendment and spending authority of the original budget.

The original project budget was \$6M (Blue Print Funding). The request is to increase the project budget up to \$8M which totals an amended project budget of \$8M.

Background Information:

Phase 2A includes the replacement of the existing elevator and shaft, removal and replacement of the press box and home side grand stands which includes design services and general construction for the area affected. Those services are as follows: architectural, plumbing, electrical and structural.

Estimated Timeline (Phase 2A):

Design Start: March 5, 2021

Construction Start: November 2021

Beneficial Occupancy: September 2022

Process for Procurement: (Phase 2A)

Competitive Solicitation for Architectural and Construction Management Services per the 2020 Florida Statutes section 287.057

Recommendation: It is recommended that the Board of Trustees approves the amended budget spending authority needed for the Bragg Memorial Stadium Phase 2A Repairs / Renovation Project and authorizes the President to execute the necessary contracts and agreements. This contract will be executed after the Board approval and review and comments by Office of General Counsel.

Attachments: No

ACTION ITEM:

CASS Building New Parking Lot Addition Project

FLORIDA **A&M** UNIVERSITY
Board of Trustees
ACTION ITEM

Budget, Finance and Facilities Committee

Thursday, December 2, 2021

Agenda Item: VII

Subject: Center for Access and Student Success (CASS) Building New Parking Lot Addition Project

Proposed Board Action:

This agenda item relates to signature authority approval for the Center for Access and Student Success (CASS) Building's New Parking Lot Addition for a total sum \$1,664,950.45.

Background: In June 2017, new construction began on the CASS building located on Wahnish Way on the north end of Gaither Gymnasium. The new construction displaced a parking lot for staff and students. Consequently, parking availability decreased yet the demand for parking to access the new CASS building increased in the area.

To alleviate the parking deficit near the CASS building, a new paved parking lot adjacent to the CASS building is proposed. The location of the proposed parking lot will be the former site of the pool house. This proposed location will provide 148 parking spaces with an additional 6 ADA/HC parking spaces.

Funding Source: Remaining funds in the CASS Building PECO Budget

Recommendation: It is recommended that the Board of Trustees approves and authorizes the President to execute the necessary contract and agreement for the Center for Access and Student Success (CASS) Building's New Parking Lot Addition for a total sum \$1,664,950.45. This contract will be executed after the Board approval and review and comments by Office of General Counsel.

Attachments: Yes

1. Florida A&M University CASS Building New Parking Lot Budget Estimate Proposal



Budget Estimate Proposal

Prepared For:
FLORIDA A & M UNIVERSITY

Project:
**FLORIDA A & M UNIVERSITY
CASS BUILDING
NEW PARKING LOT ADDITION**

Prepared By:
RAM Construction and Development, LLC
20 Ram Blvd
Midway, Florida 32343

November 1, 2021



BUDGET ESTIMATE

PROJECT DESCRIPTION:
FLORIDA A & M UNIVERSITY
CASS BUILDING
NEW PARKING LOT ADDITION

DIVISIONAL RECAP			
DIVISION - 1 GENERAL CONDITIONS / ON-SITE SUPERVISION		\$	139,647.28
DIVISION - 2 SITEWORK			
	Demolition & Abatement	\$	167,954.00
	Sitework	\$	486,945.00
DIVISION - 3 CONCRETE		\$	265,871.00
DIVISION - 4 MASONRY		\$	-
DIVISION - 5 METALS		\$	12,750.00
DIVISION - 6 CASEWORK & TRIM		\$	-
DIVISION - 7 MOISTURE PROTECTION		\$	-
DIVISION - 8 DOORS & WINDOWS			
	Doors	\$	-
	Windows	\$	-
DIVISION - 9 FINISHES			
	Flooring	\$	-
	Painting	\$	-
	Drywall	\$	-
	Ceilings & Wall Panels	\$	-
DIVISION - 10 SPECIALTIES		\$	-
DIVISION - 11 EQUIPMENT		\$	-
DIVISION - 12 FURNISHINGS		\$	-
DIVISION - 13 SPECIAL CONSTRUCTION		\$	-
DIVISION - 14 CONVEYING SYSTEMS		\$	-
DIVISION - 15 MECHANICAL/PLUMBING			
	Fire protection & related accessories	\$	-
	Plumbing	\$	-
	HVAC	\$	-
DIVISION - 16 ELECTRICAL		\$	365,000.00
SUBTOTAL (COST OF WORK)		\$	1,438,167.28
		Percentage Applied	
	PRE-CONSTRUCTION PHASE FEE	0.00%	\$ -
	CONTINGENCY	9.00%	\$ 129,435.06
	CONSTRUCTION FEE (OH & P - DMS FEE CURVE COMPLEXITY "F")	6.21%	\$ 97,348.11
BUDGET ESTIMATE TOTAL		\$	1,664,950.45

ACTION ITEM:

FAMU School of Nursing Simulation Lab Project

FLORIDA **A&M** UNIVERSITY
Board of Trustees
ACTION ITEM

Budget, Finance and Facilities Committee

Thursday, December 2, 2021

Agenda Item: VIII

Subject: FAMU School of Nursing Simulation Lab Project

Proposed Board Action:

This agenda item relates to signature authority approval for the FAMU School of Nursing Simulation Lab Project for a total sum of \$1,524,665.40. The lab location will be the Ware-Rhoney building, 334 West Palmer Avenue, Room 302.

The design includes:

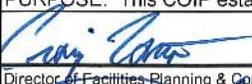
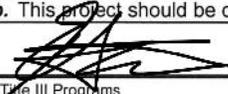
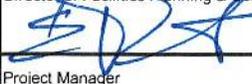
- Four (4) simulation lab spaces that can be converted into preconference/debrief rooms with low sound transmission operable partitions.
- Simulated hospital entry sequence with camera/audio incorporation into the lobby.
- Simulated standard doctor's office and a medication/IV room.
- Elevated control rooms for instructors.
- Debriefing room
- Remediation space (basement level)
- Includes all required MEPF and IT infrastructure

Funding Source: Title III Funds

Recommendation: It is recommended that the Board of Trustees approves and authorizes the President to execute the necessary contract and agreement. This contract will be executed after the Board approval and review and comments by Office of General Counsel.

Attachments: Yes

1. COIP - School of Nursing Simulation Lab - 9-17-21

FLORIDA A & M UNIVERSITY CAPITAL OUTLAY IMPLEMENTATION PLAN - PROJECT SCOPE & BUDGET PROJECT NAME: School of Nursing Simulation Lab			
SOURCE	CURRENT AVAILABLE BUDGET	PROPOSED BUDGET	CURRENT AND FUTURE FUNDING
<u>Appropriations to-date (trust fund, fiscal yr, source & phase):</u>			
2021-2022 Title III Grant	84,909.00	1,439,756.40	1,524,665.40
Total - Current Available Sources	84,909.00	1,439,756.40	1,524,665.40
<u>Future Appropriations (fiscal yr, source & phase):</u>			
Total - Future Sources	-	-	-
Total - Current and Future Sources	84,909.00	1,439,756.40	1,524,665.40
USE	Current Scope/Use of Available Budget	Proposed Scope/Use of Proposed Budget	Application of Current and Future Funding
NASF by Space Type			
Construction Cost		1,147,832.56	1,147,832.56
Additional/Extraordinary Construction Cost			
Environmental Impacts/Mitigation	-	-	-
Site Preparation	-	-	-
Landscape/Irrigation	-	-	-
Plazas/ Walks	-	-	-
Roadway Improvements	-	-	-
Parking Spaces	-	-	-
Telecommunications (Allowance)	-	18,000.00	18,000.00
Electrical Services	-	-	-
Water Distribution	-	-	-
Sanitary Sewer System	-	-	-
Chilled Water System	-	-	-
Storm Water System	-	-	-
Energy Efficient Equipment	-	-	-
Temporary Trailers	-	-	-
Total Additional/Extraordinary Const. Cost	-	18,000.00	18,000.00
SCHEDULE OF PROJECT COMPONENTS:			
1. CONSTRUCTION COST			
a. Constr. Cost (above)	-	1,147,832.56	1,147,832.56
b. Additional/Extraordinary Const. Costs	-	18,000.00	18,000.00
SUBTOTAL CONSTRUCTION COSTS	-	1,165,832.56	1,165,832.56
2. OTHER PROJECT COSTS			
a. Land/existing facility acquisition	-	-	-
b. Professional Fees	84,909.00	-	84,909.00
c. Fire Marshall Fees	-	2,869.58	2,869.58
d. Inspection Services	-	-	-
e. Insurance Consultant	-	-	-
f. Surveys & Tests (Mold & Asbestos Abatement)	-	-	-
g. Permit/Impact/Environ. Fee	-	6,619.28	6,619.28
h. Artwork	-	-	-
i. Moveable Furnishings & Sim Lab Equipment	-	230,000.00	230,000.00
j. Project Contingency @ 3%	-	34,434.98	34,434.98
j. Constuction and Facilities Planning Fees @3%	-	-	-
SUBTOTAL OTHER PROJECT COSTS	84,909.00	273,923.84	358,832.84
3. ALL PROJECT COSTS (1+2)*	84,909.00	1,439,756.40	1,524,665.40
PURPOSE: This COIP establishes the budget for <i>Nursing Simulation Lab</i> . This project should be capitalized.			
	9/17/21		09/17/2021
Director of Facilities Planning & Construction	Date	Executive Director, Title III Programs	Date
	9/17/21		
Project Manager	Date	VP for Finance & Administration	Date

Information Item:

Vice President for Finance and Administration's Report

FLORIDA **A&M** UNIVERSITY
Board of Trustees
INFORMATION ITEM

Budget, Finance and Facilities Committee

Thursday, December 2, 2021

Agenda Item: IX

Subject: Vice President for Finance and Administration's Report

Background Information and Summary:

Mrs. Rebecca Brown, Interim Vice President for Finance and Administration / CFO will provide information on the following items:

- a. Financial Status Report / Quarterly Budget Review
- b. Report on MWBE
- c. Project Updates – University Construction / Operations
 - i. Bragg Memorial Stadium
- d. Master Plan Update
- e. Compensation Study Update

Information Item:

