REPORT OF INVESTIGATION

PRESENTED TO THE STATE UNIVERSITY SYSTEM OF FLORIDA BOARD OF GOVERNORS

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Bryan Cave Leighton Paisner LLP

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I. BACKGROUND AND SCOPE OF INVESTIGATION

A. Prior Investigation and Engagement of BCLP

In September 2018, the University of Central Florida ("UCF") Board of Trustees ("BOT") engaged the law firm of Bryan Cave Leighton Paisner LLP ("BCLP") to conduct an independent[1] investigation into the University's use of state appropriated Education and General ("E&G") funds for capital projects, including the construction of a new academic building called Trevor Colbourn Hall ("TCH"). The BOT directed the Chair of its Audit and Compliance Committee, Beverly J. Seay, to oversee the investigation. Following a three month investigation with assistance from the accounting firm of PricewaterhouseCoopers Advisory Services LLC ("PwC"), BCLP issued a report of investigation on January 17, 2019 ("TCH Report") and presented it to the BOT on the following day, January 18, 2019.

The TCH Report concluded, among other things, that between 2013 and 2016, UCF allocated over $38 million of E&G funds, nearly all of which were "E&G carryforward funds" (i.e. E&G funds that were not spent during the fiscal year for which they were appropriated), to a project that began as the renovation of an existing building, Colbourn Hall, but which resulted in the construction of a new building, TCH, in violation of state law and regulations. The TCH Report found that most of these funds were not spent until fiscal year 2017-18, such that millions of dollars in E&G carryforward funds had been moved from carryforward accounts, the balance of which must be reported to state officials, to a construction account for the project, where they would not have to be reported, long before the funds were actually needed or spent.

The TCH Report focused exclusively on the funding of TCH and not on any other capital projects where E&G funds may have been inappropriately used, even though other such projects had been identified by UCF during its own internal investigation. UCF staff presented this information, which we understand was initially based on a five-year review but ultimately expanded to ten years, at various BOT meetings, including on September 20, 2018, when the Board retained BCLP. To be clear, BCLP had no involvement in the identification of these other, potentially improperly funded projects. On January 24, 2019, the BOT voted to accept the TCH Report but not to extend the BCLP investigation to examine the additional projects that UCF staff had identified.

The State University System of Florida ("SUS") Board of Governors ("BOG") invited BCLP and PwC to present the TCH Report at its January 31, 2019 meeting. After hearing the report, the BOG voted to continue the investigation into the transfer and/or use of E&G funds at UCF for capital projects beyond the funds used for the construction of TCH, and for the investigation to be paid for by UCF. The Board directed Julie Leftheris, the BOG Inspector General and Director of Compliance, to oversee the investigation. On February 8, 2019, BOG Chair Ned Lautenbach wrote to BCLP and asked to retain the firm to conduct this broader investigation. Specifically, he asked for BCLP "to identify all E&G funds transferred into UCF construction accounts since July 1, 2010, to determine the usage or intended usage of those funds and their earnings, and

[1] BCLP did not then and does not currently represent UCF or the BOT in any other matters.

the current status of those funds. Additionally, we are asking you to determine how this was done, at whose direction, and for what purpose." (Exhibit 1). BCLP subsequently terminated its representation of the BOT (with the BOT's consent), and on February 26, 2019, Chair Lautenbach signed an engagement letter on behalf of the BOG, formally engaging BCLP to conduct this investigation. (Exhibit 2).

The BCLP investigative team was once again led by R. Joseph Burby, a partner in the firm's Atlanta office and the leader of its Higher Education Internal Investigations and Compliance team. Prior to joining BCLP, Burby was employed by the United States Department of Justice, serving as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Northern District of Georgia for nearly five years. As a federal prosecutor, Burby investigated and prosecuted a wide range of fraud offenses and other financial crimes, including crimes involving government funds. Burby's practice at BCLP focuses on, among other things, conducting internal investigations for large, complex organizations and their boards, including for colleges and universities.

B. Engagement of PwC

BCLP engaged PwC to assist it with the investigation and provide forensic accounting and other services. (Exhibit 3). The PwC team was once again led by Robert E. Gallagher, a CPA and Certified Fraud Examiner with substantial experience conducting complex, internal investigations involving accounting fraud and regulatory matters and the leader of the firm's Southeast Forensic Services practice group. PwC also has the largest higher education practice in the country, with over 1,500 higher education industry professionals in accounting and auditing, regulatory compliance and education advisory services, among others. Gallagher drew upon this wealth of higher education expertise as needed during the investigation. PwC had not, prior to the TCH investigation, provided any professional services to UCF, the BOT or the BOG.

C. Scope of the Investigative Work

1. General Overview

BCLP conducted the investigation with assistance from PwC over a period of approximately six months, between February and August 2019. As previously stated, our work was overseen by BOG Inspector General Julie Leftheris, to whom we provided regular updates. Inspector General Leftheris in turn provided updates to the BOG's Audit and Compliance Committee, and we also provided an interim report to the Committee on June 13, 2019.

The initial phase of the investigation involved developing a methodology for identifying capital projects at UCF that had received improper transfers of E&G funds since July 1, 2010.[2] We developed this methodology in consultation with BOG staff, as discussed in Section II of this Report, and then applied it using various financial and construction data provided by UCF, resulting in the identification of ten capital projects for further investigation. During this initial phase, we also gathered information

[2] We did not want to rely on UCF's own internal investigation or the projects they had identified through that process; rather, we wished to perform our own independent analysis and reach our own conclusions.

regarding UCF's investment portfolio and process for allocating investment gains, as questions had arisen concerning UCF's investment of E&G funds and use of investment gains for capital projects. This effort resulted in the identification of an eleventh capital project that appeared to have been improperly funded with E&G, the Global UCF building. Specifically, the project appeared to have been funded with investment earnings derived in part from the investment of E&G funds. When the E&G portion of those earnings was considered, the project qualified for inclusion under the methodology agreed upon with BOG staff.

Next, we investigated each of the 11 identified capital projects to determine how the decision was made to use E&G funds for them, why it was made and who at UCF was involved. As part of that process, BCLP interviewed over 40 witnesses, some more than once. Most of these interviews were conducted in person, although some were done by telephone. Inspector General Leftheris participated in most of the witness interviews, including nearly all of the in-person interviews. BCLP also requested extensive documents and other information from the University, including emails and detailed financial and accounting records, which were then reviewed and analyzed. The total number of documents collected and reviewed during the investigation is estimated to be in the tens of thousands. This is in addition to the estimated tens of thousands of documents collected and reviewed during the TCH investigation, many of which were also relevant to this investigation.

2. <u>Witnesses Interviewed</u>

BCLP conducted over 46 interviews with 42 different witnesses, including many current and former UCF administrative officers and staff, faculty members, BOT members, BOG staff and others having information about the matters within the scope of the investigation. Inspector General Leftheris and representatives from PwC were present for, and participated in, most of these interviews.

Senior UCF administrators who were interviewed include Interim University President Thad Seymour; Vice President and General Counsel W. Scott Cole; former Interim Chief Financial Officer Kathy Mitchell; and Chief of Staff to President Seymour and Vice President for Communications and Marketing Grant J. Heston.

A number of senior staff from the University's Finance & Accounting department also made themselves available for interviews, including former Assistant Vice President and University Controller Christy Tant; Interim University Controller Brad Hodum; Assistant Controller Bert Francis; Director of University Budget, Planning & Administration Donna DuBuc; and Director of Budget Initiatives Lynn Gonzalez. Gonzalez also served as Associate Vice President for Academic Affairs during some of the relevant period.

BCLP also interviewed a number of employees from the University's Facilities & Safety department, including Director of Facilities, Planning and Construction Bill Martin; former Director of Downtown Campus Facilities Allen Bottorff; Associate Director, Business Office, Facilities and Safety Resource Management, Lashonda Brown-Neal; and Construction Specialist Gina Seabrook.

BCLP interviewed the current Chair and Vice Chair of the BOT's Finance and Facilities Committee ("FFC"), Alex Martins and Robert Garvy, as well as former FFC Chairs Marcos Marchena and Conrad Santiago. Mr. Marchena also previously served as Chair of the BOT, and Mr. Garvy served as Interim Chair. BCLP also interviewed trustee David Walsh, who serves as a member of the FFC.

Finally, BCLP also interviewed staff of the Florida Board of Governors, including Vice Chancellor for Finance and Administration and Chief Financial Officer Tim Jones, Assistant Vice Chancellor for Finance and Facilities Chris Kinsley and Budget Director Dale Bradley, and consulted with General Counsel Vikki Shirley.

A complete list of the individuals interviewed during this investigation, and the dates of their interviews, is included at Appendix A.

3. Witnesses Not Interviewed

Perhaps more noteworthy than who was interviewed during the investigation is who was not. All of the key individuals who made or participated in the funding decisions for the capital projects that were the focus of this investigation declined to be interviewed, some through their counsel and others by simply ignoring our written interview requests. The lack of cooperation from these individuals significantly hindered the investigation and in some cases prevented us from fully ascertaining how and why the decisions were made to fund the projects. As these individuals were no longer employed by UCF, and the BOG and Inspector General Leftheris lack subpoena power, BCLP had no ability to compel them to cooperate or provide an interview.

The following former senior UCF officials declined our request for an interview:

- John C. Hitt (President, 1992-2019)
- Dale Whittaker (President, 2018-2019; Provost, 2014-2018)[3]
- William ("Bill") F. Merck, II (VP for Administration and Finance and Chief Financial Officer, 1996-2018)
- Tony G. Waldrop (Provost, 2010-2014)
- Diane Chase (Interim Provost, 2010 & 2014; Executive Vice Provost, 1984-2016)[4]
- Tracy Clark (Assoc. Provost and VP for Finance, 2007-2019)
- Priscilla L. ("Lee") Kernek (Assoc. VP for Facilities and Safety, 2007-2019)
- Vanessa Fortier (Assoc. VP for Administrative Affairs, 1998-2013)

Relevant correspondence with these individuals and/or their counsel is included as collective Exhibit 4.

[3] Whittaker declined to be interviewed about the capital projects at issue and his involvement in the funding decisions relating to them, but did offer to discuss policy and process improvements.

[4] Chase provided certain information by email but declined to answer questions or give a formal interview.

4. Documents Received and Considered

BCLP submitted numerous written document requests to the University, resulting in the receipt of thousands of documents. Former Interim CFO Kathy Mitchell initially coordinated the collection of documents (including financial and accounting records as well as emails) in response to BCLP's requests, but this was later handled by current Interim CFO Dennis Crudele. Employees in the University's Office of the General Counsel and Facilities & Safety department coordinated the collection of other types of documents in response to BCLP's requests. BCLP also requested documents and emails directly from some employees.

