



NATIONAL SCIENCE FOUNDATION  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

## CLOSEOUT MEMORANDUM

Case Number: I02040013

Page 1 of 1

A university<sup>1</sup> and the National Science Foundation (NSF) entered into a Cooperative Agreement for a \_\_\_\_\_ for the purpose of developing infrastructure and inter-disciplinary cooperation designed to enhance minority education. NSF committed to provide \$ \_\_\_\_\_ million in award funds and the university agreed to provide \$2.5 million in cost-share fund to support the project over a 5-year period. Following a one-year no cost extension, the grant closed in May.

NSF OIG received an allegation that the university was not providing the agreed upon cost-share and was misrepresenting the amount of cost-share funds it did provide. NSF-OIG opened an investigation into this matter to determine if the university was contributing the cost-share funds it promised NSF, if the certifications sent to NSF regarding cost-share contributions were accurate and if the university was properly stewarding federal monies.

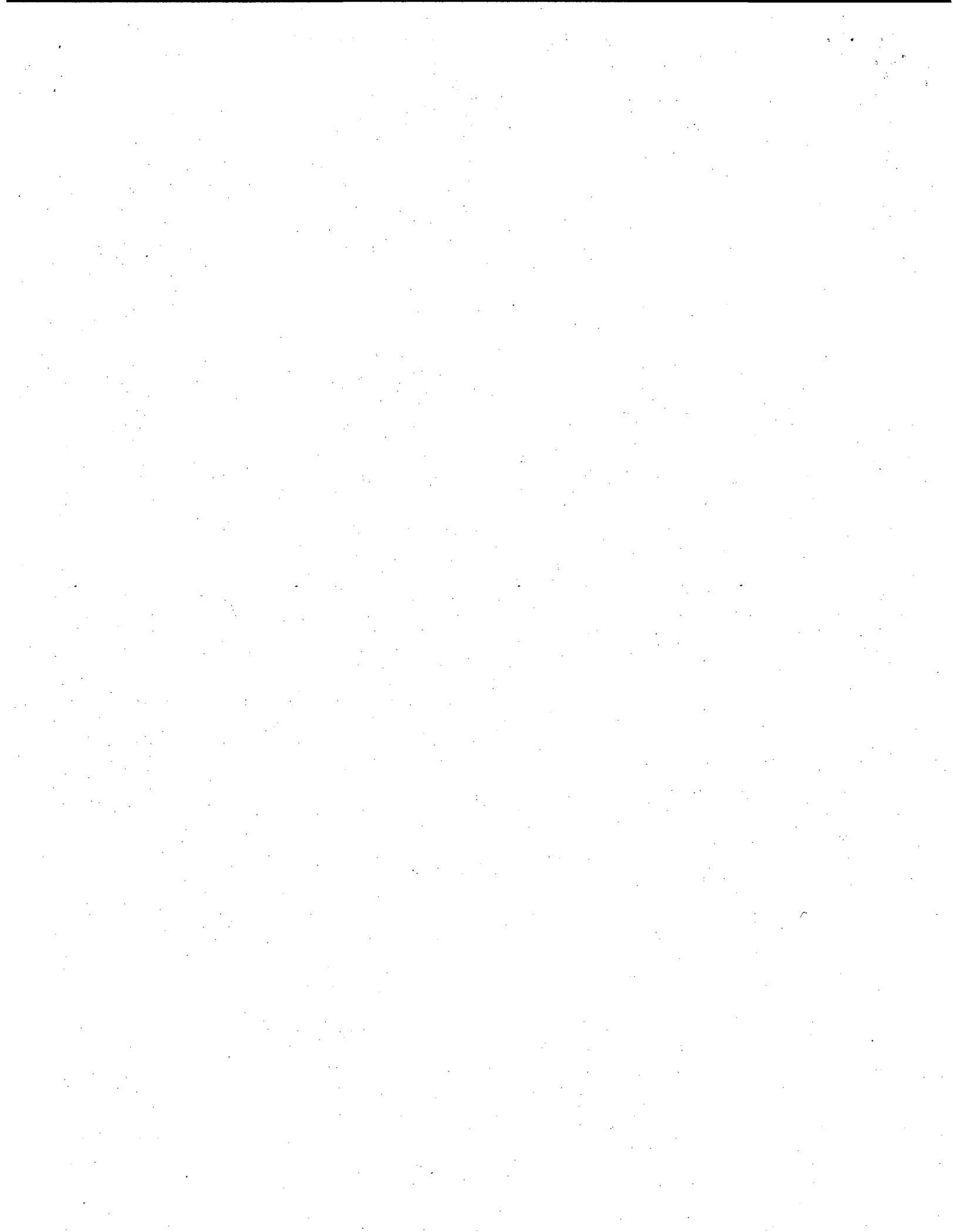
During the course of the investigation, OIG uncovered significant issues with the university's financial management of the award. The university produced documentation to support approximately \$3.4 million in award expenditures but failed to produce documentation demonstrating its use of the remaining \$1.4 million of award funds.