Vice President for Finance and Administration's Report

- a) Financial Status Report / Quarterly Budget Review

FLORIDA A&M UNIVERSITY
Financial Status FY21-22 Quarter 1

FLORIDA A&M UNIVERSITY
Financial Status FY20-21 Quarter 1 36

Fund	Fund Name	Approved Budget	Encumbrances and Expenditures	Budget Status	Percent of Budget Expended	FY2019-20 Approved Budget	Expenditures and Encumbrances	Budget Status	Percent of Budget Expended
		-1-	PeopleSoft as of 09/30/21 -2-	(Over) Under -3-	% -4-		PeopleSoft as of 09/30/20 -2-	(Over) Under -3-	% -4-
Education and General					Education and General				
101	General Revenue	\$ 96,905,897	\$ 137,837,395	\$ (40,931,498)		\$ 100,412,258	\$ 139,304,713	\$ (38,892,455)	
102	Tuition and Student Fees	67,801,614	4,560,812	\$ 63,240,802		67,801,614	4,513,257	\$ 63,288,357	
104	Educational Enhancement (Lottery)	26,908,721		\$ 26,908,721		22,663,971	702,111	\$ 21,961,860	
Total Educational and General		\$ 191,616,232	\$ 142,398,207	\$ 49,218,025	74%	\$ 190,877,843	\$ 144,520,081	\$ 46,357,762	76%
Auxiliary Enterprises					Auxiliary Enterprises				
110	Housing Trust Fund	21,042,350	9,205,197	\$ 11,837,153		15,575,659	9,099,550	\$ 6,476,109	
116	Auxiliary Trust Fund	27,398,321	10,395,808	\$ 17,002,513		26,283,530	11,717,751	\$ 14,565,779	
603	Auxiliary R&R Fund	3,233,187	246,530	\$ 2,986,657		3,658,970	169,607	\$ 3,489,363	
701	Housing Debt Service	-	-	\$ -		381,000	2,636,422	\$ (2,255,422)	
Total Auxiliary Enterprises		\$ 51,673,858	\$ 19,847,535	\$ 31,826,323	38%	\$ 45,899,159	\$ 23,623,330	\$ 22,275,829	51%
Total Intercollegiate Athletics		\$ 9,500,808	\$ 7,100,512	\$ 2,400,296	75%	\$ 6,503,487	\$ 5,309,655	\$ 1,193,832	82%
Total Concessions		\$ 67,670	\$ 20,068	\$ 47,602	30%	\$ 71,790	\$ 14,043	\$ 57,747	20%
Total Technology Fee		\$ 1,200,000	\$ 207,613	\$ 992,387	17%	\$ 1,840,117	\$ 1,338,091	\$ 502,026	73%
Student Activities					Student Activities				
117	Late Registration Fee (480910)	122,500	95,533	\$ 26,967		53,566	881	\$ 52,685	
117	Orientation Fee (482000)	104,123	119,896	\$ (15,773)		247,408	103,522	\$ 143,886	
117	Student Activities- Activities and Services Fee (43 Series)	2,815,163	1,842,817	\$ 972,346		3,136,559	339,820	\$ 2,796,739	
Total Student Activities		\$ 3,041,786	\$ 2,058,246	\$ 983,540	68%	\$ 3,437,533	\$ 444,223	\$ 2,993,310	13%
Student Financial Aid					Student Financial Aid				
117	Late Payment Fee Controller (480920)	301,848	137,126	\$ 164,722		349,387	118,778	\$ 230,609	
117	Administrative Expense Fin. Aid (481210)	187,960	78,491	\$ 109,469		161,317	105,727	\$ 55,590	
117	Administrative Controller (481220)	207,609	56,354	\$ 151,255		243,223	53,296	\$ 189,927	
201	Title IV Administrative Expense (410333)	119,382	117,650	\$ 1,732		115,382	115,331	\$ 51	
201	College Work Experience Program (410405)	28,397	0	\$ 28,397		22,200	705	\$ 21,495	
201	Federal Work Study Program (410452)	779,038	8,100	\$ 770,938		825,000	120,849	\$ 704,151	
202	Scholarship Fund	42,000,000	13,515,850	\$ 28,484,150		33,636,548	18,400,687	\$ 15,235,861	
301	Federal Perkins Loan Program (550100) and other Fund 301	400,000	10,452	\$ 389,548		30,000	29,500	\$ 500	
901	Other Tuition Assistance Grant (511700)	3,250,000	899,217	\$ 2,350,783		2,641,472	1,380,738	\$ 1,260,734	
Total Financial Aid		\$ 47,274,234	\$ 14,823,240	\$ 32,450,994	31%	\$ 38,024,529	\$ 20,325,611	\$ 17,698,918	53%
Contracts & Grants					Contracts & Grants				
118	FAMU DRS Trust Fund	5,380,990	4,505,198	\$ 875,792		5,215,030	3,977,885	\$ 1,237,145	
203	Sponsored Research Trust Fund (402210)	138,111,750	59,585,590	\$ 78,526,160		82,313,195	56,003,865	\$ 26,309,330	
Total Contracts and Grants		\$ 143,492,740	\$ 64,090,788	\$ 79,401,952	45%	\$ 87,528,225	\$ 59,981,750	\$ 27,546,475	69%
Grand Total		\$ 447,867,328	\$ 250,546,209	\$ 197,321,119	56%	\$ 374,182,683	\$ 255,556,784	\$ 118,625,899	68%

***KEY ASSUMPTIONS**

*Salaries are encumbered for 12 months

*View of Expenditures across all categories related to FY21-22 Operating Budget

Information Item:

Vice President for Finance and Administration's Report

- b) Report on MWBE

FAMU MWBE Report

Fiscal Year 2020-2021

FAMU MBE CERTIFIED MINORITY BUSINESS EXPENDITURE REPORT Fiscal Year 2020-2021

CLASSIFICATIONS	Spend amount	Total spend	Percentage of Spend
AFRICAN AMERICAN	\$ 615,017.87	\$ 991,952.77	62%
HISPANIC	\$ 21,608.61	\$ 21,608.61	100%
ASIAN-HAWAIIAN	\$ 5,744.00	\$ 7,526.32	76%
NATIVE AMERICAN	\$.00	\$.00	--
AMERICAN WOMEN	\$ 485,270.34	\$ 573,268.15	84%
CERTIFIED MBE SUBTOTAL:	\$ 1,127,640.82	\$ 1,594,268.15	71%
NON-MBE SUBTOTAL:	\$ 10,335,596.24	\$ 15,818,799.05	65%
GRAND TOTAL:	\$ 11,463,237.06	\$ 17,413,154.90	65%

Minority Business Enterprise (MBE) Tracker

Fiscal Year 2020-2021

FAMU Facilities Planning and Construction MBE/WBE Tracker Fiscal Year 2020-2021

	Total Minor Proj. Budget of \$4,660,262.17	Project Budget	Percentage of Work
MBE/WMBE Vendors			
305 BROTHERS ALL IN ONE, LLC		\$20,950.00	1%
DATA SET READY		\$570,244.50	12%
FLORIDA DEVELOPERS, INC. OF TALLAHASSEE		\$82,732.78	2%
PYRAMID CONSTRUCTION & DESIGN, INC		\$25,694.00	1%
SEVEN HILLS COMMERCIAL CLEANING & PAINTING		\$97,725.00	2%
WUH SERVICES LLC		\$69,500.00	1%
Ace Contracting		\$13,412.17	1%
Total Value of Work	\$4,660,262.17	\$847,096.28	20%
	Total Construction Budget \$3,200,000	Project Scope of work Budget	Percentage of Work
Phase I Bragg Memorial Stadium Project MBE/WBE Allocation			
Jackson Cook WBE		\$41,000.00	1%
Empire Fencing		\$30,000.00	1%
			0%
Total MBE/WBE	\$3,200,000.00	\$71,000.00	2%

Efforts for Increased Engagement and Promotion of Access for Suppliers rev. 11-19-21

Cultivate relationships through Networking Opportunities

- Facilitate Industry Day which is an event held twice annually where MWBEs are invited to attend and learn of ways to engage with University departments on the procurement of goods and services. The recent Industry Day event was held November 9, 2021 with approximately 23 potential suppliers and University department representatives in attendance.
- University personnel attendance and participation at off-campus seminars and trade shows to identify and meet potential suppliers of select commodities, contractual services, architectural and engineering services, and construction materials and supplies.

Encourage Utilization of MWBE

- Departments within the University are educated on the availability of minority vendors and are encouraged to use MWBEs where possible.
- Prime contractors for construction projects are encouraged to invite certified MWBEs to bid on subcontracting opportunities.
- Known MBE vendors/contractors are directly contacted about business opportunities solicited by the University.
- Encourage joint ventures and partnering that involves two or more businesses pooling their resources and expertise to achieve a particular goal. The risks and rewards of the enterprise are also shared.

Address the Economic and Business Development Needs of MWBEs

- Collaborate with SBDC to promote awareness of services they offer to assist potential suppliers with bonding, business certifications, strategic business planning, cash flow management, capital access, procurement and document review, and more.



Florida Agricultural and Mechanical University

TALLAHASSEE, FLORIDA 32307-3100

TELEPHONE: (850) 599-3591

FAX: (850) 561-2862

DIVISION OF LEGAL AFFAIRS

To: The Florida A&M University Board of Trustees
From: The Division of Legal Affairs – Office of the General Counsel
Date: November 12, 2021
RE: University Contracting and Minority Business Enterprises

The Florida A&M University Board of Trustees has asked the University's Division of Legal Affairs and the Office of the General Counsel to provide an update on the status of Florida law as it concerns goals for minority participation in contracting with the University – specifically, whether the University may establish specific requirements for participation in University contracting based on race, ethnicity or gender.

In 1996 the Florida Legislature enacted Florida Statute 287.09451 which established the Florida Office of Supplier Diversity. The Section (4)(n)1 of the "encouraged" each state agency to spend specific amounts with certified minority vendors and contractors depending on the category of the goods or services. A copy of F.S. 287.09431 is attached hereto.

However, in 2003 the Florida Association of General Contractors Council brought a law suit in federal court challenging the constitutionality of F.S. 287.09431. Notably, the Florida A&M University Board of Trustees was among the several named defendants in that case. Judge Stephan Mickle declared the statute as unconstitutional in a ruling dated February 6, 2004. In a settlement reached February 11, 2004 the parties to the law suit reached a settlement specifically targeting construction contracts, but applicable generally to other university contracts. The Settlement Agreement sanctions encouragement and outreach programs for small minority and women owned businesses but specifically prohibits the Defendants from establishing quotas, set-asides or percentages based upon race, ethnicity or gender in construction contracts.

Copies of the February 6, 2004 Order of Judge Mickle and the February 11, 2004 settlement Agreement are attached.

Select Year:

The 2021 Florida Statutes

[Title XIX](#)[Chapter 287](#)[View Entire Chapter](#)

PUBLIC BUSINESS PROCUREMENT OF PERSONAL PROPERTY AND SERVICES

287.09451 Office of Supplier Diversity; powers, duties, and functions.—

(1) The Legislature finds that there is evidence of a systematic pattern of past and continuing racial discrimination against minority business enterprises and a disparity in the availability and use of minority business enterprises in the state procurement system. It is determined to be a compelling state interest to rectify such discrimination and disparity. Based upon statistical data profiling this discrimination, the Legislature has enacted race-conscious and gender-conscious remedial programs to ensure minority participation in the economic life of the state, in state contracts for the purchase of commodities and services, and in construction contracts. The purpose and intent of this section is to increase participation by minority business enterprises accomplished by encouraging the use of minority business enterprises and the entry of new and diversified minority business enterprises into the marketplace.