As discussed in the TCH Report, in October 2018, BCLP collected from the University the entire email accounts of John Hitt, Dale Whittaker, Bill Merck, Tracy Clark, Lee Kernek and Christy Tant. BCLP also collected text messages from all of these individuals except for Merck. These emails and text messages (totaling over 300 GB of data) were loaded into an e-discovery document review platform at BCLP to permit complex searches to be performed of the data and to facilitate document review. During the current investigation, BCLP performed additional searches of these emails and texts for documents relating to the capital projects of interest. BCLP also requested emails directly from some employees, and the University also collected emails from employees in response to the document requests it received from BCLP.

5. Forensic Analysis of Hard Drive

As discussed in the TCH Report, the audio recording of the FFC's April 3, 2014 meeting abruptly cut off during the portion of the meeting when the TCH project was discussed. (TCH Report at p. 24). This meeting was also relevant to this investigation, as information about one of the in-scope projects (Global UCF) was presented at the meeting, although the recording captured that discussion. As part of this investigation, we obtained from UCF a copy of a forensic image of the hard drive for the laptop computer that may have been used to record the April 3, 2014 FFC meeting. We were informed by UCF that the laptop was used to record BOT and FFC meetings during the time period in question, and that following a meeting, recording software would be used to create an MP3 audio file that would be copied to a CD and provided to University staff to maintain as part of the official record of the meeting. We were also informed that it was common practice to delete the audio file from the laptop after it had been copied to the CD. PwC performed a forensic analysis of the hard drive image but was unable to locate an audio file for the meeting in question.

6. Other Information Considered

In conducting this investigation and preparing this Report, BCLP considered documents and other information collected during the earlier TCH investigation for the BOT, including information provided by witnesses during interviews.

Additionally, BCLP considered information collected during an investigation by the Florida House of Representatives' Public Integrity & Ethics Committee ("PIE

Committee"), including the sworn testimony of witnesses taken in depositions[5] conducted by attorneys for the PIE Committee as well as the PIE Committee's final report titled, "Report of Investigation Into Unauthorized Use of Appropriated Funds for Fixed Capital Outlay Projects at the University of Central Florida."

[5] Unlike BCLP and BOG Inspector General Leftheris, the PIE Committee had the authority to serve subpoenas on witnesses, compelling them to provide sworn testimony.

II. METHODOLOGY FOR IDENTIFYING IN-SCOPE PROJECTS

As part of this engagement, BCLP was asked to identify all capital projects at UCF that were improperly funded, in whole or in part, with E&G funds between the dates of July 1, 2010 and December 31, 2018 ("Review Period"), excluding Trevor Colbourn Hall ("In-Scope Projects"). The In-Scope Projects would then be investigated further to determine how the decision was made to use E&G funds, who made it and why. BCLP consulted with BOG staff, including Assistant Vice Chancellor for Finance and Facilities Chris Kinsley, on how to identify capital projects that were improperly funded with E&G and ultimately developed an agreed upon methodology. The methodology was designed to be conservative and to only focus on clear-cut instances of improper spending.

The methodology involved, as an initial step, obtaining from UCF a complete listing of all transfers of any types of funds into unique construction project accounts during the Review Period. Construction project accounts that did not receive *any* transfers of E&G funds were considered outside the scope of this review, as the projects associated with those accounts were presumed to have been properly funded. The remaining construction project accounts which did receive E&G transfers in some amount were then separated into accounts involving a "New Facility" project and accounts involving an "Existing Facility" project. A "New Facility" was defined as any new, stand-alone building, or any work done to an "Existing Facility" that adds 10,000 or more gross square feet to such facility that was not in service prior to the date of the first transfer of E&G funds to the project. An "Existing Facility" was defined as a building that was operational prior to the date of the first transfer of E&G funds to the project. BOG staff requested this step in the methodology in order to better understand the nature of the projects at issue, although as will be shown the distinction between "New Facility" and "Existing Facility" construction accounts did not affect the final determination of the In-Scope Projects.

Next, those New Facility construction accounts and Existing Facility construction accounts that received cumulative transfers of E&G funds totaling $2 million or less were removed from the list and considered out-of-scope, without further analysis. BOG staff indicated that for purposes of this investigation, they were willing to treat the E&G transfers to such construction accounts as permissible, and the projects associated with those accounts as properly funded. BOG staff explained that in prior guidance they had advised SUS institutions that up to $2 million of E&G funds could be used for so-called "minor projects." Accordingly, this step in the methodology was intended to eliminate projects that may have been funded with E&G up to $2 million in favor of larger, more clear-cut instances of improper funding.

The projects associated with the remaining New Facility and Existing Facility construction accounts (i.e., those accounts that had received cumulative E&G transfers in excess of $2 million during the Review Period) were then examined more closely to determine the overall scope of each project. In order to analyze overall scope, both the budgeted and actual Planning & Design costs and Construction costs were considered. Notably, the Furniture, Fixtures and Equipment ("FF&E") costs were not considered in this step of the methodology.[6] This was done using project budget information received from UCF's Facilities department and project expenditure detail received from the Finance & Accounting department. BOG staff elected to exclude FF&E costs in this step to ensure that projects would not cross the $2 million threshold and therefore be included in the In-Scope Projects due solely to the addition of FF&E costs on top of Planning & Design and Construction costs.

The final step in the methodology was intended to ensure that projects whose budgets were less than $2 million but that ultimately cost more than $2 million were included in the In-Scope Projects. Accordingly, if either the budgeted or actual Planning & Design and Construction costs for a project were greater than $2 million, the E&G transfers associated with the project were considered to be impermissible. All such projects were considered "In-Scope Projects" which would be subject to further investigation to determine how the improper funding occurred. If neither the budgeted nor actual Planning & Design and Construction costs for a project were greater than $2 million, then the E&G transfers associated with the project were considered to be permissible, and the project was considered to be properly funded with E&G. All such projects were considered outside the scope of this investigation.

[6] BOG staff defined FF&E for us as property that is movable, such as desks and chairs, and attached, such as lab equipment, fume hoods, safety equipment, cubicles, and the like. It also includes painting, carpet and signage. It does not include walls, doors, windows or elevators.

III. SUMMARY OF FINDINGS

A. Improperly Funded Projects and Related E&G Transfers

Applying the methodology agreed upon with BOG staff (discussed in Section II of this Report), we identified ten capital projects at UCF that were improperly funded, in whole or in part, with E&G funds between the dates of July 1, 2010 and December 31, 2018 ("Review Period"), excluding Trevor Colbourn Hall. We identified an eleventh improperly funded project, the construction of the new Global UCF building (together with the other ten projects, the "In-Scope Projects"), after determining that it was funded with investment earnings derived in part from the investment of E&G funds.[7]

In Appendix B, we list the 11 In-Scope Projects and summarize the amount and timing of E&G funds transferred to each project. More detailed information about the E&G transfers made to each project is provided in Appendix C. As you can see, the total amount of E&G funds transferred to the In-Scope Projects was $ 61.3 million. We found that nearly all of the $61.3 million ($55.3 million) was E&G carryforward funds. If the $38.2 million of E&G funds transferred to Trevor Colbourn Hall are also considered, the total amount of E&G funds improperly transferred by UCF to capital projects during the Review Period is over $99 million. In Appendix D, we summarize the expenditures incurred by UCF over time towards the In-Scope Projects, identifying for each the general timing, amount and type of expense.

The 11 In-Scope Projects and the E&G funding they received are discussed in detail in Section IV of the report but are briefly summarized as follows:

1. College of Medicine - Furniture, Fixtures & Equipment. Between 2009 and 2012, UCF purchased furniture, fixtures and equipment ("FF&E") for the College of Medicine's new Medical Education Building using approximately $2.4 million in unrestricted auxiliary funds. In late June 2012, University officials decided to substitute E&G carryforward funds for these auxiliary funds even though the money had already been spent.

2. CREOL Building Roof. In late June 2012, UCF transferred $2.6 million in E&G funds to replace the roof of the existing Center for Research and Education in Optics and Lasers ("CREOL") building. These funds were not ultimately used for the project, however, and the roof of the CREOL building was never actually replaced. Instead, a portion of the funds were returned to E&G accounts and the balance was used for other deferred maintenance projects involving other buildings, which we found to be appropriate uses of E&G.

3. Combined Heating and Power Plant. In January 2011, UCF made an internal loan of auxiliary funds to fund the construction of a Mitsubishi-built cogeneration power plant housed within a 5,000 square foot building

[7] As will be discussed, BOG regulations provide that interest from the investment of E&G funds are subject to the same restrictions on use as the E&G principal. When we considered the portion of the investment earnings used to fund the Global UCF project that should have been allocated to E&G, the project met the requisite criteria for inclusion in the In-Scope Projects.

on UCF's main campus. The loan was to be repaid using future energy savings derived from UCF's reduced dependence on electricity from outside providers. In September 2012, after the project was nearly completed, University officials decided to substitute $10.8 million of E&G carryforward funds for the auxiliary funds that had been loaned and partially spent. Additional E&G funds were transferred to the project throughout 2012, increasing the total amount to $11.1 million.

4. Global UCF. In 2014, UCF transferred $10 million in investment earnings from an auxiliary account to fund the construction of this new, 52,000 square foot building for international students and international-focused programs. The investment earnings, however, were derived in part from the investment of E&G funds, and officials elected not to treat the E&G portion of those earnings as E&G, even though UCF's normal practice was to allocate all investment earnings pro-rata so that E&G departments would receive their proportionate share. Had UCF allocated these earnings according to the methodology in place at the time of each transfer, an estimated $3.8 million would have been credited to E&G accounts. Additionally, in June 2016, UCF transferred approximately $1.6 million in E&G carryforward funds to pay for the building's FF&E.

5. CREOL Building Expansion. In July 2015, UCF transferred $4 million of E&G carryforward funds to fund a 14,000 square foot expansion of the existing CREOL building that includes new labs and offices, along with the shell for an auditorium to be completed at a later date.

6. Center for Emerging Media. In November 2016, UCF transferred $5 million of E&G carryforward funds to renovate an existing academic building located in downtown Orlando, consisting of a 28,000 square foot remodel of approximately one half of the building.

7. Research I - FF&E. In May 2017, UCF transferred $3 million of E&G carryforward funds to pay for the FF&E for the Research I building, a new, three-story, nearly 106,000 square foot interdisciplinary research building located on UCF's main campus.

8. Research I - Lab Buildouts. In May 2017, UCF transferred $6 million of E&G funds (all but $100,000 of which was E&G carryforward funds) for the design, construction and customization of certain labs located in the new Research I building.