After consulting with the Assistant U.S. Attorney and receiving its guidance, NSF, OIG, and the university developed and signed a Compliance Agreement and a Settlement Agreement to resolve the issues. Under these agreements, the university agreed to return approximately \$1.495 million to the Federal Government and develop internal systems to detect and prevent criminal behavior. The Compliance Agreement and Settlement Agreement are attached.

Accordingly, this case is *closed*.

<sup>1</sup> Florida Agricultural and Mechanical University

<sup>2</sup>



**Compliance Agreement  
Between  
The National Science Foundation  
And  
The National Science Foundation Office of Inspector General  
And  
Florida Agricultural and Mechanical University**

This Compliance Agreement (the "Compliance Agreement") is entered into between Florida Agricultural and Mechanical University ("FAMU"), the National Science Foundation ("NSF"), and the NSF Office of Inspector General ("OIG"). FAMU, NSF, and OIG may be referred to herein individually as "Party" and collectively as "the Parties."

**RECITALS**

WHEREAS, FAMU and NSF entered into Cooperative Agreement No.

(Cooperative Agreement), for FAMU to assume primary responsibility for planning, operating and managing \_\_\_\_\_ "f" for a period of September 1, \_\_\_\_\_ to August 31, \_\_\_\_\_, and

WHEREAS, the primary purpose of the Cooperative Agreement was to develop the infrastructure and inter-disciplinary cooperation that would produce new knowledge, publishable papers, provide a more effective education for undergraduate and graduate students, and result in the graduation of more minority PH.D candidates in science, engineering, mathematics, and or technology; and

WHEREAS, the Agreement committed NSF to provide \$ \_\_\_\_\_ in funds and FAMU to provide cost sharing in the amount of \$2,500,000; and

WHEREAS, as of December 25, 2004, FAMU had received funds in the amount of \$4,800,000 from NSF; and

WHEREAS, from April 2002 until present, the NSF Inspector General has engaged in an investigation to address allegations concerning financial information and supporting

documentation related to the Agreement, and the Parties have entered into a Settlement Agreement to bring that investigation to a conclusion.

**NOW THEREFORE, FAMU agrees to undertake the compliance obligations outlined below.**

**I. Preamble**

1. FAMU agrees to implement a Compliance Program (the "Program") to ensure compliance with the terms and conditions, both General Grant Conditions and any Special Grant Conditions, applicable to any NSF grants and awards; to ensure compliance with all relevant laws and regulations governing NSF awards; and to prevent fraud, false statements, and misspending of funds related to NSF grants, contracts, and cooperative agreements ("Awards") by FAMU, its officers, faculty, other relevant employees, and relevant independent contractors and sub-recipients. The Program shall be based upon an assessment of the risk of such unlawful activities; shall have adequate financial and human resources provided; and shall be maintained so as to ensure that FAMU and each of its officers, faculty, other relevant employees and relevant independent contractors and sub-recipients maintain the integrity required of a recipient of NSF funds. It is recognized by the Parties that FAMU submitted a Corrective Action Plan ("CAP") to NSF on March 15, 2004. Nothing in this Compliance Agreement modifies, amends, or affects the terms of the Corrective Action Plan and its implementation.

**II. Terms and Conditions**

2. The period of future compliance obligations assumed by FAMU under this Compliance Agreement shall be five (5) years from the effective date of this Compliance Agreement. The "effective date" shall be the date on which the final signatory to this Compliance Agreement executes this Compliance Agreement. It is understood that FAMU will not be bound by the terms of this Compliance Agreement until the Board of Trustees of FAMU ratifies the execution of this Compliance Agreement by its Interim President. The scope of this Compliance Agreement shall be limited to NSF funds that are awarded or disbursed during the aforesaid five-year period. All reports and notifications required under this Compliance Agreement shall be sent to the NSF OIG Associate Inspector General for Investigations, via email to [oig@nsf.gov](mailto:oig@nsf.gov) and to the NSF Director of the Division of Grants and Agreements via email. Such reports and notifications shall reference the applicable section(s) of this Compliance Agreement.