(2) The Office of Supplier Diversity is established within the Department of Management Services to assist minority business enterprises in becoming suppliers of commodities, services, and construction to state government.

(3) The secretary shall appoint an executive director for the Office of Supplier Diversity, who shall serve at the pleasure of the secretary.

(4) The Office of Supplier Diversity shall have the following powers, duties, and functions:

(a) To adopt rules to determine what constitutes a “good faith effort” for purposes of state agency compliance with the minority business enterprise procurement goals set forth in s. [287.042](#). Factors which shall be considered by the Minority Business Enterprise Assistance Office in determining good faith effort shall include, but not be limited to:

1. Whether the agency scheduled presolicitation or prebid meetings for the purpose of informing minority business enterprises of contracting and subcontracting opportunities.
2. Whether the contractor advertised in general circulation, trade association, or minority-focus media concerning the subcontracting opportunities.
3. Whether the agency effectively used services and resources of available minority community organizations; minority contractors’ groups; local, state, and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons.
4. Whether the agency provided written notice to a reasonable number of minority business enterprises that their interest in contracting with the agency was being solicited in sufficient time to allow the minority business enterprises to participate effectively.

(b) To adopt rules to determine what constitutes a “good faith effort” for purposes of contractor compliance with contractual requirements relating to the use of services or commodities of a minority business enterprise under s. [287.094\(2\)](#). Factors which shall be considered by the Office of Supplier Diversity in determining whether a contractor has made good faith efforts shall include, but not be limited to:

1. Whether the contractor attended any presolicitation or prebid meetings that were scheduled by the agency to inform minority business enterprises of contracting and subcontracting opportunities.

2. Whether the contractor advertised in general circulation, trade association, or minority-focus media concerning the subcontracting opportunities.
3. Whether the contractor provided written notice to a reasonable number of specific minority business enterprises that their interest in the contract was being solicited in sufficient time to allow the minority business enterprises to participate effectively.
4. Whether the contractor followed up initial solicitations of interest by contacting minority business enterprises or minority persons to determine with certainty whether the minority business enterprises or minority persons were interested.
5. Whether the contractor selected portions of the work to be performed by minority business enterprises in order to increase the likelihood of meeting the minority business enterprise procurement goals, including, where appropriate, breaking down contracts into economically feasible units to facilitate minority business enterprise participation.
6. Whether the contractor provided interested minority business enterprises or minority persons with adequate information about the plans, specifications, and requirements of the contract or the availability of jobs.
7. Whether the contractor negotiated in good faith with interested minority business enterprises or minority persons, not rejecting minority business enterprises or minority persons as unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Whether the contractor effectively used the services of available minority community organizations; minority contractors' groups; local, state, and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons.
 - (c) To adopt rules and do all things necessary or convenient to guide all state agencies toward making expenditures for commodities, contractual services, construction, and architectural and engineering services with certified minority business enterprises in accordance with the minority business enterprise procurement goals set forth in s. 287.042.
 - (d) To monitor the degree to which agencies procure services, commodities, and construction from minority business enterprises in conjunction with the Department of Financial Services as specified in s. 17.11.
 - (e) To receive and disseminate information relative to procurement opportunities, availability of minority business enterprises, and technical assistance.
 - (f) To advise agencies on methods and techniques for achieving procurement objectives.
 - (g) To provide a central minority business enterprise certification process which includes independent verification of status as a minority business enterprise.
 - (h) To develop procedures to investigate complaints against minority business enterprises or contractors alleged to violate any provision related to this section or s. 287.0943, that may include visits to worksites or business premises, and to refer all information on businesses suspected of misrepresenting minority status to the Department of Management Services for investigation. When an investigation is completed and there is reason to believe that a violation has occurred, the matter shall be referred to the office of the Attorney General, Department of Legal Affairs, for prosecution.
 - (i) To maintain a directory of all minority business enterprises which have been certified and provide this information to any agency or business requesting it.
 - (j) To encourage all firms which do more than \$1 million in business with the state within a 12-month period to develop, implement, and submit to this office a minority business development plan.
 - (k) To communicate on a monthly basis with the Small and Minority Business Advisory Council to keep the council informed on issues relating to minority enterprise procurement.
 - (l) To serve as an advocate for minority business enterprises, and coordinate with the small and minority business ombudsman, as defined in s. 288.703, which duties shall include:
 1. Ensuring that agencies supported by state funding effectively target the delivery of services and

resources, as related to minority business enterprises.

2. Establishing standards within each industry with which the state government contracts on how agencies and contractors may provide the maximum practicable opportunity for minority business enterprises.

3. Assisting agencies and contractors by providing outreach to minority businesses, by specifying and monitoring technical and managerial competence for minority business enterprises, and by consulting in planning of agency procurement to determine how best to provide opportunities for minority business enterprises.

4. Integrating technical and managerial assistance for minority business enterprises with government contracting opportunities.

(m) To certify minority business enterprises, as defined in s. [288.703](#), and as specified in ss. [287.0943](#) and [287.09431](#), and shall recertify such minority businesses at least once every 2 years. Minority business enterprises must be recertified at least once every 2 years. Such certifications may include an electronic signature.

(n)1. To develop procedures to be used by an agency in identifying commodities, contractual services, architectural and engineering services, and construction contracts, except those architectural, engineering, construction, or other related services or contracts subject to the provisions of chapter 339, that could be provided by minority business enterprises. Each agency is encouraged to spend 21 percent of the moneys actually expended for construction contracts, 25 percent of the moneys actually expended for architectural and engineering contracts, 24 percent of the moneys actually expended for commodities, and 50.5 percent of the moneys actually expended for contractual services during the previous fiscal year, except for the state university construction program which shall be based upon public education capital outlay projections for the subsequent fiscal year, and reported to the Legislature pursuant to s. [216.023](#), for the purpose of entering into contracts with certified minority business enterprises as defined in s. [288.703](#), or approved joint ventures. However, in the event of budget reductions pursuant to s. [216.221](#), the base amounts may be adjusted to reflect such reductions. The overall spending goal for each industry category shall be subdivided as follows:

a. For construction contracts: 4 percent for black Americans, 6 percent for Hispanic-Americans, and 11 percent for American women.

b. For architectural and engineering contracts: 9 percent for Hispanic-Americans, 1 percent for Asian-Americans, and 15 percent for American women.

c. For commodities: 2 percent for black Americans, 4 percent for Hispanic-Americans, 0.5 percent for Asian-Americans, 0.5 percent for Native Americans, and 17 percent for American women.

d. For contractual services: 6 percent for black Americans, 7 percent for Hispanic-Americans, 1 percent for Asian-Americans, 0.5 percent for Native Americans, and 36 percent for American women.

2. For the purposes of commodities contracts for the purchase of equipment to be used in the construction and maintenance of state transportation facilities involving the Department of Transportation, the terms "minority business enterprise" and "minority person" have the same meanings as provided in s. [288.703](#). In order to ensure that the goals established under this paragraph for contracting with certified minority business enterprises are met, the department, with the assistance of the Office of Supplier Diversity, shall make recommendations to the Legislature on revisions to the goals, based on an updated statistical analysis, at least once every 5 years. Such recommendations shall be based on statistical data indicating the availability of and disparity in the use of minority businesses contracting with the state.

3. In determining the base amounts for assessing compliance with this paragraph, the Office of Supplier Diversity may develop, by rule, guidelines for all agencies to use in establishing such base amounts. These rules must include, but are not limited to, guidelines for calculation of base amounts, a deadline for the agencies to submit base amounts, a deadline for approval of the base amounts by the Office of Supplier Diversity, and procedures for adjusting the base amounts as a result of budget reductions made pursuant to s. [216.221](#).

4. To determine guidelines for the use of price preferences, weighted preference formulas, or other preferences, as appropriate to the particular industry or trade, to increase the participation of minority

businesses in state contracting. These guidelines shall include consideration of:

- a. Size and complexity of the project.
- b. The concentration of transactions with minority business enterprises for the commodity or contractual services in question in prior agency contracting.
- c. The specificity and definition of work allocated to participating minority business enterprises.
- d. The capacity of participating minority business enterprises to complete the tasks identified in the project.
- e. The available pool of minority business enterprises as prime contractors, either alone or as partners in an approved joint venture that serves as the prime contractor.

5. To determine guidelines for use of joint ventures to meet minority business enterprises spending goals. For purposes of this section, "joint venture" means any association of two or more business concerns to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills, and knowledge. The guidelines shall allow transactions with joint ventures to be eligible for credit against the minority business enterprise goals of an agency when the contracting joint venture demonstrates that at least one partner to the joint venture is a certified minority business enterprise as defined in s. 288.703, and that such partner is responsible for a clearly defined portion of the work to be performed, and shares in the ownership, control, management, responsibilities, risks, and profits of the joint venture. Such demonstration shall be by verifiable documents and sworn statements and may be reviewed by the Office of Supplier Diversity at or before the time a contract bid, proposal, or reply is submitted. An agency may count toward its minority business enterprise goals a portion of the total dollar amount of a contract equal to the percentage of the ownership and control held by the qualifying certified minority business partners in the contracting joint venture, so long as the joint venture meets the guidelines adopted by the office.

(o)1. To establish a system to record and measure the use of certified minority business enterprises in state contracting. This system shall maintain information and statistics on certified minority business enterprise participation, awards, dollar volume of expenditures and agency goals, and other appropriate types of information to analyze progress in the access of certified minority business enterprises to state contracts and to monitor agency compliance with this section. Such reporting must include, but is not limited to, the identification of all subcontracts in state contracting by dollar amount and by number of subcontracts and the identification of the utilization of certified minority business enterprises as prime contractors and subcontractors by dollar amounts of contracts and subcontracts, number of contracts and subcontracts, minority status, industry, and any conditions or circumstances that significantly affected the performance of subcontractors. Agencies shall report their compliance with the requirements of this reporting system at least annually and at the request of the office. All agencies shall cooperate with the office in establishing this reporting system. Except in construction contracting, all agencies shall review contracts costing in excess of CATEGORY FOUR as defined in s. 287.017 to determine if such contracts could be divided into smaller contracts to be separately solicited and awarded, and shall, when economical, offer such smaller contracts to encourage minority participation.

2. To report agency compliance with the provisions of subparagraph 1. for the preceding fiscal year to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives on or before February 1 of each year. The report must contain, at a minimum, the following:

- a. Total expenditures of each agency by industry.
- b. The dollar amount and percentage of contracts awarded to certified minority business enterprises by each state agency.
- c. The dollar amount and percentage of contracts awarded indirectly to certified minority business enterprises as subcontractors by each state agency.
- d. The total dollar amount and percentage of contracts awarded to certified minority business enterprises, whether directly or indirectly, as subcontractors.
- e. A statement and assessment of good faith efforts taken by each state agency.

f. A status report of agency compliance with subsection (6), as determined by the Minority Business Enterprise Office.