9. Downtown Energy Plant. In October 2017, UCF loaned $11.5 million of E&G carryforward funds for the construction of a new, 9,500 square foot central energy plant designed to meet the chilled water needs of the new Downtown campus.

10. Downtown Student Center. In October 2017, UCF loaned $5.4 million of E&G carryforward funds for the design and buildout of approximately 47,000 square feet of leased space in the UnionWest at Creative Village

building, a privately owned and developed building that includes student residences. The leased space for the Student Center includes the Office of Student Services for the Downtown campus and other student resources.

11. Downtown Infrastructure. In October 2017, UCF loaned $4.8 million of E&G carryforward funds for the construction of telecommunications, data network systems, plumbing, sanitation, landscaping and other infrastructure needs for the new Downtown campus buildings.

UCF recorded the E&G transfers to 4 of the 11 capital projects (the Combined Heating and Power Plant, Downtown Energy Plant, Downtown Student Center and Downtown Infrastructure) as internal loans. However, we found that *none* of these loans had been repaid, *in any amount*, as of late August 2018 when the University's use of E&G funds for the construction of Trevor Colbourn Hall came under scrutiny. UCF collected loan payments in the form of energy cost savings for one of the projects, the Combined Heating and Power Plant, but elected to transfer those payments to an auxiliary account rather than repaying them to the E&G account that funded the loan. No loan payments were collected for the other three loans which were associated with projects located at UCF's new Downtown campus, nor had the University settled on an official plan to repay the loans as of late August 2018.

B. Involvement of UCF Employees and the Board of Trustees

In Section IV of this Report, we discuss in detail how each of the In-Scope Projects came to be funded with E&G, including the relative involvement of individual UCF employees and the Board of Trustees ("BOT"). The specific employees involved varies by project, which is not surprising given that the Review Period covered a span of ten years, and we do not intend to list all of them here.

Nevertheless, several former senior UCF officials approved the use of E&G funds for multiple In-Scope Projects and therefore warrant mention. Chief among them is the University's former Vice President of Administration and Finance and Chief Financial Officer, William ("Bill") F. Merck, II, who served in that role for over 20 years, from 1996 to 2018. We found that Merck approved (or jointly approved) the funding for many of the In-Scope projects, and was involved, in one way or another, in the funding decisions for all of the projects. Former Provosts Tony Waldrop (2010-2014) and Dale Whittaker (2014-2018) also played significant roles. We found that Waldrop approved the E&G funding for the College of Medicine FF&E and the Combined Heating & Power Plant, while Whittaker approved the funding for the Research I lab buildouts and Center for Emerging Media renovation, likely approved the funding for the Downtown Energy Plant, Downtown Student Center and Downtown Infrastructure, and was heavily involved (along with Merck) in the funding of the CREOL building expansion. We found that former President John Hitt (1992-2018) had only limited involvement in the funding of the In-Scope Projects but did approve the funding for the CREOL building expansion and the FF&E for the Research I building.

While she did not approve any funding, we found that, like Merck, former Associate Provost and Vice President for Finance Tracy Clark (2007-2019) participated in the funding decisions for every In-Scope Project with the exception of the CREOL

Roof project, in many instances identifying if not recommending the specific funding sources, including E&G. Other senior employees who did not approve funding but were also involved in funding decisions for multiple projects, meaning they exchanged emails or attended meetings where the funding with E&G was discussed, directed the funding transfers, etc., include former Associate VP for Administrative Affairs Vanessa Fortier (1998-2013), former Associate Vice President for Facilities & Safety Priscilla L. ("Lee") Kernek (2007-2019), and former University Controller Christy Tant, who has been employed at the University since 2011 and remains employed today.

Significantly, none of the individuals listed above, with the exception of Tant, agreed to be interviewed or otherwise cooperated with this investigation.

To be clear, the fact that an individual approved of the transfer of E&G funds to an In-Scope Project, or was involved in the funding decision, does not mean they knew it was improper at the time. Evidence we found as to the relative knowledge and understanding individuals had of the relevant BOG regulations, including the limits on the use of E&G funds, are discussed within the Report and will not be repeated here. In many instances, however, we could not determine what individuals were thinking at the time of these funding decisions or their motivations, due in part to the lack of cooperation we received from them. However, at least Merck and Clark, if not others, had reason to question the use of E&G funds for some of the In-Scope Projects, particularly those involving new construction. Evidence collected during the TCH investigation and presented in that report also supports this conclusion.

We found that the BOT did not formally approve of the use of E&G funds for any of the In-Scope Projects. Indeed, the BOT only approved of the funding for 2 of the 11 In-Scope Projects, Global UCF and the CREOL building expansion, and in neither instance was the BOT told that E&G funds were being used or that there was anything potentially improper about the source of funds for the projects. In the case of Global UCF, the BOT was not informed that the $10 million in investment earnings they approved to fund the project was derived in part from the investment of E&G funds, and that BOG regulations prohibit the use of the E&G portion of such earnings for the construction of a new facility. As for the CREOL building expansion, the project was listed on the University's Capital Outlay Budget for fiscal year 2017-18 as being funded with funds from "other state sources," but the specific source of funds was not disclosed or discussed during the meeting when the budget was approved. We found that the BOT was not informed at all about some of the In-Scope Projects; others they were informed of, but the information they received, particularly as to funding sources, was limited and often vague and contradictory.

C. Concerns about the Timing of E&G Carryforward Transfers

In addition to finding that UCF improperly transferred E&G funds to the In-Scope Projects, we found that the timing of some transfers of E&G carryforward funds was concerning and potentially improper, as the timing appeared to be driven by a desire to reduce the University's carryforward balance prior to reporting it to the BOG in a fiscal year-end or interim carryforward report, rather than by a legitimate need for the funds in the construction accounts for the projects at that time.[8] By moving E&G carryforward funds from E&G carryforward accounts, such as the University's central E&G reserve account, to construction accounts, UCF could avoid including the funds in the total carryforward balance it reported to the BOG. As will be discussed, the BOG shares E&G carryforward balance reports with the Legislature, which considers the balances in deciding how much funding to provide to SUS institutions, and may reduce funding to institutions that have large balances (an indication such institutions are not spending, and therefore do not need, all of the operating funds they have been appropriated). According to some UCF employees we interviewed, concerns about reporting large E&G carryforward balances influenced the timing of some of the transfers to the In-Scope Projects.

The E&G transfer data for the In-Scope Projects clearly indicates a pattern of timing E&G transfers around known or expected carryforward fund balance reporting dates. For example, in reviewing the E&G transfers to the In-Scope Projects, which are summarized in Appendix B and broken down into individual transfers by project in Appendix C, it is striking how many were made at or near the end of the fiscal year, such as for the College of Medicine FF&E (June 26, 2012), CREOL Roof (June 28, 2012), Global UCF (June 30, 2016), Research I FF&E (May 25, 2017) and Research I lab buildouts (May 25, 2017). Equally striking is the length of time between many of the fund transfers shown in Appendix C, on the one hand, and the material expenditure of the funds as shown in Appendix D, suggesting that the transfers were not precipitated by a specific need for the funds.

We also found more direct evidence that UCF transferred E&G carryforward funds to In-Scope Projects at least in part to avoid reporting them. For example, in the case of the College of Medicine project, we found that initial discussions about replacing auxiliary funds that had already been spent on the building's FF&E with E&G carryforward funds coincided with the Legislature's discussion of major state budget cuts that were ultimately allocated to the universities based on their pro-rata share of total E&G carryforward balances. Further, the final decision to swap out the spent auxiliary funds with E&G carryforward funds took place right before the end of the fiscal year, the next year's fund balance report was almost due to the BOG, and the funds were obviously not needed at the time of the transfer (indeed, the expenditures had already occurred, in some cases *years* earlier).

The Combined Heating and Power Plant ("CHP") and Downtown Campus projects (excluding the Center for Emerging Media renovation) present even more blatant examples, as the fund transfers were made by UCF shortly after the BOG requested interim E&G carryforward balance reports. In the case of the CHP project, in early September 2012, BOG staff notified all universities they would need to report their E&G carryforward balances in October as of September 30, 2012. Less than ten days later, on September 21, 2012, UCF decided to substitute nearly $11 million of E&G carryforward funds for auxiliary funds that had been loaned to the CHP project in the previous year and partially spent, even though the project was already fully funded and

[8] As will be discussed, universities are required to report their starting balance of E&G carryforward funds to the BOG each fiscal year along with their operating budgets.

there was no apparent need to change the funding source. With respect to the Downtown Energy Plant, Downtown Student Center and Downtown Infrastructure projects, in mid-October 2017, BOG staff notified all universities they would need to report their E&G carryforward balances in November as of October 31, 2017. On November 1, 2017, UCF decided to loan $21.7 million of E&G carryforward funds to the aforementioned three projects, but made the transfers effective as of October 31. The decision to loan the funds at this particular time does not appear to have been based on any immediate need for the funding.

To be clear, there is no statute or regulation that prohibited UCF from reviewing its E&G carryforward balance at the end of the fiscal year or prior to an interim report and adjusting its carryforward balance as necessary to reflect legitimate commitments of E&G funds. But our review found that these adjustments were made to account for commitments that were not permitted under the regulations and, at least in some cases, were motivated by the desire to report a lower carryforward balance to the BOG rather than by an immediate need to fund construction costs. As a result, the BOG was not provided with accurate balance information which it relied upon in making funding requests to the Legislature on behalf of the entire SUS system.

D. Status of Repayment of Improperly Transferred E&G Funds

As discussed above, we found that UCF improperly transferred a total of $61.3 million of E&G funds to the In-Scope Projects. Pursuant to the analysis described in Section V of this Report, we confirmed that UCF has either returned or replaced $41.3 of the $61.3 million in improperly transferred E&G funds, and that any replacement of spent E&G funds was done using non-E&G funds. Additionally, we found that of the $2.6 million that was transferred for the CREOL building roof, a portion was returned to E&G accounts, while the balance was ultimately spent on deferred maintenance projects, an appropriate use of E&G funds. Accordingly, it is our conclusion that approximately $17.4 million of E&G funds still need to be returned or replaced by UCF as of the date of this Report.

IV. FINDINGS REGARDING IN-SCOPE PROJECTS

As discussed earlier, applying the methodology agreed upon with BOG staff resulted in the identification of 11 In-Scope Projects (i.e., UCF capital projects during the Review Period that were funded with more than $2 million of E&G funds and otherwise met the requisite criteria, excluding Trevor Colbourn Hall). Below we discuss each of these projects and how the E&G funding occurred, beginning with an overview section and then providing a detailed timeline discussion. As requested by the BOG Chair, we have attempted to address, with respect to each project's E&G funding, "how this was done, at whose direction, and for what purpose." First, though, we provide relevant background information on E&G funds, applicable BOG regulations and state statutes, and university reporting obligations concerning E&G carryforward balances.