3. FAMU agrees to implement the following measures within one hundred and twenty (120) days of the effective date of this Compliance Agreement, unless otherwise specified below:

**A. Compliance**

**1. Compliance Officer**

4. An individual shall be appointed by the President to serve as the Compliance Officer for FAMU. The Compliance Officer shall be a member of the senior management of FAMU and shall report to the President and to the Board of Trustees of FAMU. The Compliance Officer shall be responsible for the Compliance Program operations including, where appropriate, the review of awards, the development of training programs, and the submission of comprehensive written annual reports to the President, to the Board of Trustees, to OIG, and to NSF on the status of compliance at FAMU.

**2. Compliance Committee for Research**

5. The Compliance Officer shall chair a Compliance Committee that shall be responsible for ensuring implementation of the Compliance Program throughout FAMU. In addition to the Compliance Officer, the members of the Compliance Committee shall include, at a minimum, the following FAMU officers: FAMU's Inspector General, the Vice President for Administration and Financial Services, the Vice President of Sponsored Research, the Provost and Vice President of Academic Affairs.

**3. Compliance Program**

6. The Compliance Program shall include identification of the positions throughout FAMU that have roles and responsibilities in the application for, receipt of, and administration of NSF Awards. Each of those roles and responsibilities shall be described so that their relationship to FAMU's responsibilities under NSF awards is clear. The lines of responsibility shall be clearly established from each individual position up to and including FAMU's responsible signatory officials. All individuals in such positions will be provided with (or have electronic access to) written policies and/or procedures applicable to their positions for (1) a code of conduct holding FAMU personnel to high ethical standards of professional conduct and integrity, including addressing conflicts of interest; (2) accurate time and effort reporting under NSF Awards to meet the standards of the cost principles specified in the Office of Management and Budget (OMB) Circular A-21 and the Federal administrative requirements contained in OMB Circular A-110; (3) accurate charging of costs under NSF Awards; (4) accurate monitoring, managing and reporting of cost sharing; (5) accurate monitoring of sub-recipients and consultants and sub-recipient and consultant charges; (6) accurate reconciliation of accounting records; and (7) document management

## **F. Confidential Disclosure Program**

15. To the extent permitted by the laws of the State of Florida, FAMU shall establish a confidential disclosure mechanism enabling FAMU, sub-recipient and contractor employees to disclose anonymously to FAMU's Compliance Officer any practices, procedures, or acts deemed by the employee to be inappropriate. FAMU shall make the confidential disclosure mechanism known to each relevant employee as part of the training described above. FAMU shall require the internal review of all such credible disclosures and ensure that proper follow-up is conducted. FAMU shall include in its annual report to NSF and OIG a summary of communications received under the confidential disclosure program, and the results of the internal review and follow-up of such disclosures.

## **III. Dealing with Debarred or Suspended Persons**

16. FAMU shall implement, and make appropriately known as part of its training program, a written internal operating policy providing that FAMU shall comply with 45 C.F.R. part 620.

17. As to persons or contractors who become excluded while they are employed by or under contract with FAMU, FAMU shall comply with 45 C.F.R. Sections 620.315 & .310, respectively. In addition, FAMU shall notify NSF and OIG of each such person or contractor who is excluded while they are employed by or under contract with FAMU under an NSF Award, and the decision made by FAMU (and the reasons therefore) about whether to discontinue the person's employment or to terminate the contract, within fifteen (15) days of such decision.

## **IV. OIG Inspection, Audit, and Review Rights**

18. In addition to any other right that OIG has pursuant to NSF Award conditions or other authority, OIG may examine and copy FAMU's records, including audits and audit workpapers, for the purpose of verifying and evaluating: (a) FAMU's compliance with the terms of this Compliance Agreement; and (b) FAMU's compliance with any NSF requirements. FAMU shall make the records available at any reasonable time for inspection, audit, and/or reproduction. Furthermore, for purposes of this provision, OIG may interview any relevant FAMU employee at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee and OIG. Relevant employees are those individuals with a role or responsibility in the application for, receipt of, or administration of NSF Awards and those individuals who conduct projects supported by NSF Awards.