(5)(a) Each agency shall, at the time the specifications or designs are developed or contract sizing is determined for any proposed procurement costing in excess of CATEGORY FOUR, as defined in s. 287.017, forward a notice to the Office of Supplier Diversity of the proposed procurement and any determination on the designs of specifications of the proposed procurement that impose requirements on prospective vendors, no later than 30 days prior to the issuance of a solicitation, except that this provision shall not apply to emergency acquisitions. The 30-day notice period shall not toll the time for any other procedural requirements.

(b) If the Office of Supplier Diversity determines that the proposed procurement will not likely allow opportunities for minority business enterprises, the office may, within 20 days after it receives the information specified in paragraph (a), propose the implementation of minority business enterprise utilization provisions or submit alternative procurement methods that would significantly increase minority business enterprise contracting opportunities.

(c) Whenever the agency and the Office of Supplier Diversity disagree, the matter shall be submitted for determination to the head of the agency or the senior-level official designated pursuant to this section as liaison for minority business enterprise issues.

(d) If the proposed procurement proceeds to competitive solicitation, the office is hereby granted standing to protest, pursuant to this section, in a timely manner, any contract award during competitive solicitation for contractual services and construction contracts that fail to include minority business enterprise participation, if any responsible and responsive vendor has demonstrated the ability to achieve any level of participation, or, any contract award for commodities where, a reasonable and economical opportunity to reserve a contract, statewide or district level, for minority participation was not executed or, an agency failed to adopt an applicable preference for minority participation. The bond requirement shall be waived for the office purposes of this subsection.

(e) An agency may presume that a vendor offering no minority participation has not made a good faith effort when other vendors offer minority participation of firms listed as relevant to the agency's purchasing needs in the pertinent locality or statewide to complete the project.

(f) Paragraph (a) will not apply when the Office of Supplier Diversity determines that an agency has established a work plan to allow advance consultation and planning with minority business enterprises and where such plan clearly demonstrates:

1. A high level of advance planning by the agency with minority business enterprises.
2. A high level of accessibility, knowledge, and experience by minority business enterprises in the agency's contract decisionmaking process.
3. A high quality of agency monitoring and enforcement of internal implementation of minority business utilization provisions.
4. A high quality of agency monitoring and enforcement of contractor utilization of minority business enterprises, especially tracking subcontractor data, and ensuring the integrity of subcontractor reporting.
5. A high quality of agency outreach, agency networking of major vendors with minority vendors, and innovation in techniques to improve utilization of minority business enterprises.
6. Substantial commitment, sensitivity, and proactive attitude by the agency head and among the agency minority business staff.

(6) Each state agency shall coordinate its minority business enterprise procurement activities with the Office of Supplier Diversity. At a minimum, each agency shall:

(a) Adopt a minority business enterprise utilization plan for review and approval by the Office of Supplier Diversity which should require meaningful and useful methods to attain the legislative intent in assisting minority business enterprises.

(b) Designate a senior-level employee in the agency as a minority enterprise assistance officer, responsible for overseeing the agency's minority business utilization activities, and who is not also charged with purchasing

responsibility. A senior-level agency employee and agency purchasing officials shall be accountable to the agency head for the agency's minority business utilization performance. The Office of Supplier Diversity shall advise each agency on compliance performance.

(c) If an agency deviates significantly from its utilization plan in 2 consecutive or 3 out of 5 total fiscal years, the Office of Supplier Diversity may review any and all solicitations and contract awards of the agency as deemed necessary until such time as the agency meets its utilization plan.

History.—s. 28, ch. 96-320; s. 86, ch. 98-279; s. 4, ch. 2000-286; s. 26, ch. 2002-207; s. 336, ch. 2003-261; s. 1, ch. 2009-83; s. 1, ch. 2010-103; s. 128, ch. 2011-142; s. 10, ch. 2011-213; s. 50, ch. 2020-2.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

FLORIDA A.G.C. COUNCIL, INC.,
et al.,

Plaintiffs,

v.

CASE NO.: 4:03-CV-59-SPM

THE STATE OF FLORIDA, et al.,

Defendants.

ORDER

PENDING NOW before the Court is the Plaintiffs' Motion for Partial Summary Judgment (doc. 29) and the Defendants' Motion for Summary Judgment (doc. 55). For the reasons set forth below, the Plaintiffs' motion will be granted and the Defendants' motion will be denied.

I. BACKGROUND

The Plaintiffs', Florida A.G.C. Council, Inc., and the South Florida Chapter of the Associated General Contractors, have brought this cause of action challenging the constitutionality of certain provisions of Florida Statutes, §287.09451 *et seq.* The Plaintiffs contend that aspects of the statute contravene the Equal Protection Clause of the Fourteenth Amendment,¹ by instituting race and gender-conscious "preferences" in

¹U.S. CONST. amend XIV, § 1 provides:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.
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order to increase the numeric representation of minority business enterprises² in certain industries.³

According to the statute, the Florida Legislature determined that there existed "evidence of a systemic pattern of past and continuing racial discrimination against minority business enterprises and a disparity in the availability and use of minority business enterprises in the state procurement system." Florida Statutes, § 287.09451(1). In an effort to confront the pervasive problem of racial discrimination, the Legislature "enacted race-conscious and gender-conscious remedial programs to ensure minority participation in the economic life of the state, in state contracts for the purchase of commodities, and in construction contracts." *Id.* To this end, the Office of Supplier Diversity was established within the Department of Management Services to assist minority enterprises become "suppliers of commodities, services, and construction to state government." §287.09451(2).

The Office of Supplier Diversity (OSD) has a myriad of responsibilities, including,

²Florida Statutes § 288.703(2) defines in relevant part a "Minority business enterprise" as:

[A]ny small business concern . . . which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51-percent-owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group resulting in an underrepresentation of commercial enterprises under the group's control, and whose management and daily operations are controlled by such persons. A minority business enterprise may primarily involve the practice of a profession. Ownership by a minority person does not include ownership which is the result of a transfer from a nonminority person to a minority person within a related immediate family group if the combined total net asset value of all members of such family group exceeds \$1 million. For purposes of this subsection, the term "related immediate family group" means one or more children under 16 years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

³The Plaintiffs have also brought a cause of action pursuant to Title VI. To reiterate what was stated in the undersigned's previous order dismissing many of the Plaintiffs claims, in order to properly bring a Title VI claim, the Plaintiffs "must allege a 'logical nexus' between a federally funded program or activity and the . . . discrimination [the Plaintiffs] allegedly suffered." *Commodari v. Long Island University*, 89 F.Supp.2d 353, 378 (E.D.N.Y. 2000), *aff'd*, 2003 WL 1785893 ((2nd Cir.) (April 3, 2003) (unpublished opinion)). As the Plaintiffs have failed to allege a "logical nexus" that would support its Title VI claim, this claim is dismissed. *See Arroyo v. New York State Insurance Department*, 1995 WL 611326 (S.D.N.Y.) (October 18, 1995))
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inter alia, adopting rules meant to assess whether state agencies have made "good faith efforts" to solicit business from minority business enterprises. §287.09451(4)(a). The OSD is also empowered to monitor whether contractors doing business with the State have similarly made good faith efforts to comply with the Legislature's objective of greater overall minority participation in the purchasing of commodities, services, and construction contracts. See §287.09451(4)(b). The statute subsequently enumerates targeted measures which contractors should undertake, such as minority-centered recruitment and advertising, as a means of advancing the statute's purposes. See §287.09451(b)(1)-(8).

The Plaintiffs argue that provisions of §287.09451 impermissibly violate the Equal Protection Clause of the United States Constitution by permitting states agencies to allow the use race, ethnicity and gender dictate who receives construction and other related contracts. For example, §287.09451(4)(n)(1) provides that,

Each [state] agency is encouraged to spend 21 percent of the moneys actually expended for construction contracts, 25 percent of the moneys actually expended for architectural and engineering contracts, 24 percent of the moneys actually expended for commodities, and 50.5 percent of the moneys actually expended for contractual services during the fiscal year . . . for the purpose of entering into contracts with certified minority business enterprises as defined in §288.703(2), or approved joint ventures.

The statute proceeds to list "overall spending goals" for various industry's falling under the authority of §287.09451. Specifically, state agencies are to allocate 4 percent for

Is the
claim

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black Americans,⁴ 6 percent for Hispanic-Americans,⁵ and 11 percent for American women⁶ of moneys actually expended for construction contracts.

§287.09451(4)(n)(1)(a). For architectural and engineering contracts, state agencies are to allocate 9 percent for Hispanic-Americans, 1 percent for Asian-Americans,⁷ and 15 percent for American women. §287.09451(4)(n)(1)(b). For commodities, the goal is 2

percent for black Americans, 4 percent Hispanic-Americans, 0.5 percent for Asian-Americans, 0.5 percent for Native Americans,⁸ and 17 percent for American women.

§287.09451(4)(n)(1)(c). Finally, as it pertains to contractual services, the goals are 6 percent for black Americans, 7 percent for Hispanic-Americans, 1 percent for Asian-Americans, 0.5 percent for Native Americans, and 36 percent for American women of moneys actually expended for contractual services during the previous fiscal year.

§287.09451(4)(n)(1)(d).

The aforementioned spending goals are framed as precatory. The Plaintiffs contend that the goals constitute an impermissible racial and gender classification that cannot withstand constitutional scrutiny. Moreover, the Plaintiffs maintain that the goals serve neither a compelling State interest, nor are they narrowly tailored to warrant their

⁴Florida Statutes §288.703(3)(a) defines a black or African Americans as "a person having origins in any racial group of the African diaspora."

⁵Florida Statutes §288.703(3)(b) defines a Hispanic American as "a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race."

⁶Florida Statutes §288.703(3)(e) defines an American woman as a "minority person."

⁷Florida Statutes §288.703(3)(c) defines Asian-Americans as any "person having origins in the in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands including the Hawaiian islands prior to 1778."

⁸Florida Statutes §288.703(3)(d) defines Native Americans as any "person who has origins in any of the Indian tribes of North America prior to 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services."
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continuation. See Wygant v. Jackson Board of Education, 476 U.S. 267, 274, 106 S.Ct. 1842, 1847 (1986) (plurality opinion) (racial classifications are only justified by a “compelling governmental interest” and that the means chosen to implement the classifications’ purposes must be narrowly tailored to achieve the goal). On this basis, the Plaintiffs have moved for summary judgment.

The Defendants counter that the Plaintiffs are unable to overcome the presumption that §287.09451 is constitutionally valid. Additionally, the Defendants assert that the Plaintiffs lack standing to seek prospective relief because the Plaintiffs have failed to demonstrate, notwithstanding the explicit terms of §287.09451 *et seq.*, that race, ethnicity or gender have determined who will be the beneficiary of governmental contracts. The Defendants have similarly moved for summary judgment.