A. Relevant Background[9]

1. About E&G Funds and Their Use

E&G funds are public funds through which the State of Florida supports the operations of the twelve universities that make up the State University System of Florida ("SUS"). E&G funds are used to support various operating activities such as academic instruction, research, public service, plant operations and maintenance, student services, libraries and administrative support. The Florida Legislature appropriates E&G funds annually to each SUS institution following extensive consultation with the BOG, who in turn works with each institution to identify and assess its funding needs for the upcoming fiscal year.

After E&G funds are distributed by the State, universities are required to separately account for and track the use of such funds. The use of E&G funds is governed by regulations promulgated by the BOG pursuant to authority granted to it by Article 9, Section 7, of the Florida Constitution and Fla. Stat. §§ 1001.706 and 1011.40.[10] BOG Regulation 9.007(3)(a)(1) provides, in pertinent part, that "[u]nless otherwise expressed by law, **E&G funds are to be used for E&G operating activities only**, such as, but not limited to, general instruction, research, public service, plant operations and maintenance, student services, libraries, administrative support, and other enrollment-related and stand-alone operations of the universities." (Emphasis added).[11]

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[9] Additional relevant background information may be found in the TCH Report at pp. 12-14, as well as the Florida Auditor General's January 2019 report regarding its operational audit of UCF and the PIE Committee's March 2019 "Report of Investigation into Unauthorized Use of Appropriated Funds for Fixed Capital Outlay at the University of Central Florida."

[10] The use of E&G and other appropriated funds is also subject to Fla. Stat. § 216.292.

[11] The BOG adopted this regulation in December 2007 and has since amended it twice, in November 2013 and September 2016, although the latter amendments were immaterial. The original regulation provided that the E&G budget "funds the general instruction, research, public service, plant operations and maintenance, student services, libraries, administrative support, and other enrollment-related and stand-alone operations of the universities." The November 2013 amendments revised subparagraph 3(a)(1) to include the current language which expressly limits the use of E&G funds to "E&G operating activities only... ." These amendments were circulated to SUS institutions on July 11, 2013, in a redline showing proposed amendments and soliciting comments from SUS chief financial officers, budget officers and

Interest earnings from investing current-year E&G funds are also considered E&G funds and subject to the same restrictions, under BOG Regulation 9.007(5), which states that "E&G interest earnings are not to be utilized for non-E&G related activities or for fixed capital outlay activities except where expressly allowed by law."

Under BOG Regulation 9.007, E&G funds cannot be used to construct new facilities, although E&G can be used for repair and maintenance of existing facilities. According to BOG staff, E&G funds may be used for building renovations, but only up to a limit of $2 million. There is no regulation that explicitly sets forth this limit. According to BOG staff, the limit arises from Fla. Stat. § 255.103(4), which imposes a $2 million limit on a governmental entity's authority to enter into a continuing contract for construction projects, and Fla. Stat. § 1013.74, which provides that a university may undertake construction or remodeling projects without the need for educational plant survey approval, up to a limit of $1 million.

Funding sources for fixed capital outlay, on the other hand, include Public Education Capital Outlay ("PECO") appropriations, Capital Improvement Trust Fund ("CITF") financing, bonding, private sources including donations, and the Courtelis challenge grant program.[12] The PECO program is funded through a gross receipts tax on utilities, including electricity, telecommunications and cable. Historically, PECO revenues have been used to secure the issuance of tax-exempt bonds, used to finance construction and maintenance projects for education facilities, including facilities at SUS member institutions.[13] However, PECO revenues have not been bonded for many years, significantly reducing the amount of state funds available for capital projects.

Florida law governs expenditures by SUS institutions on fixed capital outlay. Pursuant to Fla. Stat. § 1013.61, university trustees must adopt a capital outlay budget for the ensuing fiscal year which is part of the annual budget and designates the proposed capital outlay expenditures by project for the year from all fund sources. The BOT may not expend funds on any project not included in the budget or amendments thereto.

2. <u>E&G Carryforward Funds and Reporting Obligations to the BOG</u>

E&G funds that are not spent during the fiscal year for which the funds were appropriated by the State are referred to as "E&G carryforward funds." Under the regulations in place throughout the relevant period, SUS institutions were entitled to

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general counsels. (Exhibit 82). As will be discussed, the amendments were received by CFO Bill Merck, Associate VP of Finance Tracy Clark and University Controller Christy Tant, among others at UCF.

[12] Fixed capital outlay is defined as real property and permanent fixtures and includes "repairs, renovations to real property which materially extend its useful life or materially improve or change its functional use." Fla. Stat. § 216.011(1)(p).

[13] Fla. Stat. § 1013.01(16) defines "Public education capital outlay (PECO) funded projects" to include "renovation, remodeling, construction projects, and site improvements necessary to accommodate buildings, equipment, other structures, and special educational use areas that are built, installed, or established to serve primarily the educational instructional program of the…university board of trustees."

keep their E&G carryforward balances for use in later fiscal years.[14] The use of E&G carryforward funds, however, remains subject to the same restrictions as other E&G funds. Specifically, BOG Regulation 9.007(6) states that "[a]ny unexpended E&G appropriation carried forward to the fund balance in a new fiscal year shall be utilized in support of E&G operating activities only except where expressly allowed by law."

SUS institutions are required to report their starting balance of E&G carryforward funds to the BOG each fiscal year along with their operating budgets. This is done every August using a document titled "Operating Budget - Beginning Fund Balance Composition" but more commonly called the "Fund Balance Composition Report" ("FBCR"). The document follows a standard form and reports a university's E&G carryforward balance at the beginning of the year and also the date of the report, followed by its predicted use of the balance broken down into two categories: (1) Restricted/Contractual Obligations and (2) Commitments, i.e., funds that have been allocated by the University for a particular purpose. Each of these categories are further broken down into numerous subcategories whose names reflect various permitted uses of E&G funds, such as "Campus Security-Safety Issues," "Building Maintenance and Repairs," and "Financial Aid." As E&G funds cannot be used for fixed capital outlay, there is no such subcategory on the FBCR form.

According to BOG staff, the BOG uses the FBCRs in preparing its Legislative Budget Request ("LBR"). The LBR is the BOG's request for state funding for the entire university system, which the BOG submits each October to the Florida House, Senate and Governor's Office. The BOG also forwards the FBCRs to the House and Senate for their consideration (and also to the Governor's Office, if requested) after they are received in August. Additionally, the Legislature sometimes requests updated E&G carryforward balance information during the fiscal year, often at the end of the calendar year or in the spring during session. BOG staff explained that the Legislature considers these E&G carryforward balances in deciding how much funding to provide to each university, and may reduce funding to universities that have large balances (an indication such universities are not spending, and therefore do not need, all of the operating funds they have been appropriated).[15] According to BOG staff, universities are therefore dis-incentivized to maintain a large carryforward balance and instead are incentivized to spend carryforward funds (for permissible purposes, of course, and based on legitimate funding needs) before the fiscal year-end or an interim carryforward report is due.

B. College of Medicine Building - Furniture, Fixtures & Equipment

1. <u>Overview</u>

UCF's College of Medicine (COM) includes a four-story, 170,000 square foot Medical Education Building which opened in August 2010. Between 2009 and 2012, the

[14] *See also* Fla. Stat. § 1011.45. Universities are expected, however, to keep an amount equal to 5% of their E&G revenues as a minimum reserve. Fla. Stat. § 1011.40(2).

[15] As will also be discussed herein, at least one past state budget cut was effectuated pro-rata based on each university's balance of carryforward funds.

COM purchased various furniture, fixtures and equipment ("FF&E") for the building using approximately $2.4 million in unrestricted auxiliary funds. In late June 2012, University officials decided to replace these spent auxiliary funds with E&G carryforward funds. The E&G transfers that enabled this "funds swap" are detailed in the chart at Appendix C.

We found that Provost Tony Waldrop approved the transfer of all but a small portion of these E&G funds. Other senior University officials involved in the transaction include CFO Bill Merck, Vanessa Fortier, Tracy Clark, Judith Monroe and Lee Kernek. The precise extent of each person's knowledge and participation could not be determined. This was due in part to the fact that none of these individuals agreed to be interviewed and was compounded by the fact that we received limited documents from the University regarding the transaction. We found no evidence indicating that President John Hitt or the BOT were involved in any way.

The decision to swap out the spent auxiliary funds for E&G carryforward funds appears to have been motivated by a desire to decrease the balance of carryforward funds that the University would have to report to the BOG at the start of the next fiscal year on July 1, 2012. It may also have been based on a genuine belief by those involved that E&G funds could be used for FF&E purchases, even if those purchases exceeded $2 million and were intended for a newly constructed building. The swap also freed up for the University's use approximately $2.4 million in unrestricted auxiliary funds.

2. <u>Timeline of Significant Events</u>

a) *UCF's College of Medicine*

UCF decided to open a medical school, which was established as the COM, in 2006. The COM is located on UCF's Health Sciences Campus at Lake Nona. It includes a four-story, 170,000 square foot Medical Education Building, which cost approximately $68 million to build and opened in August 2010. Construction of the Medical Educational Building was primarily funded by private donations and the Florida Department of Education's Alec P. Courtelis Capital Facilities Matching Trust Fund ("Courtelis Funds").

After its official opening, work continued for the next two years on outfitting the Medical Education Building. Various FF&E for the building was purchased and installed between 2009 and 2012. We identified two different construction accounts for the Medical Education Building. The relevant account for this investigation is the UCF552-COM ADDL RESOURCES account (COM Additional Resources), which was created May 1, 2009 and used to fund construction and also purchase the aforementioned FF&E for the building.

b) *Original funding for purchases of FF&E*

The original funding for the Medical Educational Building fell short of covering the completion and furnishing of the building when Courtelis Funds ceased to be made available in 2009. *See* Fla. Stat. § 1013.79. The University identified alternative funding, specifically auxiliary funds from the University's sale of excess broadband capacity for internet services (the "broadband funds") and funds from bond proceeds. These funds were transferred to the COM Additional Resources account and were used to cover remaining costs, including the FF&E costs.