19. In the event that OIG believes FAMU has breached any of its obligations under this Compliance Agreement, OIG shall notify NSF of the alleged breach. OIG shall

subsequently notify FAMU of the alleged breach by email and certified mail (return receipt requested) to FAMU's Authorized Organizational Representative ("AOR"), specifying the nature and extent of the alleged breach. FAMU will have thirty (30) days from receipt of the notice to: (a) cure said breach; or (b) otherwise satisfy OIG that (1) it is in full compliance with this Compliance Agreement or (2) the breach cannot be reasonably cured within thirty (30) days, but that FAMU has taken action to cure the breach and is pursuing such action with diligence.

20. If, at the end of the thirty (30) day period described above, OIG determines that FAMU continues to be in breach of any of its obligations under this Compliance Agreement, OIG will notify NSF. Subsequently, OIG may, by email sent to FAMU's AOR, state its conclusion that FAMU is in default and refer the matter for NSF to initiate proceedings to undertake appropriate administrative action, including but not limited to the suspension or termination of any or all NSF awards and/or suspension or debarment of FAMU. If FAMU is suspended or debarred based upon breach of the Compliance Agreement, and in the event FAMU fully cures the material breach or otherwise satisfies NSF, it will be promptly reinstated.

21. Should any action to enforce or interpret this Compliance Agreement or to resolve any dispute hereunder be required, the Parties acknowledge the jurisdiction of the federal courts. The parties agree that, absent a breach of this Compliance Agreement and/or the Settlement Agreement, the execution of the said Agreements shall be final as to all matters alleged in the said Agreements.

#### V. Costs

22. Each Party to this Compliance Agreement shall bear its own costs, expenses, and fees incurred in implementing the terms of the Agreement.

23. FAMU agrees that all costs, whether direct or indirect, incurred by or on behalf of FAMU in connection with the following are unallowable costs under the cost principles applicable to government Awards (hereafter, "unallowable costs"): (1) the matters covered by this Compliance Agreement, (2) OIG's investigation of FAMU's performance under NSF award, (3) FAMU's investigation, defense, and corrective actions undertaken in response to OIG's investigation in connection with FAMU's performance under NSF award and the matters covered by this Compliance Agreement and the Settlement Agreement (including attorney's fees), (4) the negotiation of this Compliance Agreement and the Settlement Agreement, and (5) any payment made pursuant to the Settlement Agreement.

24. These unallowable costs will be separately estimated and accounted for by FAMU and FAMU will not charge such unallowable costs directly or indirectly to any Federal Awards.

#### **VI. Modification**

25. FAMU, OIG and NSF agree that any modification to this Compliance Agreement shall not be effective until a written amendment is signed by representatives duly authorized to execute such amendment.

#### **VII. Integration Clause**

26. This Compliance Agreement and the Settlement Agreement entered into by FAMU, OIG, and NSF embody the entire and exclusive agreement and understanding of the Parties with respect to the covered conduct addressed herein. As to the covered conduct, there are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in this Compliance Agreement and the Settlement Agreement.

27. This Agreement will be deemed effective upon the occurrence of the events as provided in Section II.2 herein.

28. Each person who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so. IN WITNESS WHEREOF, the Parties hereto affix their signatures.

FOR THE NATIONAL SCIENCE FOUNDATION

Thomas N. Cooley

Thomas N. Cooley

Chief Financial Officer & Director, Office of Budget, Finance, and Award Management

29 June 2005

Date

FOR THE NSF OFFICE OF INSPECTOR GENERAL

Thomas C. Cross

for Christine C. Boesz, Dr.P.H.  
Inspector General

6/29/05

Date

FOR FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY

Castell Vaughn Bryant

Castell Vaughn Bryant  
Interim President

6/27/05

Date



**Settlement Agreement**  
**Between**  
**The National Science Foundation**  
**And**  
**The National Science Foundation Office of Inspector General**  
**And**  
**Florida Agricultural and Mechanical University**

1. This Settlement Agreement (the "Settlement Agreement") is entered into between Florida Agricultural and Mechanical University ("FAMU"), the National Science Foundation ("NSF"), and the NSF Office of Inspector General ("OIG"). FAMU, NSF, and OIG may be referred to herein individually as "Party" and collectively as "the Parties."

**I. The Covered Conduct**

2. On September 1, \_\_\_\_\_, FAMU and NSF entered into a five-year Cooperative Agreement, \_\_\_\_\_ (the "Award"), under the ( \_\_\_\_\_ the purposes of developing infrastructure and inter-disciplinary cooperation designed to enhance minority education. NSF committed to provide \$ \_\_\_\_\_ in Award funds and FAMU agreed to provide cost sharing in the amount of \$2,500,000 to support the project for the entire five-year Award period. Following a one-year no cost extension, the Award expired August 31, 2003. As of December 25, 2004, approximately \$471,000 of Award funds unspent by FAMU were reclaimed by NSF. Therefore, as of December 25, 2004, FAMU received \$4.8 million in funding under this Award.