II. SUMMARY JUDGMENT STANDARD

The standard for summary judgment is well understood. This Court must review all evidence and factual inferences, that are reasonably drawn, in a light that is most favorable to the party opposing summary judgment. Lowe's Home Center v. Olin Corp., 313 F.3d 1309, 1310 (11th Cir. 2002) (citation omitted). “All reasonable doubt about the facts should be resolved in the favor of the non-movant.” Sledge v. Goodyear Dunlop Tires North America, Ltd., 275 F.3d 1014, 1019 (11th Cir. 2001) (citations omitted). A party’s motion for summary judgment will be granted “ if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56 (c). The moving party has

the burden of demonstrating that there are no genuine issues of material fact in dispute. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

In turn, the non-moving party's response "may not rest upon mere allegations or denials of the [moving party's] pleading," but should include affidavits or "specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). "A mere 'scintilla' of evidence supporting the [non-moving] party's position will not suffice; there must be a sufficient showing that the jury could reasonably find for that party." Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990).

There of course may be instances where the "parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts. If reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment." Clemons v. Dougherty County, 684 F.2d 1365, 1369 (11th Cir. 1982) (citations omitted).

III. ANALYSIS

A. Standing

As an initial matter, the Court must determine whether the Plaintiffs have standing to maintain this action. The Supreme Court has squarely addressed this issue, consequently, resolving the question of standing is relatively straightforward. A party seeking to bring a cause of action into a federal district court must first demonstrate an "injury in fact" wherein "a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical" has been invaded. Northeastern Florida Chapter of the Florida Associated General Contractors of

America v. City of Jacksonville, 508 U.S. 656, 663, 113 S.Ct. 2297, 2301– 02 (1993) (citation and internal quotations omitted). Second, there must be “a causal relationship between the injury and the challenged conduct . . . [and] the injury fairly can be traced to the challenged action of the defendant, and has not resulted from the independent action of some third party not before the court.” Id. (citation and internal quotations omitted). Finally, there must be a “likelihood that the injury will be redressed by a favorable decision . . . [wherein] the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative.” Id. at 663-64, 113 S.Ct. 2302 (citation and internal quotations omitted).

The Plaintiffs, who are challenging what they consider to be a State authorized “set-aside” program, are not required to prove that they would have received a particular contract “but for” the State’s “spending goals” articulated in §287.09451(4)(n)(1). In order to establish standing in this context, “a party challenging a set-aside program . . . need only demonstrate that it is able and ready to bid on contracts and that a discriminatory policy prevents it from doing so on an equal basis.” Northeast Florida, 508 U.S. at 666, 113 S.Ct. at 2303; see also Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 211, 115 S.Ct. 2097, 2105 (1995) (“The injury in cases of this kind is that a discriminatory classification prevent[s] the plaintiff from competing on an equal footing.”) (alterations in the original). There is no dispute between the parties as to whether the Plaintiffs are ready and able to bid on governmental contracts. The only question at issue is whether the Defendants are maintaining a discriminatory policy that, though benign in purpose, “erects a barrier that makes it more difficult for members of one

group to obtain a benefit than it is for members of another group.” Northeast Florida, 508 U.S. at 666, 103 S.Ct. at 2303. This question will be more fully addressed below. However, for the time being, the Court has determined that the Plaintiffs clearly have standing to challenge §287.09451 *et seq.*

Additionally, it is briefly necessary to touch upon why the Plaintiffs also have standing to pursue prospective relief. The Supreme Court has observed that a party desiring such relief must show “that sometime in the relatively near future it will bid on another Government contract that offers financial incentives to a prime contractor for hiring disadvantaged subcontractors.” Adarand, 515 U.S. at 211, 115 S.Ct. at 2105. The Plaintiffs have also clearly satisfied this burden, based on the likelihood that they will bid on State construction contracts in the future, and a plain textual reading of §287.09451(4)(n)(1)(a)-(d).

B. Constitutionality of §287.09451

Fifteen years ago, the Supreme Court struck down a city ordinance requiring prime contractors who were awarded contracts by the city of Richmond to subcontract at least 30 percent of the value of the contracts to Minority Business Enterprises. City of Richmond v. J.A. Croson, 488 U.S. 469, 109 S.Ct. 706 (1989). The Supreme Court noted that while the purposes of the city ordinance were obviously benign, the ordinance nevertheless constituted a racial classification, and thus was inherently suspect. *Id.* at 500, 109 S.Ct. at 725. The Croson court found that certain citizens were prevented from competing for a fixed percentage of governmental contracts solely on the basis of their race. Given this, the ordinance was subjected to strict scrutiny,

meaning that ordinance's constitutionality rested on whether it was narrowly tailored to further a compelling governmental interest. See id. at 493, 109 S.Ct. at 721. The city of Richmond's ordinance was found to violate the Equal Protection Clause, on the grounds that the city had not sufficiently "identified the need for remedial action in the awarding of its public construction contracts." Id. at 512, 109 S.Ct. at 731. Croson also stands for the proposition that the level of scrutiny that is applied to a particular racial classification is not dependent upon the race of the party aggrieved by the classification. Id. at 505, 109 S.Ct. 727-28; see also Wygant, 476 U.S. at 273, 106 S.Ct. at 1846 ("The Court has recognized that the level of scrutiny does not change merely because the challenged classification operates against a group that historically has not been subject to governmental discrimination.") (citation omitted).

Given this background, the Court must determine whether the spending goals outlined in §287.09451 are narrowly tailored to further a compelling governmental interest.

1. Do §287.09451 Spending Goals Serve a Compelling Governmental Interest?

Remedying past or present discrimination is considered to be a compelling governmental interest. Ensley Branch, N.A.A.C.P. v. Seibels, 31 F.3d 1548, 1565 (11th Cir. 1994). A governmental entity may not rationalize a racial preference of this basis alone. Instead, "the true test of an affirmative action program is usually not the nature of the government's interest, but rather the adequacy of the evidence of discrimination offered to show that interest." Id. (quotation omitted). Accordingly, a public employer may justify race-conscious remedial measures if there is a strong evidentiary basis to

conclude that such measures are indeed required. *Id.* At this juncture, it is not necessary to scrutinize evidence the Defendants have presented, which for the most part involves affidavits asserting that race does not play a role as to who receives contracting opportunities with the State, and a general assertion that the goals are precatory. The Legislature's articulated reasons for its spending goals, *i.e.*, "a systemic pattern of past and continuing racial discrimination against minority business enterprises and a disparity in the availability and use of minority business enterprises in the state procurement system," §287.09451(1), would, if true, constitute a compelling governmental interest necessitating race-conscious remedies. See *Croson*, 488 U.S. at 509, 109 S.Ct. at 730 ("Where there is a significant disparity between the number of minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise.").

*2. Are the Spending Goals
Narrowly Tailored?*

Determining whether a public employers' race-conscious program is narrowly tailored involves consideration of:

(1) the necessity for the relief and the efficacy of alternative measures; (2) the flexibility and duration of the relief, including the availability of waiver provisions; (3) the relationship of numerical goals to the relevant labor market; and (4) the impact of the relief on the rights of innocent third parties.

Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County, 122 F.3d 895, 927 (11th Cir. 1997) (citing Ensley Branch, 31 F.3d at 1569 (citations and internal quotation marks omitted)). There is absolutely no evidence in the record to

suggest that the Defendants contemplated 'race-neutral means to accomplish the objectives set forth in §287.09451 *et seq.*, such as "simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races [which] would open the public contracting market to all those who have suffered the effects of past discrimination.'" Engineering Contractors Association, 122 F.3d at 928 (quoting Croson, 488 U.S. at 509-10, 109 S.Ct. at 730).

The Plaintiffs have affixed to its Motion for Partial Summary Judgment, Interim Project Report 2001-042 (Report), issued by Florida Senate, outlining the legislative history underlying §287.09451 and an analysis of disparity studies related to the State's utilization of minority business enterprises. The Report concluded that there was little evidence to support the spending goals outlined in §287.09451. In spite of this conclusion however, the Legislature continued to promulgate the statute. This is obviously at variance with Supreme Court's observation that there must be "some showing of prior discrimination by the governmental unit involved before allowing limited use of racial classifications in order to remedy such discrimination." Wygant, 476 U.S. at 274, 106 S.Ct. at 1847.

The Defendants do not seem to disagree with the Reports findings. Instead, they insist that §287.09451 is permissive. However, there is no distinction between a statute that is precatory versus one that is compulsory when the challenged statute "induces an employer to hire with an eye toward meeting . . . [a] numerical target." Lutheran Church-Missouri Synod v. Federal Communications Commission, 141 F3d 344, 354 (D.C. Cir. 1998); see also Association for Fairness in Business Inc. v. The

State of New Jersey, 82 F.Supp.2d 353, 356 (D.N.J. 2000) (“While the regulations governing the set-aside program do not mandate specific contracting decisions, they undoubtedly have a ‘concrete effect’ on whether non-minority business enterprises receive contracts[.]”). It is also apparent that the Defendants apply pressure to state agencies to meet the legislative objectives of §287.09451(1), extending beyond simple outreach efforts. See MD/DC/DE Broadcasters Association v. Federal Communications Commission, 236 F.3d 13, 16 (D.C. Cir 2001). State agencies are required to coordinate their minority business enterprise procurement activities with the OSD, which includes adopting a minority business enterprise utilization plan. §287.09451(6)(a). If the state agency “deviates significantly from its utilization plan in 2 consecutive or 3 out of 5 total fiscal years, the OSD may review any and all solicitation and contract awards of the agency as deemed necessary until such time as the agency meets its utilization plan.” §287.09451(6)(c). Though alleged to be permissive, textually §287.09451 *et seq.* is not.

Accordingly, I find that §287.09451 *et seq.* is not narrowly tailored to serve a compelling governmental interest, and consequently violates the Equal Protection Clause of the Fourteenth Amendment.⁹

IV. CONCLUSION

The United States of America has a brutal racial legacy. This is not to suggest that racial discrimination is no longer rampant throughout society. See Gratz v.

⁹This order has given short shrift to the gender-conscious aspects of §287.09451 *et seq.* Gender-conscious affirmative action programs are subjected to intermediate scrutiny. The evidentiary burden in such instances “turns on whether there is evidence of past discrimination in the economic sphere at which the affirmative action program is directed.” Engineering Contractors Association, 122 F.3d at 910 (quoting Ensley Branch, 31 F.3d at 1581). Even under this more lenient standard, the gender-conscious spending goals outlined in §287.09451(4)(n)(1) cannot withstand intermediate scrutiny.
CASE NO.: 4:03-CV59-SPM

Bollinger, -- U.S. --, 123 S.Ct. 2411 , 2442 – 45 (2003) (GINSBURG, J., dissenting) (outlining a litany of racial disparities in health care, educational and employment opportunities, homebuying, and commercial transactions). However, I am bound to follow the precedent established by Croson and its progeny. Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. Plaintiffs' Motion for Partial Summary Judgment (doc. 29) is GRANTED.
2. Defendants' Motion for Summary Judgment (doc. 55) is DENIED.
3. §287.09451 *et seq.* is declared unconstitutional.
4. The pretrial conference scheduled for February 9, 2004 is cancelled.
5. The Court will entertain briefing as to proposed remedies, including prospective relief. Such briefing will be due with the Clerk of Court by no later than February 20, 2004.