UCF purchased FF&E for the Medical Education Building between 2009 and 2012 using the non-E&G funds from the COM Additional Resources account. Including installation costs, these FF&E purchases totaled $2,384,676. (Exhibit 5 at p. 3). We were not able to determine exactly which types of funds were used for the specific FF&E purchases, although the total balance of auxiliary funds transferred into the COM Additional Resources account more than covered the cost of the FF&E.

c) *E&G carryforward funds are used to replace auxiliary funds already spent on FF&E*

In 2012, the decision was made to replace the nearly $2.4 million of auxiliary funds that had already been spent on the aforementioned FF&E purchases for the Medical Educational Building with E&G carryforward funds. Internal emails and other documents indicate this was first considered in February 2012, although the funds swap did not actually occur until June 2012.[16]

On February 2, 2012, Associate Vice President for Administrative Affairs Vanessa Fortier sent an email to Associate Vice President for Facilities and Safety Lee Kernek, copying CFO Bill Merck, Associate Vice President of Administrative Affairs Judith Monroe and Assistant Vice President for Finance and University Controller Tracy Clark.[17] The email confirmed a discussion the prior day between Fortier, Merck and Monroe regarding the use of E&G carryforward funds and raised questions about expenditures already made from non-E&G sources that could have been made from E&G, including for the COM building. Fortier asked Kernek if her team could "look at the expenditures for those buildings to see if E&G carry forward funds could be used instead of the auxiliary funds for some of these amounts," further noting that Fortier, Merck and Monroe thought there were "at least some furniture and equipment expenditures that could be justified [as E&G-related expenses] and perhaps others." (Exhibit 6).[18]

This apparent effort by University officials to reduce their E&G carryforward balances may be explained by the state budget for fiscal year 2012-13 that was being discussed at the time and ultimately approved in April 2012. The budget included $300

[16] The planned use of E&G carryforward funds for this purpose was not included in the University's FY 2011-12 Fund Balance Composition Report (FBCR), submitted to the BOG on August 17, 2011, indicating that the decision was not made until sometime later.

[17] Although having the same titles, Fortier oversaw Finance Accounting, University Budgets, and Purchasing, while Monroe oversaw Human Resources, Parking and Transportation Services, and Business Services. Fortier retired from UCF in March 2013, while Monroe left the University in August 2012.

[18] We were not provided with any responses to this email, or any other documents revealing contemporaneous communications or discussions regarding this request or the issue.

million in cuts to the state's eleven universities existing at the time, including UCF.[19] It is our understanding that these cuts were effectuated pro-rata based on each university's balance of carryforward funds. Each university's share of the budget cuts was calculated based on a series of factors. We understand that half of the $300 million reduction in funding was allocated to the universities based on their pro-rata share of available E&G carryforward balance compared to the total E&G carryforward balance across all the universities. In other words, the higher the balance of unspent E&G carryforward funds on a university's books, the more that university would be impacted negatively from the statewide budget cut of $300 million.

What happened next, including what Kernek's team concluded and why, could not be determined due to the lack of cooperation from witnesses and available documents.[20] However, on June 21, 2012, Clark emailed Scott Sumner, COM's Faculty Administrator, a spreadsheet and asked him to call her to discuss it. The spreadsheet included a list of 23 different expenditure categories plus other transactions involving the COM Additional Resources account between 2009 and 2012. Twenty different line item entries for various FF&E expenditures were highlighted in yellow, with a total sum for those entries already calculated as $2,384,676. The only expenditure categories not included in the highlighted group were for professional services, construction contracts, and "TSFR TO UCF FINANCING CORP DSO." On June 24, 2012, Sumner forwarded this email and spreadsheet to Steven Omli, Assistant Dean - Medical School Finances, and indicated that he wanted to discuss it at a meeting they had scheduled the next day. (Exhibit 5).

Sumner is no longer employed at the University, having left in February 2013, and was not interviewed. Omli was interviewed but did not recall the June 25, 2012 meeting referenced in the email. What Omli did recall was that by the time of these emails, the University had already decided to use E&G carryforward funds to "pay back" certain expenses related to the Medical Educational Building that had originally been paid for using auxiliary funds. Omli confirmed that the highlighted expenses on the spreadsheet were all FF&E expenses for the building that had already been paid for using auxiliary funds and comprised the expenses to be "repaid" with E&G, and further that the spreadsheet also included proposed journal entries to effectuate the funds swap. Omli did not recall who actually prepared the spreadsheet. Omli indicated he was not aware at that time of any restrictions on the use of E&G funds and as a result this transaction did not raise any red flags with him or cause him any concerns.

On June 25, 2012, University officials transferred $2,384,676 of E&G carryforward funds—the same amount that appeared on the spreadsheet Clark sent to Sumner—from the University's central E&G reserve account (which holds unallocated

[19] According to Dale Bradley, Florida BOG Budget Director, the Florida Legislature reduced overall funding to the State University Systems by $300 million ahead of the 2012-2013 Fiscal Year. *See* Florida Legislature "Fiscal Analysis in Brief 2012 Legislative Session", page 23 "ALIGN APPROPRIATIONS WITH REVENUE ESTIMATES", attached as Exhibit 7.

[20] Merck, Kernek and Clark declined to be interviewed through their attorney, while Fortier and Monroe did not respond to our request for an interview.

carryforward funds) to the COM's E&G carryforward account. The next day, on June 26, 2012, the same amount was transferred from the COM carryforward account to the COM Additional Resources account. (Appendix C at p.1).

Clark initiated the request for this transfer on June 25, 2012 by email to Provost Waldrop, attaching a Budget Transfer Request form and asking him to approve the transfer. In her requesting email, Clark told Waldrop the transfer was from the University's E&G carryforward reserve, the transferred funds would "be applied toward the telecom, furniture and equipment expenditures at the Lake Nona campus operations," and the transfer would "be recorded as a temporary increase." Waldrop approved the transfer about an hour after Clark's request, with Fortier, Lynn Gonzalez (Associate Vice President Academic Affairs) and Christy Tant (at the time, Sr. Associate Controller for Budget, Contracts and Grants, and Compliance) copied on his reply email. (Exhibit 8). We found no evidence that any other information regarding the transfer was provided to Waldrop. As previously mentioned, Waldrop declined to be interviewed, and therefore his rationale for approving the transaction, including his understanding of the restrictions on the use of E&G funds, is unknown.

A few days later, on June 28, 2012, Clark emailed Gonzalez and asked her to approve a transfer of $23,873 from the University's central E&G reserve account to the COM's E&G carryforward account. As with the earlier request to Waldrop, Clark told Gonzalez that the amount transferred would "be applied toward the furniture and equipment purchase at the Lake Nona campus operations" and would "be recorded as a temporary increase." Gonzalez approved the request within an hour. (Exhibit 9). That same day, UCF transferred $23,873 from the central E&G reserve account to the COM-BSD carryforward account, and then from the COM-BSD account to the COM Additional Resources account. Gonzalez was interviewed but did not recall this transaction or her rationale for approving it. However, Gonzalez indicated that at the time she was not aware of any restrictions or limits on the use of E&G funds for FF&E.[21]

d) *Involvement of the President and BOT*

We found no evidence that President Hitt was apprised of this transaction, let alone approved it. The planned use of E&G carryforward funds for this purpose was not, for example, included in the FY 2011-12 Allocation Document[22] that he signed on August 25, 2011, nor did we find any other documents contemporaneous with the transaction that reflected his knowledge or approval of it. (Exhibits 10 & 11). We also found no evidence that this transaction was shared with, or approved by, the BOT.

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[21] According to journal entry support, the purpose of this additional transfer of $23,827 on June 28, 2012 was to reconcile a negative cash balance in the account related to FF&E purchases. The record does not explain why Gonzalez was asked to approve this transfer instead of Provost Waldrop, although it was likely due to the small amount.

[22] The Allocation Document sets forth the University's plans to commit E&G funds during the current fiscal year, is used as written authorization to carry out budget transfers of E&G funds, and must be recommended by the Provost and approved by the President (which is evidenced by their signatures).

The evidence does clearly show that Provost Waldrop approved the use of E&G carryforward funds to purchase FF&E for the COM's Medical Educational Building on June 25, 2012. The transfer request email clearly informed Waldrop that over $2 million in E&G funds were being requested for FF&E, but it is unclear what other specific knowledge he had at the time. Clark's email did not clearly explain that these E&G funds would *replace* auxiliary funds that had *already* been spent on the FF&E. The evidence also indicates that CFO Merck was aware of the transaction and involved in the decision, even if he did not specifically approve it, given his participation in the February 2012 meeting and inclusion on Fortier's follow-up email. The evidence further shows that Clark, Kernek and Fortier were involved in discussions on the topic, and knew that swapping out auxiliary funds for E&G funds for the COM FF&E expenditures was being considered.

e) *Knowledge and understanding of relevant regulations*

The key individuals involved with the reclassification of funds used for the COM's FF&E purchases declined to be interviewed, including Waldrop, Merck, Clark, Fortier, Monroe and Kernek. As a result, it is difficult to reach any conclusions regarding their rationale for replacing the nearly $2.4 million in already-spent auxiliary funds with E&G carryforward funds. It may be that the individuals involved genuinely believed it was proper to use E&G funds for FF&E in any amount (including over $2 million), and even for a newly constructed building, and as a result the funds swap presented a legitimate (if unconventional) opportunity to decrease the University's E&G carryforward balance at fiscal year-end.

While Merck and Clark declined to be interviewed as part of our investigation, both were subpoenaed by the PIE Committee to provide sworn testimony during its investigation. While neither specifically addressed the funding for this project, both testified that they believed E&G funds could be used for FF&E. (*See* Exhibit 12 at p. 78; Exhibit 13 at pp. 68-69). They were not asked, however, whether they understood there to be any limits on such FF&E expenditures, such as a $2 million "cap" that other witnesses have indicated they understood to exist. We found no evidence that directly contradicts this testimony by Merck and Clark, although as will be discussed elsewhere in this Report, both were clearly aware of the BOG regulation that limited the use of E&G funds to operating activities. Kernek also declined to be interviewed but was interviewed during the earlier TCH Investigation and also was deposed by PIE Committee investigators. While her testimony did not cover this project or the propriety of using E&G funds for FF&E, she claimed in both her interview and deposition to be unaware of any restrictions on the use of E&G funds. (Exhibit 14 at pp. 26-27).

f) *Timing concerns*

The decision to replace spent auxiliary funds with E&G carryforward funds took place right before the end of the fiscal year, the next year's FBCR was almost due to the BOG, the funds were obviously not needed at the time of the transfer (indeed, the expenditures had already occurred, in some cases *years* earlier), and this specific use of E&G funds had not been included in relevant budget planning documents for the current fiscal year. Based on this, and our findings with regard to the timing of E&G

transfers for other projects discussed in this Report, it is fair to conclude that these transfers took place when they did at least in part to reduce the University's E&G carryforward balance that would be reported to the BOG in the August FBCR. This conclusion is further corroborated by witnesses who described a general concern that the Legislature may take back unspent E&G funds that carry forward to the next fiscal year, particularly if a large balance of such funds is reported. Indeed, the state budget passed in 2012 cut $300 million from UCF and other universities in part based on their unallocated E&G carryforward balances at the time.