3. Based upon credible allegations that FAMU had failed to meet its cost-sharing obligations under the Award and questions concerning whether FAMU had appropriately spent NSF Award funds and whether FAMU accurately reported the financial status of the Award to NSF, OIG conducted an investigation.

4. During the course of the investigation, FAMU provided documentation to support approximately \$3.4 million in Award expenditures made between September 1, 1997 through and including December 25, 2004. However, FAMU failed to provide any documentation for how it spent the remaining Award funds disbursed by NSF to FAMU between September 1, \_\_\_\_\_ through and including December 25, \_\_\_\_\_, to wit, approximately \$1.4 million.

5. The conduct described in paragraphs 2 through 4 is the "Covered Conduct."

6. **OIG believes that FAMU may have provided false certifications to NSF pertaining to its appropriate use of Award funds and its cost sharing contributions and may have misspent Award funds.**

7. **FAMU believes that all Award funds were expended properly and all required cost sharing amounts were provided and that no misrepresentations were made by FAMU or its representatives.**

## **II. Awardee Obligations and NSF Authority**

8. **Applicable Federal cost principles and NSF award terms and conditions require the awardee to provide adequate records demonstrating that claimed costs and cost sharing amounts are allowable, allocable, and reasonable.**

9. **When OIG determines that an awardee is unable to provide adequate records demonstrating that claimed costs and cost sharing amounts are allowable, allocable, and reasonable, OIG must question those amounts in their entirety.**

10. **When OIG questions claimed costs or cost sharing amounts, NSF must determine whether to disallow those amounts; the awardee must reimburse any amounts disallowed by NSF.**

11. **In circumstances in which an awardee is unable to provide adequate records demonstrating that claimed costs and cost sharing amounts are allowable, allocable, and reasonable, but NSF determines that the awardee's performance under the award was adequate and that appropriate equitable circumstances exist, NSF has the authority to adjust the amount that the awardee must reimburse to NSF.**

12. **NSF also has the authority to settle disputes with awardees concerning questionable charges and cost sharing contributions.**

## **III. Terms and Conditions**

13. **In order to avoid the needless burden and expense of protracted litigation and because NSF considers it in the public interest to settle such disputes, NSF and FAMU have agreed to settle all claims raised by the Covered Conduct by virtue of this agreement.**

14. **The Parties agree that FAMU will repay NSF the total sum of \$1.495 million which represents: (1) the difference between what NSF dispersed to FAMU under the Award, between September 1, through and including December 25, to wit, \$4.8 million and what FAMU affirmatively documented in costs under the award, to wit, \$3.4 million, and (2) the cost of OIG investigating this matter, to wit \$95,000.**

FAMU agrees to pay the above amount on a quarterly basis with the first quarterly payment of \$373,750.00 to be paid on or before September 30, 2005. Subsequent quarterly payments in the same amount shall be paid on or before December 30, 2005, March 30, 2006 and June 30, 2006. The quarterly payments shall be made by electronic funds transfer pursuant to written instructions to be provided by NSF.

15. The Parties agree to enter into and comply with the Compliance Agreement, which is incorporated herein.

16. The Parties agree that this settlement of the covered conduct will have no effect on FAMU's submission of proposals to NSF or NSF's evaluation of FAMU proposals.

17. FAMU releases NSF and each of its officers, agents, employees, and contractors and their employees for any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the Covered Conduct, including the investigation of the Covered Conduct and this Agreement.

18. Subject to the exceptions in paragraph 19 below, in consideration of the obligations of FAMU set forth in this Agreement, NSF on behalf of itself, its officers, employees, and agents, releases FAMU, its predecessors, successors, assigns, and affiliates from any civil or administrative monetary claims NSF has or may have under common law theories, including payment by mistake of fact, unjust enrichment, disgorgement, restitution, breach of contract, and breach of fiduciary duty for the Covered Conduct.

19. Notwithstanding any provision of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including FAMU) are the following:

- (1) Any civil, criminal, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (2) Any criminal liability;
- (3) Any liability to the United States (or its agencies) or NSF for any conduct other than the Covered Conduct;
- (4) Any claims or administrative actions arising from a breach of this Settlement Agreement or the Compliance Agreement.

- (5) FAMU's Corrective Action Plan with NSF and any NSF actions that follow from the Corrective Action Plan.