SO ORDERED this 6th day of February, 2004.

s/Stephan P. Mickle

Stephan P. Mickle
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

**FLORIDA A.G.C. COUNCIL, INC. and
SOUTH FLORIDA CHAPTER OF THE
ASSOCIATED GENERAL CONTRACTORS;**

Plaintiffs,

Civil Action Number

v.

4:03CV59-SM

**JOHN ELLIS BUSH, a/k/a "JEB" BUSH,
as the Governor of the State of Florida;
CYNTHIA A. HENDERSON, as the former Secretary
of the Florida Department of Management Services,
WILLIAM SIMON, as the present Secretary of the
Florida Department of Management Services,
and as a representative of all persons
similarly situated as heads of departments and agencies; and
DR. CHARLES YOUNG, as the president of the
University of Florida; and
DR. FRED GAINOUS, as the president of
Florida A&M University, and as representatives
of all persons similarly situated as the chief executive
officers of State institutions of higher learning;
THE UNIVERSITY OF FLORIDA BOARD OF TRUSTEES,
d/b/a "The University of Florida"; and
THE FLORIDA A&M UNIVERSITY BOARD OF TRUSTEES,
d/b/a "Florida A&M University",
on their own behalf and as representatives
of institutions of higher learning that are similarly
situated; and THE FLORIDA DEPARTMENT OF
MANAGEMENT SERVICES, on its own behalf and
as a representative of all agencies and departments
that are similarly situated;**

Defendants.

RECEIVED

FEB 24 2004

Office of the General Counsel
Florida A&M University

SETTLEMENT AGREEMENT

Plaintiffs and certain State Parties, in order to amicably resolve any existing disputes and settle all claims asserted in the First Amended Complaint, and in order to secure dismissal of this action, hereby stipulate and agree as follows (the "Agreement").

This Agreement is for a term of 99 years from the date of its execution:

1. The One Florida Equity in Contracting Initiative ("One Florida") implemented by Governor Jeb Bush in Executive Order 99-281 on November 9, 1999 recognizes that the goal of increasing diversity in the allocation of state contracts can and should be realized without the use of racial and gender set-asides, preferences and quotas. The goals of One Florida are to provide equal state contracting opportunities to all qualified businesses, to eliminate discrimination in state contracting based upon race, ethnicity or gender, and to institute all-inclusive procurement practices that remove barriers to all small businesses, including those owned by women and minorities, thereby ensuring all interested vendors have a full opportunity to participate in state contracting.

2. The parties agree that ensuring and increasing small business participation in state construction projects, including particularly the participation of small businesses owned by women and minorities, is a desirable goal, but that, in keeping with the principles of One Florida, state construction contracts will not be awarded upon the basis of race, ethnicity or gender. Plaintiffs' members and others should be able to bid on all contracts for which they qualify and to select partners and subcontractors as dictated by the needs of the project.

3. As used in this agreement, the words "State Parties to the Agreement" includes only the named defendants, as well as all four year colleges and universities, all executive departments and agencies under the control or direction of the Governor, as well as all

executive departments and agencies for which the Department of Management Services presently (or in the future) provides any oversight or services with regard to construction services. As used in this Agreement the word "contractor" includes contractors, construction managers, design/build firms, vendors, consultants (including architects and engineers), subcontractors, sub-vendors or sub-consultants (or of the owners of any such business) engaged in public construction contracting. As used in this Agreement, "state construction contracts" includes all contracts with contractors for goods and services.

4. Plaintiffs and State Parties to the Agreement, individually and collectively, will use their best efforts to encourage small business participation in state construction contracts, including participation of small businesses owned by women and minorities, and to remove any existing barriers to small business participation in state contracting through the following:

- a. The parties will work together to explore the establishment of a small business enterprise contracting program and/or other programs or laws aimed at promoting the participation small business, including those owned by women and minorities, in state construction contracts.
- b. State Parties to the Agreement may conduct "outreach" activities targeted toward small businesses, including women- and minority-owned firms to inform such firms of the availability of particular public contracting opportunities and to encourage such firms to seek work on public construction projects through the normal procurement process as applied to all businesses.
- c. State Parties to the Agreement may conduct programs to educate business owners in the various processes used by State agencies, departments, and

institutions of higher learning and may take steps in an attempt to ensure that such programs reach small businesses, including those owned by minorities and women.

- d. State Parties to the Agreement may encourage contractors engaged for construction or construction-related services to actively recruit the widest practicable participation in the procurement process (including specifically efforts to ensure reasonable notice to small businesses, including women- and minority-owned businesses, of opportunities available), but may not require contractors to enter into contracts or subcontracts with any entity on the basis of race, ethnicity or gender, except as such contractor, in its reasonable discretion, deems it best for the accomplishment of the contract objective. Further, State Parties to the Agreement may not directly or indirectly encourage contractors engaged for construction or construction-related services to achieve specific participation percentages based upon race, ethnicity or gender, or otherwise use racial or gender set asides, preferences and quotas in existing or future construction or construction-related services contract(s).
- e. State Parties to the Agreement may require the provision of information concerning the employment of minority- and women-owned contractors, and may maintain data on the use of minority- and women-owned contractors on public construction contracts. State Parties to the Agreement may not use such information in making any decision concerning the hiring of, employment of, or contracting with any particular contractor.

5. State Parties to the Agreement will not permit or require the consideration of race, ethnicity, or gender of contractors in public construction contracting.
6. State Parties to the Agreement shall, upon the execution of this Agreement, reimburse the Plaintiffs' attorney's fees and costs as agreed upon by the parties by separate agreement.
7. Each of the parties hereto acknowledges that it has been represented by independent counsel of its own choice throughout all negotiations that have preceded the execution of this Agreement and that the execution of it has been made with the consent of and upon the advice of said independent counsel.
8. Each of the parties hereto, individually and collectively, as the case may be, acknowledges that no other party, or agent or attorney of any other party or member of the putative class, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the other party to execute this Agreement or any of the other documents referred to herein, and each party hereto acknowledges that it has not executed this Agreement or such other documents in reliance upon any such promise, representation, or warranty not contained herein.
9. Each of the parties hereto knowingly, voluntarily and intentionally waives the right any of them may have to a trial by jury in respect of any litigation brought by any party hereto arising out of, under or in connection with the First Amended Complaint, or any course of conduct, course of dealing, statement (whether verbal or written) or action of Plaintiffs and State Parties to the Agreement. This provision is a material inducement for each of the parties entering into this Agreement.

10. This Agreement does not constitute and shall not be taken or construed as an admission of liability on the part of any party, but rather, such liability has been and is expressly denied by all parties.
11. This Agreement shall, for contract interpretation purposes, be construed in accordance with the laws of the State of Florida.
12. Upon the receipt by the Plaintiffs of a copy of this Agreement executed on behalf all State Parties to the Agreement and the reimbursement by State Parties to the Agreement to the Plaintiffs of the amount specified in paragraph 6, above, Plaintiffs shall promptly dismiss the above-captioned action presently pending in the U.S. District Court for the Northern District of Florida. Such dismissal, no matter how characterized, shall not constitute adjudication on the merits of the allegations of the complaint and amended complaint in that action.
13. By executing this Agreement, Plaintiffs, in their own and in their representative capacities, hereby jointly and severally release and forever discharge the State Parties to the Agreement, their successors, assigns, directors, officers, employees, representatives, agents, subsidiaries or affiliates, persons employed or engaged by State Parties to the Agreement, whether past or present, of and from all actions, judgments, claims and demands whatsoever, which Plaintiffs, their successors, assigns, directors, officers, employees, or any person or entity for whom the Plaintiffs are authorized to act in a representative capacity, or anyone claiming by, through, or under Plaintiffs, or any one or more of them (collectively referred to as "the Plaintiffs"), has had, now has, or may have against the State Parties to the Agreement or any one or more of them, arising out of or related to claims asserted or which could have been asserted relative to the subject matter of the First Amended Complaint in the litigation styled Florida A.G.C. Council,

Inc., et. al. v. State of Florida, et al., pending in the United States District Court for the Northern District of Florida, Case No. 4:03CV59-SM. Any alleged breach of the Agreement by State Parties to the Agreement will be addressed and remedied as specified in paragraph 14 herein.

14. Plaintiffs shall notify State Parties to the Agreement in writing of any breach of this Agreement of which Plaintiffs are aware and for which they have concern, within two weeks of any alleged breach. Such notice shall be sent via certified mail— return receipt requested and facsimile to both the Governor's General Counsel and the Department of Education's General Counsel, or their successors in office.

- a. Plaintiffs' required notice shall contain sufficient detail for State Parties to the Agreement to understand the nature and scope of the alleged breach, to investigate it and to take necessary corrective action.
- b. State Parties to the Agreement shall provide a written response to Plaintiffs within ten (10) working days of receipt of such notice.
- c. Plaintiffs will promptly advise State Parties to the Agreement in writing, as specified in this paragraph, of their acceptance or rejection of State Parties to the Agreement's response within five (5) working days of their receipt of State Parties to the Agreement's response.
- d. In the event that the parties cannot agree on the sufficiency of any corrective actions taken by State Parties to the Agreement in response to Plaintiffs' notice, the parties agree to attempt mediation of the dispute within fifteen (15) working days of receiving such notice from Plaintiffs using a mutually agreed upon mediator.

e. In the event that mediation is unsuccessful in resolving the alleged breach, Plaintiffs may bring suit in the Circuit Court of Leon County, Florida, and each and every State Party to the Agreement waives any defense of venue or personal jurisdiction in such an action. In any such action, Plaintiffs will be entitled to an order redressing the violation in an equitable manner. Such order may include, in appropriate cases, but is not necessarily limited to requiring a "do over" of the process in which the violation occurred. The prevailing party in any such action shall be entitled to costs and attorneys fees.

15. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement binding on all the parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart. Each counterpart shall constitute an original of this Agreement.

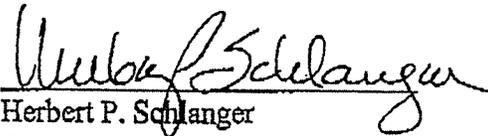
16. This Agreement is intended by the parties as a final expression of their agreement with respect to the subject matter hereof and is intended as a complete and exclusive statement of the terms and conditions thereof, and, as to its subject matter, this Agreement supersedes and replaces all prior negotiations and agreements between the parties hereto, or any of them, whether written or oral. The parties agree that they have not, with respect to the subject matter hereof, entered into, nor have they relied upon any agreements or representations not expressly contained in this Agreement.