C. CREOL Building Roof

1. Overview

In 2012, the roof of the Center for Research and Education in Optics and Lasers (CREOL) building, located on UCF's main campus and home to the College of Optics and Photonics (COP), was leaking and deemed to be in need of repair. Facilities personnel considered different fixes but ultimately commissioned a roof condition study by an outside firm which recommended replacing the roof. Bids were solicited for the project which indicated it would cost approximately $1.8 million to replace the roof; however, for unknown reasons, Facilities personnel added another $725,000 as a contingency amount, bringing the total estimated cost of the project to nearly $2.6 million. In late June 2012, that amount of E&G funds was transferred to a construction account for the project from 39 different E&G accounts within the University's Administration and Finance division, including from several E&G carryforward accounts. These transfers are shown in the chart at Appendix C.

These E&G funds were not ultimately used for the project, however, and the roof of the CREOL building was never actually replaced. Instead, the project was briefly abandoned, then in 2014 Facilities decided to repair the roof rather than replace it at a cost of just $592,525 using PECO funds. Despite this, most of the E&G funds budgeted for the CREOL roof replacement project were not returned to their original E&G accounts. Instead, the funds remained in the construction account for the project where they were later used for other critical deferred maintenance involving other buildings, which appear to have been appropriate uses for E&G.

Details about this project are relatively scant and largely based on accounting records and a handful of witness interviews. Nevertheless, the available information indicates that Lee Kernek, the Associate Vice President for Facilities and Safety, made the decision to transfer the $2.6 million in E&G funds to the CREOL roof replacement project with the knowledge and approval of CFO Bill Merck. We found no evidence that President John Hitt, Provost Tony Waldrop or the BOT approved of the project or the source of funds for it, or were even aware of the project.

2. Timeline of Significant Events

a) *Problems with the CREOL building roof*

The CREOL building was constructed in 1996 and by early 2012 was experiencing problems with its roof, including leaks. UCF's Facilities department began looking at ways to address these issues. The earliest evidence we identified relating to the roof conditions, from March 2012, was a proposed scope of work to repair the roof by spraying it with a protective coating. (Exhibit 15). Shortly thereafter, Facilities hired an outside firm, Construction Moisture Consulting, Inc., to perform a study of the roof's condition and determine how best to address the leakage issues. In May 2012, Facilities transferred $57,200 of E&G funds from a carryforward account to a construction project account it had set up for the project (the "CREOL Roof Account"). (Exhibit 16). The funds were intended to pay for the roof study, and the University issued a Purchase Order for that study in the amount of $57,200. (Exhibit 17). Facilities eventually paid Construction Moisture Consulting a total of $25,865 for this study.

The roof study recommended replacing the CREOL roof rather than repairing it, and bids were solicited for the project. (Exhibit 18). On June 13, 2012, Delphini Construction submitted a written proposal to replace the roof for $1.84 million, which included a 10% contingency amount. That same day, Facilities personnel opened a Facilities Improvement Work Order to replace the CREOL roof. The amount of the work order was $2,565,523, however, because it included an additional contingency amount of $725,523 on top of the $1.84 million estimate. (Exhibit 19). The added contingency was approximately 40% of the project cost (which as mentioned already included the contractor's built-in 10% contingency), and is the exact difference between the total amount of E&G funds transferred to the project minus the original amount of the work order.[23]

According to Facilities employees we interviewed, it is common practice to add contingency amounts to the estimated cost of capital projects, but those typically range from between 3% and 10% of the total estimated project cost. We were unable to determine why such a higher contingency amount was included for the CREOL roof project, but witnesses speculated it may have been due to the fact that the building housed expensive lab equipment on the roof used for ongoing research, and Facilities was concerned about possible damage to the equipment or additional costs to move it. Lashanda Brown Neal, Associate Director of the Facilities Business Office (part of the Resources Management Department), advised us that she believes Lee Kernek decided on the amount of the work order, including the contingency amount, and that she suspects Kernek was unsure exactly how much the project would cost and just wanted to make sure they had enough money for it. Kernek, as has been discussed, declined to be interviewed as part of this investigation.

b) *Transfers of E&G funds for the roof replacement project*

On June 28, 2012, the University transferred a total of $2,565,523 of E&G funds to the CREOL Roof Account for the purpose of replacing the CREOL roof. (Appendix C at pp. 1-2). These E&G funds came from 39 different E&G accounting departments within the University's Administration & Finance division, accounts controlled by Merck as the division's Vice President. (Exhibit 16). Four of these accounts were E&G

[23] $2,565,522.54 of E&G transfers minus $725,522.54 written in "contingency" equals $1,840,000 amount in original proposed work order.

carryforward accounts, from which $767,488 was transferred to the project. The transfers were made by a former accountant in the Facilities Business Office.

According to Brown-Neal and other witnesses, Kernek directed the funding of the CREOL roof project in this manner pursuant to an arrangement she had with Merck to use excess E&G funds in the Administration and Finance division for critical deferred maintenance projects. Brown-Neal described how periodically, including prior to the end of each fiscal year, Kernek would ask someone to review the balances in the division's E&G accounts, compare the available funds to each department's budget, and then roll any excess funds into Facilities accounts for deferred maintenance projects.

The unusually large contingency (40% of the project cost), coupled with the timing of the transfer (two days before the end of the fiscal year) and the fact that the project was discontinued just two months later (as discussed further below), raises the question of whether the nearly $2.6 million transfer was motivated at least in part by a desire to decrease the University's E&G carryforward balance prior to reporting the balance to the BOG in August. As indicated, $767,488 of the $2.6 million transferred came from E&G carryforward accounts. Additionally, assuming the remaining E&G funds had not been transferred or spent by June 30, 2012 (i.e., prior to the end of the 2011-12 fiscal year), these funds would have rolled over into the 2012-13 fiscal year as E&G carryforward funds, and therefore would have been reported in the beginning balance of E&G carryforward in the FY 2012-13 FBCR due in August 2012.

c) *The CREOL building roof is not replaced, the E&G funds are not returned, and some of the E&G funds are used for repairs to other buildings*

Just two months later, in August 2012, the University abruptly decided not to move forward with the plan to replace the CREOL roof. This decision was made by Kernek, purportedly due to budget constraints, even though the project was fully funded. The decision was confirmed in an email to Construction Moisture Consulting from Facilities employee Frank Ballentine, a maintenance superintendent who worked closely with Kernek. Ballentine also asked Construction Moisture Consulting to close out the CREOL roof project but keep its records in case funding for the project became available in the future. (Exhibit 20). We were not provided any similar communications with Delphini, but the University made no payments to Delphini in 2012 in connection with the CREOL roof project.

Between September 2012 and May 2013, the University returned some of the approximately $2.6 million of E&G funds originally transferred to fund the CREOL roof project. Specifically, Facilities transferred back $416,765 of the E&G funds from the CREOL Roof Account to the original source departments via 13 separate transfers, according to General Ledger data we received. Facilities left the remaining E&G funds in the CREOL Roof Account to be used for other deferred maintenance projects associated with other buildings. None of the individual deferred maintenance projects that were later funded from this account, however, exceeded $2 million or even came close to that amount.

d) *The CREOL roof is repaired rather than replaced using non-E&G funds*

In May 2014, the University received PECO funds for "critical deferred maintenance projects" which had been requested in 2012.[24] Witnesses reported that Kernek decided which deferred maintenance projects would receive these PECO funds and chose to allocate $592,151 for repairing the CREOL building roof. Apparently sometime between 2012 and 2014, Kernek determined that the roof could be repaired rather than replaced, as originally recommended. The decision to finally move forward with the project appears to have also been prompted by new complaints about water leaks in the building including from the COP Dean. Witnesses reported that Kernek made the decision to repair the roof rather than replace it and to pay for the repair costs using some of the PECO funds that were received rather that the E&G funds that had already been transferred to the construction account for the project. As Kernek declined to be interviewed, her reasons for these decisions are unknown.

The CREOL roof was repaired in stages between fall 2015 and spring 2017. The main repair involved recoating the roof with a protective sealant, which was completed in April 2016. Including the 2012 roof study, the University spent a total of $592,525 on the CREOL roof project. (Exhibit 21).

e) *Conclusions regarding the funding decision for the project*

As discussed, it appears that Kernek, the Associate VP for Facilities and Safety, made the decision to fund the CREOL roof project, and indeed the fund transfers were performed by a Facilities accountant. It further appears that CFO Merck knew about and approved of the transfers, based on where the funds came from (E&G accounts within the Administration and Finance division, which he oversaw) and what witnesses told us about an arrangement he had with Kernek to aggregate and transfer excess E&G funds within the Administration and Finance division at the end of each fiscal year for use on deferred maintenance projects. We found no evidence indicating that the F&A department was otherwise involved in this decision or the transaction itself, and F&A employees we interviewed were not familiar with this project or the transfers.

Additionally, we found no evidence that President Hitt, Provost Waldrop or the BOT approved of the CREOL roof project or its source of funds or were otherwise aware of, or involved in, the project. We found no evidence, for example, that the project was discussed in "budget chats" at the time between the Provost and CFO and their respective staffs. Nor was the project identified in the FY 2011-12 Allocation Document, signed by both the President and Provost, as a planned use of E&G funds, or included in the FY 2011-12 Capital Outlay Budget approved by the BOT in May 2011. (Exhibits 11 & 23).

[24] The University's PECO request had apparently included $1.3 million for the CREOL roof project.

f) *Knowledge and understanding of relevant regulations*

Kernek declined to be interviewed as part of this investigation and therefore her explanation of the CREOL roof transaction is unknown. She was not asked about this specific project in her only interview for the TCH investigation and she did not discuss it in her PIE Committee testimony, but in both she claimed not to be aware of any restrictions on the use of E&G funds for capital projects. (TCH Report at p. 9; *see* Exhibit 14 at p. 26-27). Chris Kinsley, the BOG's Assistant Vice Chancellor for Finance and Facilities, expressed skepticism about Kernek's claim, given her long tenure at the University (over 11 years) and her frequent interaction with him and other BOG staff regarding capital project funding. Indeed, Kernek acknowledged in her PIE Committee testimony that she frequently spoke with Kinsley about whether E&G funds could be used to fund particular projects, suggesting some awareness of limits on their use. (Exhibit 14 at pp. 41-42, 48). Nevertheless, we found no direct evidence that Kernek knew E&G funds carried restrictions prior to May 2015 when she heard statements by Merck about potential issues with the use of such funds for TCH. (Exhibit 14 at p. 27).