20. In consideration of the repaid funds specified in paragraph 14 and the compliance promised in paragraph 15, OIG agrees to conduct no further audit or investigation activities concerning the Covered Conduct, except that in OIG's sole discretion it may audit or investigate substantive credible evidence concerning (1) FAMU's compliance with this Settlement Agreement or the Compliance Agreement, or (2) other wrongdoing based on evidence not in OIG's possession at the time of entering into this agreement. The Parties agree that, absent these exceptions and the exclusions listed in Paragraph 19, the execution of the said Agreements shall be final as to all matters alleged in the Agreements.

21. FAMU fully and finally releases NSF, OIG, and their employees and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which FAMU could have asserted or may assert in the future against NSF, OIG, and their employees and agents, related to the Covered Conduct and OIG's audit and investigation thereof through the effective date hereof.

#### **IV. Breach and Default Provisions**

22. In the event that NSF believes FAMU has breached any of its obligations under this Settlement Agreement, NSF shall notify FAMU of the alleged breach by written notice to FAMU's Authorized Organizational Representative ("AOR"), specifying the nature and extent of the alleged breach. FAMU will have thirty (30) days from receipt of the notice: (a) to cure said breach; or (b) otherwise satisfy NSF that (1) it is in full compliance with this Settlement Agreement or (2) the breach cannot be reasonably cured within thirty (30) days, but that FAMU has taken action to cure the breach and is pursuing such action with diligence.

23. If, at the end of the thirty (30) day period described above, NSF determines that FAMU continues to be in breach of any of its obligations under this Settlement Agreement, NSF may, by written notice sent to FAMU's AOR, declare FAMU to be in default and initiate proceedings to undertake appropriate administrative action, including but not limited to the suspension or termination of any active FAMU awards or and including suspension or debarment of FAMU. If FAMU is suspended or debarred based upon breach of the Settlement Agreement, and in the event FAMU fully cures the material breach or otherwise satisfies NSF, it will be promptly reinstated.

24. Should any action to enforce or interpret this Settlement Agreement or to resolve any dispute hereunder be required, the Parties acknowledge the jurisdiction of the federal courts.

## V. Costs

25. Each Party to this Settlement Agreement shall bear its own costs, expenses, and fees incurred in implementing the terms of this agreement.

26. FAMU agrees that all costs, whether direct or indirect, incurred by or on behalf of FAMU in connection with the following are unallowable costs under the cost principles applicable to government Awards (hereafter, "unallowable costs"): (1) the matters covered by this Settlement Agreement, (2) OIG's investigation of the Covered Conduct, (3) FAMU's investigation, defense, and corrective actions undertaken in response to NSF's investigation in connection with the Covered Conduct and the matters covered by this Settlement Agreement and the Compliance Agreement (including attorney's fees), (4) the negotiation of this Settlement Agreement and the Compliance Agreement, and (5) the payment made pursuant to this Settlement Agreement.

27. These unallowable costs will be separately estimated and accounted for by FAMU and FAMU will not charge such unallowable costs directly or indirectly to any Federal Awards, including but not limited to grants, contracts and cooperative agreements.

## VI. Modification

28. FAMU, NSF and OIG agree that any modification to this Settlement Agreement shall not be effective until a written amendment is signed by representatives duly authorized to execute such amendment.

## VII. Integration Clause

29. This Settlement Agreement and the Compliance Agreement entered into by NSF, OIG and FAMU embody the entire and exclusive agreement and understanding of the Parties with respect to the covered conduct addressed herein. As to the covered conduct, there are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in this Settlement Agreement and the Compliance Agreement.

30. This Agreement will be deemed effective on the date that it is fully executed by the final signatory to this Settlement Agreement. It is understood that FAMU will not be bound by the terms of this Settlement Agreement until the Board of Trustees of FAMU ratifies the execution of this Settlement Agreement by its Interim President.

31. Each person who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so. **IN WITNESS WHEREOF**, the Parties hereto affix their signatures.

**FOR THE NATIONAL SCIENCE FOUNDATION**

Thomas N. Cooley

Thomas N. Cooley

Chief Financial Officer & Director, Office of Budget, Finance, and Award Management

29 June 2005

Date

**FOR THE NSF OFFICE OF INSPECTOR GENERAL**

Thomas C. Cross

for Christine C. Boesz, Dr.P.H.  
Inspector General

6/29/05

Date

**FOR FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY**

Castell Vaughn Bryant

Castell Vaughn Bryant

Interim President

6/27/05

Date