17. The State Parties to the Agreement individually and collectively, in their official capacities, represent to the Plaintiffs that they have the authority to enter into this Agreement on behalf of the entities they purport to bind, and to bind the State Parties to the Agreement (as defined above) to the terms of this Agreement, and the State Parties to the Agreement and their undersigned attorneys represent that – to the best of their

information, knowledge and belief – this Agreement is enforceable according to its terms against the State Parties to the Agreement in their official capacities only. State Parties to the Agreement and their undersigned attorneys understand that this representation by each State Party to the Agreement and attorney is a material inducement in obtaining Plaintiffs' agreement as reflected herein.

Undersigned counsel stipulate and agree, on behalf of their respective clients, to the foregoing, this 11th day of FEBRUARY, 2004.

FOR PLAINTIFFS:


Herbert P. Schlanger
Ga. Bar Number 629330
Counsel for plaintiffs

Law Offices of Herbert P. Schlanger
Suite 1890
230 Peachtree Street, N.W.
Atlanta, Georgia 30303
(404) 893-9977

- and -

FOR STATE PARTIES TO THE AGREEMENT:

CHARLES J. CRIST, Jr.
ATTORNEY GENERAL


Jonathan A. Glogau
Special Counsel
Fla. Bar No. 371823
Counsel for State Parties to the Agreement

Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300, ext. 4817

Information Item:
Vice President for Finance and Administration's
Report

- c) Project Updates – University Construction / Operations
 - i. Bragg Memorial Stadium

Phase II - Bragg Memorial Stadium

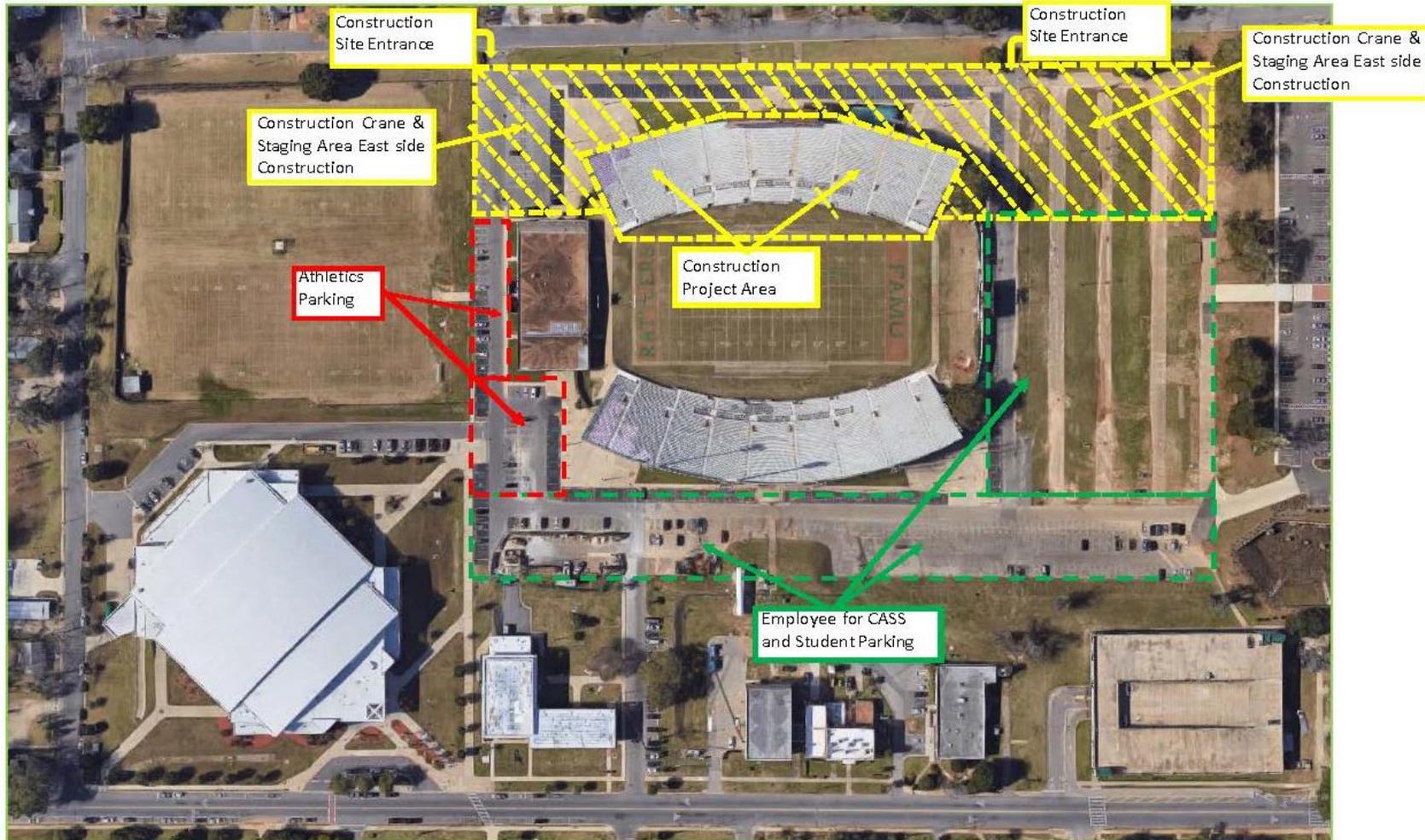
Project Status Report:		Budget: \$6,000,000		Date: 12/1/2021	
Project #:	Project Name:	University Project Manager:	Project Status:		
BRFM 346	Bragg Stadium Renovation	Bodie Young / David Rosenfeld			
Design Status (% Complete):	Designer:	Substantial Completion Date:			
100%	Clemons Rutherford & Associates	-			
Construction Status (% Complete):	Contractor:	Occupancy Date:			
10%	Allstate Construction, Inc.	-			
<p>Timely Completion Risk: Severe weather, material delays, COVID Mitigation Strategy: Identifying critical path materials that could impact the schedule</p>					
Project Contracts:	Expenses:	Encumbrances:	Remaining:		
\$446,118	\$21,626.10	\$446,118	\$5,532,255.90		

FAMU Bragg Stadium Phase 2a - Executive Pricing Summary Conceptual Level

Available Construction Budget: \$5,000,000	Estimated Value Eng. Price as Presented 9/30/21	Estimated Price of Additional Items
Bleachers & Seating - West Side	\$3,662,504	\$0
Includes Contingency	\$162,049	\$0
Press box (Added Price for the President's Box)	\$1,062,113	\$1,009,103*
Includes Contingency	\$46,830	\$0
Replace Existing Elevator & Shaft	\$198,992	\$383,301*
Includes Contingency	\$9,134	\$0
General Conditions (base on 9 month duration)	\$455,272	\$0
Includes Contingency	\$20,043	\$0
Accepted Options	\$0	\$0
Adjusted Current Construction Pricing	\$5,378,881	\$0
Available Construction Budget	\$5,000,000	\$0
Variance Under/ (Over) Construction Budget	-\$378,881	\$378,881
Total Estimated Revised Shortfall		\$1,771,285

* New items added to the scope.

FAMU Bragg Stadium Phase 2 Construction Site Laydown Area Conceptual Level



FAMU Bragg Stadium Phase 2



Information Item:

Vice President for Finance and Administration's Report

- d) Master Plan Update

University's Master Plan Timeline

Anticipated Completion:
October 2022

		FAMU Master Plan Update 2020-2030																								
		Tentative Schedule																								
		2021												2022												
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV		
Begin Services for FAMU Master Plan Update				X																						
TASKS	Phase I: Evaluation and Appraisal Report			100% Complete																						
	Phase II: Inventory and Analysis			100% Complete																						
	Phase III: Conceptual Master Plan										***100% Complete															
	Phase IV: Preliminary Master Plan											10% Complete														
	Phase V: Draft Final Master Plan													10% Complete												
	Phase VI: Final Master Plan*															10% Complete										
	Phase VII: Adoption of Campus Development Agreement**																					10% Complete				
MEETINGS	<i>Master Plan Steering Committee Meetings</i>																									
	<i>Stakeholder Input Meetings</i>																									
	<i>Design Charettes</i>																									
	<i>FAMU BOT Meetings**</i>																									
	<i>City Commission Meetings**</i>																									
	<i>Tallahassee-Leon County Planning Department Meeting</i>																							X		
Project Completion																										
<i>Prepared: 21.05.10. Updated: 21.11.2</i>		*Includes 90 Days for Agency Review and Comment Period **Includes 1 st and 2 nd Public Hearings for Campus Master Plan Adoption and Public Hearings for Campus Development Agreement ***Contingent on all stakeholder engagement being completed																								

University's Master Plan Timeline

Next Steps

- Kimberly-Horn will start designing the Conceptual Master Plan layout for the University Leadership team to review.
- Kimberly-Horn will continue to work with the University Housing Department to include the updated Comprehensive Student Housing Study in the Master Plan.

(The Master Plan is in line with the University's Strategic Plan. An update will be provided as an Informational Item at future Budget, Finance and Facilities Committee Meetings)

Information Item:
Vice President for Finance and Administration's
Report

- e) Compensation Study Update

Compensation Study Update

Project Scope of Work – To conduct a review of the current classification and compensation structure for faculty, staff and administrators.

Key Objectives - Determine whether FAMU’s faculty, staff and administrator compensation and benefits are equitable and competitive.

- If required, recommend a budget plan to appropriately realign FAMU’s faculty, staff and administrator compensation; and
- Develop a framework for ensuring consistent, fair and equitable salary administration.

FAMU Rising - The Compensation Study is aligned with the FAMU Rising Strategic Plan

- Strategic Priority 2: Excellent and Renowned Faculty
We will **attract and retain** world-class faculty, improve faculty incentives and invest in critical research facilities.
- Strategic Priority 5: First-Class Business Infrastructure
Business operations that support our mission. We will **recruit and retain an excellent and diverse staff**, enhance our administrative services, adopt a more transparent and effective budgeting model, and leverage technology to make our operations more effective and efficient.

Update

- *HelioCampus Projects - The University has two projects with HelioCampus
 - **Benchmarking Data** – Estimated time frame for completion is November 2021; **Next step** – HelioCampus will schedule an Insights meeting to review benchmarking data with University leadership and discuss how the data should be used.
 - **Academic Performance Management (APM)** – Estimated time frame for completion is December 2021; **Current activity** – HelioCampus is working with FAMU staff to build and configure data validation workbooks and APM dashboards. In addition, an internal work group has been formed to benchmark faculty salaries. **Next step** – HelioCampus will schedule an Analysis & Insights Meeting to review data with University leadership and discuss how the data should be used.
- Benchmarked SUS – FSU, UF, UCF and NCF have hired compensation consultants to develop or enhance their respective total compensation rewards program.