Merck also declined to be interviewed for this investigation but in his PIE Committee testimony stated that he thought E&G funds could be used for renovation projects. (Exhibit 12 at p. 37). His testimony did not address the CREOL roof project specifically or the use of E&G funds for deferred maintenance projects generally, or if he understood there to be any limits on the amount of E&G funds that could be used for deferred maintenance projects.

g) *Timing concerns*

Due to the limited information available, including the unavailability of key witnesses, we could not determine why these E&G transfers to the CREOL roof project occurred on June 28, 2012. While the cost proposal for the project had just recently been received, no construction contract had been signed and in fact just two months later a decision was made not to go forward with the project. There is also the unusually large contingency amount. The transfers may have been part of an end-of-year process for reallocating excess E&G funds to deferred maintenance that was carried out by Kernek and the Facilities department, with Merck's approval, as discussed earlier. However, the timing also suggests that the transfers may have been part of an effort to spend down carryforward funds before the end of the fiscal year in order to report a lower carryforward balance to the BOG in the University's August FBCR, which appears to have been the case with the similar transfers in late June 2012 to the COM Additional Resources construction account and with transfers to other projects, as discussed throughout this Report.

D. Combined Heating and Power Plant

1. Overview

The Combined Heating & Power Plant (CHP) is a Mitsubishi-built "cogeneration" power plant housed within a 5,000 square foot building on UCF's main campus. The equipment for the plant cost approximately $6.3 million, and the entire project (including construction of the building) cost approximately $12.9 million. Construction began in December 2010 and the plant became operational in January 2013.

The project was planned as an energy conservation measure authorized by the Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act. *See* Fla. Stat. § 1013.23. Energy savings contracts are allowed if they meet certain statutory criteria, but as will be discussed, it does not appear such requirements were ever satisfied for CHP. The statute is silent as to whether universities can use E&G funds to meet their debt service obligations under energy savings contracts and also whether they can self-finance such projects through internal loans. The statute does not expressly prohibit using external loans on such projects, and BOG staff has indicated that BOG practice is to allow such loans to be repaid using energy savings dollars comprised partly of E&G funds. The BOG Debt Management Guidelines further enable state universities to finance energy savings contracts with only BOT approval, provided that the total contract is less than $10 million. Contracts that exceed $10 million, however, require approval by the BOG. As will be discussed, because the CHP project was funded by an internal loan of greater than $10 million, BOG approval was required. Additionally, the project never received BOT approval as required by the Debt Management Guidelines.

The CHP project was mostly funded through an internal loan of around $10.8 million in E&G carryforward funds from the University's central E&G reserve to the CHP construction account, which was to be repaid with funds generated from energy savings in annual installments through 2025. Neither the BOT nor the BOG specifically approved the project or this financing arrangement. The University has collected $7.3 million in installment payments to date. However, significantly, the installment payments were not paid into the E&G account from which the loan was made, but instead were paid into a non-E&G auxiliary account from which funds may be spent without restriction. Thus the construction of CHP was effectively paid for using E&G funds that were supposed to be repaid with funds generated through energy savings but in fact never were. The chart at Appendix C, page 2, shows the timing and amounts of the E&G transfers to the project. The chart at Appendix D, page 2, shows the timing and type of construction spending on the project.

Approval of an initial internal loan to fund the construction of the CHP plant was provided by President John Hitt and CFO Bill Merck, who entered into a memorandum of understanding (MOU) to document the loan in January 2011. The original loan amount was $6.8 million but later increased to $10.7 million. The source of the loaned funds was initially all auxiliary funds. In 2012, a decision was made to substitute E&G carryforward funds for the auxiliary funds that had been loaned and partially spent, even though the project had already been fully funded and there was no apparent need to change the funding source. The transfer of carryforward funds for this purpose was approved by Provost Tony Waldrop in September 2012 at the apparent recommendation of Merck and Vanessa Fortier (Associate Vice President for Administrative Affairs).

The timing of this substitution of funds strongly suggests that it was motivated by a desire to reduce the University's E&G carryforward balance prior to an anticipated request from the BOG to report that balance. Specifically, in early September 2012, BOG staff notified SUS institutions that they would need to report their E&G

carryforward balances in October as of September 30, 2012. We found no evidence that the substitution of E&G funds for the loaned auxiliary funds was ever discussed prior to this e-mail, and the decision to transfer the E&G funds was made shortly thereafter. Additionally, internal emails reflect an intention to execute the transfer in time for the reduction in the E&G carryforward balance to be reflected in the anticipated report to the BOG.

For reasons that are unclear, this new loan of E&G funds was not formally documented for nearly two years, until July 2014. At that time, Merck and Interim Provost Diane Chase signed a new MOU, setting the loan amount at approximately $10.2 million. The BOT was generally aware of the CHP project and in July 2010 approved a minor amendment to the 2010 Campus Master Plan to allow for it. Nevertheless, the BOT does not appear to have given individual approval to proceed with construction or to have been apprised of the funding arrangement, including specifically the internal loan of E&G funds.

From the beginning, it was contemplated that the loan would be repaid with "energy savings" generated by the new plant; i.e., the amount that UCF would save because it could now generate power that it previously had to purchase from a third-party provider. As noted, these energy savings were actually paid into a non-E&G account rather than the E&G account that had made the loan. Our review of the manner in which the energy savings were calculated indicates that UCF counted energy savings from both E&G and non-E&G departments, meaning that some of the energy savings applied to repay the loan (but in fact diverted to an auxiliary account) came from E&G departments. As such, the "color" of these energy savings-related E&G funds was effectively changed from E&G to auxiliary. The amount of such affected E&G funds could not be determined.

2. Background on Energy Savings Contracts and Related Statute

One of the main selling points of the CHP project was its potential to generate substantial energy savings for the University over time. Florida law specifically authorizes and encourages certain public agencies, including state universities, to enter into "energy savings" contracts under specified conditions. Fla. Stat. § 1013.23. This includes contracts for the "evaluation, recommendation, and implementation of energy conversation measures," meaning "a training program, facility alteration, or equipment to be used in new construction, including an addition to an existing facility, that reduces energy costs … ." Fla. Stat. §§ 1013.23(2)(a), (2)(c). Such measures include the purchase of "[c]ogeneration systems," like CHP. Fla. Stat. § 1013.23(2)(a)(7). The energy savings statute also presumes that the energy savings contracts may sometimes "be used in new construction," Fla. Stat. § 1013.23(2)(b)(2), and thus arguably authorizes the construction of a building to house energy savings equipment. The statute does not clearly address whether, in that scenario, the costs of construction are considered part of the energy savings contract and subject to the statute's conditions.

Among other things, energy savings contracts must contain certain mandatory contract terms, including the design and installation of energy saving equipment, the amount of annual savings exceeding contract payments, and the finance charges incurred over the life of the contract. Fla. Stat. § 1013.23(2)(c). Prior to design or installation, the contractor must provide the Board of Trustees with a report summarizing the costs and estimates of savings. Fla. Stat. § 1013.23(3)(d). Additionally, the contract must undergo mandatory review and approval by at least one other authority: the Department of Management Services, the Department of Education or a registered professional engineer. Fla. Stat. § 1013.23(3)(d). Although the project was approved by a registered professional engineer, we found no evidence that the other statutory requirements were fulfilled with respect to the CHP project including the requirement that the costs and estimated energy savings be reported to the BOT.[25]

The Florida energy savings statute implicitly recognizes that energy savings contracts may be financed. The statute authorizes universities to enter into an "installment payment contract" for energy conservation measures, not to exceed 20 years. Fla. Stat. § 1013.23(3)(e). However, the statute does not explicitly authorize or prohibit self-financing such as through a loan from one department of the university to another, and it does not explicitly authorize or prohibit paying for the project with "energy savings"—i.e., the difference between the overhead costs for any energy a university produces and consumes itself and the market rate for the same amount of energy. The BOG Debt Management Guidelines in effect at the time of the CHP project authorized universities to finance § 1013.23 energy savings contracts of less than $10 million, provided the financing receives BOT approval. (Exhibit 24 at 3.) (BOG approval is required if that threshold amount is exceeded.)

Finally, the statute does not identify the types of funds that may or may not be used to pay for energy saving projects. Specifically, the statute does not contain any mention of E&G funds and is silent as to whether E&G funds may be used to purchase new energy saving equipment (or ancillary implementation contracts). Because of this silence, it appears that the use of E&G funds remains subject to BOG Reg. 9.007(3)(a)(1)'s restriction on the use of E&G funds for operating activities only and its nonexclusive list of examples. Although this list includes plant operation and maintenance ("PO&M"), the purchase of new cogeneration equipment and the construction of a new building to house that equipment does not appear to qualify as an operating or maintenance expenditure.

3. Timeline of Significant Events

a) *Initial Plans for CHP*

In December 2009, UCF announced an RFP for a combined heat and power facility to reduce its energy costs and support its sustainability and environmental initiatives.[26] On June 30, 2010, UCF signed a contract with Mitsubishi Power Systems Americas, Inc. ("Mitsubishi") to build a natural gas powered CHP system to produce

[25] Additionally, the CHP contract was extensively redacted prior to its production to us, based on objections from Mitsubishi in order to protect proprietary and trade secreted information. As such, a full review of the contract to determine the presence of the required terms was not possible.

[26] On May, 2009, the BOT's Facilities & Planning Committee (which predated the FFC) reviewed various energy savings initiatives, but it is unclear whether CHP was discussed at the time.

approximately 5.2 megawatts of power, sufficient to satisfy approximately one-third of UCF's electricity needs on its main campus. (Exhibits 25 & 26). Mitsubishi agreed to build and deliver the system, consisting of a natural gas engine, generator and absorption chiller, for a price capped at $6,238,661.00. (Exhibit 26). According to Assistant Vice President Dave Norvell, the total cost of the project was anticipated to be approximately $12 million, which was originally planned to be paid in six annual installments of $2 million generated from energy savings. The project, however, did not appear on the University's FY 2010-11 Capital Outlay Budget. (Exhibit 27).

On July 22, 2010, the BOT approved a minor amendment to the 2010 Campus Master Plan "to construct a new CHP facility adjacent to the South Utility Plant on Gemini Boulevard." (Exhibits 25, 28 & 29). The funding source for the project was not discussed at this meeting or the BOT's Finance and Facilities Committee ("FFC") meeting earlier that day, and the project never received specific approval from the BOT to proceed with construction or be funded in any particular manner. There is no indication that the BOT was informed of the requirements set forth in the energy savings statute or that the project itself satisfied those requirements. Construction of the plant began in December 2010 without specific approval from the BOT.