Next Steps – Engage a compensation consulting firm.

**HelioCampus project is considered to be part of the compensation study research. HelioCampus is not a compensation consulting company*

Information Item:
COVID 19 Expenditure Report to Date

FLORIDA **A&M** UNIVERSITY
Board of Trustees
INFORMATION ITEM

Budget, Finance and Facilities Committee

Thursday, December 2, 2021

Agenda Item: X

Subject: COVID 19 Expenditure Report to Date

Background Information and Summary:

The Coronavirus Aid, Relief, and Economic Security Act (CARES) was approved by Congress on March 27, 2020. This bill allotted \$2.2 trillion to provide fast and direct economic aid to the American people negatively impacted by the COVID-19 pandemic. Of that money, approximately \$14 billion was given to the Office of Postsecondary Education. Of the funds allocated, Florida A&M received \$26,309,331 in CARES Act funding, \$35,967,824 in Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) funding, and funding of \$62,729,097 of which \$31,720,320 has been allocated to address student debt relief. Funds received were allocated under the following categories: Academic Affairs; Student Services; Facilities, Information Technology, and Program Coordination. The attached spreadsheet provides a summary of expenditures, encumbrances, and pre-encumbrances of dollars received.

Attachments: Yes

1. Summary of Expenditures for CARES and CRRSAA Funding spreadsheet

FUNDS	Source	Fund	Budget	Expense	Encumbrances & Pre-Encumbrances	Totals	% Spent	Available Balance
CARES ACT	HBCU	212	16,856,753.00	16,009,367.87	847,385.13	16,856,753.00	100.00%	0.00
CARES ACT	HBGI	213	9,452,578.00	9,418,751.14	33,826.86	9,452,578.00	100.00%	0.00
			26,309,331.00	25,428,119.01	881,211.99	26,309,331.00	100.00%	0.00

FUNDS	Source	Fund	Budget	Expense	Encumbrances & Pre-Encumbrances	Totals	% Spent	Available Balance
CRRSAA	HBCU	212	28,955,924.00	16,627,484.64	3,082,682.65	19,710,167.29	68.07%	9,245,756.71
CRRSAA	HBGI	213	7,011,900.00	3,486,397.17	1,144,790.33	4,631,187.50	66.05%	2,380,712.50
	Total		35,967,824.00	20,113,881.81	4,227,472.98	24,341,354.79	67.68%	11,626,469.21

FUNDS	Source	Fund	Budget	Expense	Encumbrances & Pre-Encumbrances	Totals	% Spent	Available Balance
ARP	HBCU	212	20,275,000.00	15,798,703.67	0.00	15,798,703.67	77.92%	4,476,296.33
ARP	HBGI	213	11,720,302.00	2,868,125.00	0.00	2,868,125.00	24.47%	8,852,177.00
	Total		31,995,302.00	18,666,828.67	0.00	18,666,828.67	58.34%	13,328,473.33

SOURCE: BUDGET OVERVIEWS @ 10.18.21

Supplemental Document

List of Contracts > \$100,000

Contracts over \$100,000 for July 2021 – October 2021

1. Contractor: Rhino Sport and Entertainment Company

Contract #: C-0009-22

Contract Start Date: August 1, 2021

Contract Expiration Date: July 31, 2024

Contract Amount: This amount will not exceed \$200,000 over the term of the contract.

This contractor will provide Event staffing services for FAMU, including security, ticket taking, ushers, & parking attendants at Bragg Memorial Stadium and Al Lawson Multipurpose Center in accordance with the referenced contract.

Funding: Athletics, Mr. Michael Johnson Jr.

2. Contractor: Belfor USA Group, Inc. (Piggyback)

Contract #: C-0014-22

Contract Start Date: July 16, 2021

Contract Expiration Date: June 30, 2022

Contract Amount: This amount will not exceed \$800,000.00 over the term of the contract.

This contractor will provide Disaster Relief, and Services for FAMU, in accordance with the referenced contract.

Funding: Facilities Planning and Construction, Ms. Stephanie Fisher

3. Contractor: Hagerty Consulting Inc. (Piggyback)

Contract #: C-0015-22

Contract Start Date: July 16, 2022

Contract Expiration Date: June 30, 2022

Contract Amount: This amount will not exceed \$800,000.00 over the term of the contract.

This contractor will provide Disaster Relief and Services for FAMU, in accordance with the referenced contract.

Funding: Facilities Planning and Construction, Ms. Stephanie Fisher

4. Contractor: The Terminix International Company

Contract #: C-0027-22

Contract Start Date: July 27, 2022

Contract Expiration Date: May 2, 2025

Contract Amount: This amount will not exceed \$500,000.00 over the term of the contract.

This contractor will provide pest control services for FAMU, in accordance with the referenced contract.

Funding: Facilities Planning and Construction, Ms. Stephanie Fisher

5. Contractor: National Office Furniture (Piggyback)

Contract #: C-0046-22

Contract Start Date: July 29, 2022

Contract Expiration Date: December 1, 2023

Contract Amount: This amount will not exceed \$550,000.00 over the term of the contract.

This contractor will provide Furniture for FAMU, in accordance with the referenced contract.

Funding: Housing, Ms. Marny Marsh

6. Contractor: Wiley Edu., LLC.

Contract #: C-0065-22

Contract Start Date: August 20, 2021

Contract Expiration Date: August 21, 2022

Contract Amount: This amount will not exceed \$449,993.00 over the term of the contract.

This contractor will provide Consulting Project Based Services for FAMU School of Nursing, in accordance with the referenced contract.

Funding: School of Nursing, Ms. Shelley Johnson

7. Contractor: Johnson Controls Inc. (Piggyback)

Contract #: C-0071-22

Contract Start Date: August 30, 2021

Contract Expiration Date: June 30, 2022

Contract Amount: This amount will not exceed \$500,000.00 over the term of the contract.

This contractor will provide Technology, Security, and Communication Services to FAMU, in accordance with the referenced contract.

Funding: Facilities Planning and Construction, Ms. Stephanie Fisher

8. Contractor: Talquin (Portable Restrooms)

Contract #: C-0078-22

Contract Start Date: August 8, 2021

Contract Expiration Date: July 31, 2022

Contract Amount: This amount will not exceed \$100,000.00 over the term of the contract.

This contractor will provide Portable Toilet Rental Services to FAMU, in accordance with the referenced contract.

Funding: Facilities Planning and Construction, Ms. Stephanie Fisher

9. Contractor: CERES Environmental Services (Piggyback)

Contract #: C-0079-22

Contract Start Date: August 26, 2021

Contract Expiration Date: March 31, 2022

Contract Amount: This amount will not exceed \$800,000 over the term of the contract.

This contractor will provide Disaster Recovery Operations and services to FAMU, in accordance with the referenced contract.

Funding: Facilities Planning and Construction, Ms. Stephanie Fisher

10. Contractor: The Mosaic Group, LLC. (Piggyback)

Contract #: C-0095-22

Contract Start Date: August 23, 2021

Contract Expiration Date: October 31, 2021

Contract Amount: This amount will not exceed \$787,746.00 over the term of the contract.

This contractor will provide Media, Advertising, Outreach, Communications & Consulting Services to support Statewide Education, Community Engagement Outreach & Multi-Media Campaign in accordance with MMERI's Legislative mandate for FAMU, in accordance with the referenced contract.

Funding: Medical Marijuana Education and Research Initiative (MMERI), Mr. GP Mendie

11. Contractor: Greenwood/Asher and Associates Inc.

Contract #: C-0113-22

Contract Start Date: September 14, 2021

Contract Expiration Date: March 31, 2022

Contract Amount: This amount will not exceed \$168,000.00 over the term of the contract.

This contractor will provide Executive Search Firm Services for FAMU, in accordance with the referenced contract.

Funding: Provost, Ms. Valeria Singleton

12. Contractor: Cisco Systems, Inc. (Piggyback)

Contract #: C-0127-22 (Piggyback)

Contract Start Date: September 1, 2021

Contract Expiration Date: September 30, 2024

Contract Amount: This amount will not exceed \$300,00.00 over the term of the contract.

This contractor will provide Data Communication Products and Services for FAMU, in accordance with the referenced contract.

Funding: Procurement Services, Ms. Mattie Hood

13. Contractor: Data Set Ready, Inc. (Piggyback)

Contract #: C-0128-22 (Piggyback)

Contract Start Date: August 23, 2021

Contract Expiration Date: September 30, 2023

Contract Amount: This amount will not exceed \$300,00.00 over the term of the contract.

This contractor will provide Telecommunication Infrastructure Project and Services for FAMU, in accordance with the referenced contract.

Funding: Procurement Services, Ms. Mattie Hood**14. Contractor: Crestron Electronics, Inc. (Piggyback)**

Contract #: C-0129-22 (Piggyback)

Contract Start Date: August 23, 2021

Contract Expiration Date: April 14, 2023

Contract Amount: This amount will not exceed \$300,00.00 over the term of the contract.

This contractor will provide Audio Visual Equipment and Services for FAMU, in accordance with the referenced contract.

Funding: Procurement Services, Ms. Mattie Hood**15. Contractor: W.W. Gay Mechanical Contractor, Inc. (Piggyback)**

Contract #: C-0155-22

Contract Start Date: October 7, 2021

Contract Expiration Date: August 31, 2022

Contract Amount: This amount will not exceed \$800,000.00 over the term of the contract.

This contractor will provide HAVC Products, and services to FAMU, in accordance with the referenced contract.

Funding: Facilities Planning and Construction, Ms. Stephanie Fisher**16. Contractor: Omega 14, Inc.**

Contract #: C-0439-21

Contract Start Date: October 30, 2021

Contract Expiration Date: October 30, 2021

Contract Amount: This amount will not exceed \$143,500.00 over the term of the contract.

This contractor will provide Entertainment/ Performance Artist for FAMU Homecoming, in accordance with the referenced contract.

Funding: Student Affairs, Mr. Andre Green**17. Contractor: Astro Turf Corporation (Piggyback)**

Contract #: C-0160-22

Contract Start Date: October 7, 2021

Contract Expiration Date: August 7, 2022

Contract Amount: This amount will not exceed \$950,00.00 over the term of the contract.

This contractor will provide FAMU with Field Turf for the Baseball Field, in accordance with the referenced contract.

Funding: Facilities Planning and Construction, Ms. Stephanie Fisher

18. Contractor: A-Turner Moving and Storage (Piggyback)

Piggy Back/Contract #: C-0176-22

Contract Start Date: October 21, 2021

Contract Expiration Date: October 31, 2023

Contract Amount: This amount will not exceed \$300,000.00 over the term of the contract.

This contractor will provide FAMU with Moving Services, in accordance with the referenced contract.

Funding: Human Rescores, Mrs. Sandi Smith Anderson-Smith.