At the outset, UCF decided that it would self-finance the CHP project through an internal loan from the central auxiliary reserve to the construction account set up for the project. On January 25, 2011, President Hitt and CFO Merck signed an MOU memorializing their understanding regarding the loan, which was to be in the amount of $6.8 million. (Exhibit 30). A handful of unsigned addenda from 2011 to increase the loan amount suggest the funding sources for the project had not yet been completely finalized, potentially explaining why the original loan amount was less than the full anticipated cost of the project. According to the MOU, the funds would be used "in connection with the purchase of a Combined Heat & Power (CHP) Plant System from Mitsubishi … ." (Exhibit 30). The outstanding principal, the source of which was not clearly stated, would accrue interest at a rate of two percent per annum. The debt would be repaid in annual installments beginning on December 31, 2012 and continuing each December 31 until 2016. As outlined by the MOU, the loan was to be repaid by the Division of Administration and Finance "from savings generated from its energy account … ." (Exhibit 30). The MOU did not identify the source of those savings or to which account they would be paid.

b) *2011 Modifications to Financing*

During 2011, the principal amount of the loan increased from $6.8 million to $10,695,000. CFO Merck authorized these loan balance increases on October 3, 2011 in a document he signed entitled "Summary of CHP Funding Plan as of 10/1/11." (Exhibit 31). Internal budget documents from the period indicate that all of the money committed to the project, through loan or otherwise, would come from non-E&G auxiliary funds. (Exhibit 32). The October 3, 2011 document signed by Merck references three separate auxiliary loans: the "original" $6.8 million loan, an additional $432,000 loan from August 2011, and an additional $3,463,000 loan approved by Merck. At this point in time, the total outstanding auxiliary loan balance (including anticipated interest) was $11,350,000. (Exhibit 31). Merck later authorized a direct transfer of an additional $1.5 million in auxiliary funds on October 5, 2011, bringing the total funds available to build the CHP plant to $12,850,000.[27] (Exhibit 32).

c) *Decision to Replace Auxiliary Funds with E&G*

In September 2012, UCF decided to change the source of the loan from auxiliary to E&G carryforward funds.[28] (Appendix C at p. 2). UCF effectively paid off the outstanding auxiliary loan balance and then transferred the full amount of the newly "loaned" E&G to the project.[29] Internal budget planning documents from immediately prior to this decision do not provide any hint that this switch was being considered. For instance, on August 15, 2012, President Hitt and Provost Waldrop signed an Allocation Document for the 2012-13 fiscal year which did not mention any anticipated use of E&G funds for the CHP project. (Exhibit 34). The transfer was similarly not listed as a commitment line item on the 2012-13 Fund Balance Composition Report ("FBCR") submitted to the BOG on August 17, 2012. (Exhibit 35). These omissions suggest the decision to transfer the funds had not been made at the time. Additionally, CHP had already secured a funding source and construction was nearing completion, indicating that the decision to use E&G carryforward was not due to a lack of other available sources of funding or a need for additional funds to complete the project.

Instead, the decision to replace the auxiliary funds loan with a loan of E&G carryforward funds was most likely made in mid-September in order to reduce the University's overall E&G carryforward balance prior to an anticipated reporting deadline to the BOG. On September 12, 2012, BOG Budget Director Kristie Harris emailed state university budget officers, stating: "In preparation for the upcoming Legislative session, our office will begin collecting unexpended E&G carryforward balance information beginning with the September 30, 2012 amounts." (Exhibit 36). On September 20, 2012, Associate Vice President for Administrative Affairs Vanessa Fortier sent an email confirming that she and CFO Merck wished to proceed with various transfers to reduce the E&G carryforward balance in advance of the September 30 deadline, including the $10.9 million CHP transfer: "Bill and I discussed these items this morning and would like to move forward with recording these expenditures **so they will be reflected in the September 30 carry forward balance we must report to the BOG in early October**." (Exhibit 37 (emphasis added)). Because both Merck and Fortier have declined to be interviewed, their explanations for this decision are unknown.

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[27] This additional $1.5 million transfer of auxiliary funds was *not* added to the auxiliary loan balance to be repaid with energy savings, but rather was committed and transferred into the CHP construction account on October 25, 2011.

[28] Prior to this decision, in March and April, 2012, UCF moved small amounts of E&G (totaling $161,535) from the E&G Admin & Finance—Energy & Sustainability account to a construction account created for CHP.

[29] As of September 2012, the outstanding principal and interest balance of the auxiliary loan was $9,430,637.15. (Exhibit 33).

The following day, on September 21, 2012, then-Associate Controller Christy Tant sent an email to Provost Waldrop, copying Assistant Vice President for Finance and University Controller Tracy Clark and other Finance and Budget Office employees, stating, "Please approve the transfer of $10,853,000 from the central carry forward [to the Administration & Finance department]. This amount relates to the Combined Heat and power Plant (CHP)." (Exhibit 38). The same morning, Waldrop responded: "**I approve with the understanding that these funds will be replaced with dollars from energy savings over several years**." (Exhibit 38 (emphasis added)). Waldrop declined to be interviewed and so we do not know his rationale for approving the transfer, what else he may have been told about it, or if he even knew that loaned auxiliary funds were effectively being swapped out for E&G funds. Nevertheless, his written approval did make clear that the use of E&G funds was conditioned on their repayment through energy savings.

Tant forwarded Waldrop's response to the Budget Office as proof of authorization to make a budget transfer of the E&G carryforward funds from the central E&G carryforward reserve to the Administration & Finance department. (Exhibit 38). The budget transfer was made the same day, after which the funds were ultimately transferred to the Facilities E&G carryforward account. On September 26, 2012, the $10,853,000 was transferred from the Facilities E&G carryforward account to the CHP construction account, effectively authorizing the use of funds in that amount to pay for the remaining construction costs of CHP and replace the outstanding balance of principal and accrued interest on the auxiliary loans of $9,430,637.15. (Exhibits 33 & 39). The BOG requested a subsequent mid-year FBCR as of December 31, 2012. The E&G carryforward balance UCF reported in response did not include the $11.1 million because it had already been transferred to the CHP construction account in September. (This amount was included in the "Expenditures to Date" line as part of the roll-forward of the E&G carryforward fund balance from July 1, 2012 to December 31, 2012, which had the effect of decreasing the reported E&G carryforward balance).

d) *"Repayments" Begin*

In January, 2013, CHP was turned over to UCF. (Exhibit 40). The plant began generating energy savings in July, 2013. (Exhibit 41). On June 30, 2014, UCF made its first payment towards the loan of E&G carryforward funds in the amount of $1 million. (Exhibit 42). This payment, however, was not paid to the central E&G reserve department that had funded the loan, but rather to a central auxiliary reserve department called "University Resources," as were all future payments.

On July 23, 2014, CFO Merck and Interim Provost Diane Chase executed a second MOU reflecting an updated loan amount of $10,231,359. (Exhibit 43). Payments under the new MOU, excluding the previous June, 2014 payment, were to begin on August 31, 2014 and continue each August 31 through 2025, and interest would accrue at 2 percent annually. (Exhibit 42). The amortization schedule attached to this new MOU indicated that payments would be made to the aforementioned central auxiliary reserve department rather than to the central E&G reserve department that had made the loan. It is unclear why there was nearly a two-year delay in documenting the loan of E&G funds to finance the CHP project, though the new MOU appears to have been prompted by the June 2014 payment. Merck of course declined to be interviewed as part of this investigation. Chase also declined to be interviewed but in an email stated that she recalled no detailed conversations about the project or its source of funding.

Since the execution of the second MOU, UCF has made six annual payments towards the CHP loan which, in addition to the June, 2014 payment, total $7.3 million. (Exhibit 42). These payments have come from funds derived from "energy savings." Under the MOU's self-financing arrangement, the University's Utilities and Energy Services ("UES") department would calculate and collect the energy savings to be applied to the loan installments by billing departments for utility costs. UES works with the Space Planning Administration ("SPA") to determine which departments occupy building space throughout campus. UES subsequently uses that information to assign a percentage of UCF's total utility costs to each department. UES enters those percentages into the "Energy Cap" system, which integrates with PeopleSoft and helps UES generate utility bills. Most departments pay their utilities bills from funds they generate during the normal course of operation (i.e., "auxiliary funds"). E&G departments, however, pay their utility bills with E&G funds specifically reserved for PO&M activity. PO&M funds must be specifically requested from and approved by the State, while any shortfall is covered by E&G carryforward funds. The kilowatt hour rate charged by the University to each department is based on the same rate billed by UCF's outside energy providers, e.g. Duke Energy. In other words, for the energy UCF produces itself through CHP, UCF bills the same kilowatt hour rate that Duke Energy would bill for the same amount of energy. For the self-produced energy, the difference between the amount billed by the University to its departments (i.e., Duke Energy's kilowatt hour rate) and the internal overhead costs constitutes the "energy savings."[30]

Each of the loan repayments funded by UCF's newly generated "energy savings" were made into the central auxiliary reserve within the University Resources Department, pursuant to the instructions in the second MOU signed by Merck and Chase. As a result, any payments from E&G departments for energy consumed from CHP were effectively reclassified as auxiliary funds to the extent the payments exceeded CHP's overhead costs (though, again, it is permissible to use E&G funds for *actual* PO&M costs). At no point has the central E&G reserve department that originally funded the CHP project ever received any portion of these payments. Although a revised MOU was circulated by Tracy Clark in July 2017 to eliminate the accrual of interest on the loan, this revised MOU was never executed and did not propose to change where the loan payments were made.

The most recent payment on the internal loan occurred on June 3, 2019. Like the previous payments, the funds were paid into the central auxiliary reserve rather than the

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[30] For example, if Duke Energy charges 10 cents/kWh while UCF can generate electricity at 5 cents/kWh, UES will charge UCF's departments at the 10 cents/kWh hour for all energy consumption. If UCF generates 40% of its energy on a $100 bill, then $60 will go to pay Duke Energy, $20 will go to pay the overhead costs of UCF's energy production, and the remaining $20 will be "energy savings." These overhead costs include both the cost to generate the energy and the administrative costs of the UES department.

central E&G refund. In total, $11,137,183 in E&G funds were expended on the project, and none of these funds were ever restored to an E&G account.

e) *Neither the BOT nor the BOG Approved the CHP's Funding*

The BOT's only involvement in the CHP project was to approve an amendment to the campus master plan to add the new facility in July 2010. Thereafter, it received periodic construction updates but was not informed or consulted about the source of funding. Instead, the initial funding (i.e., the loan of auxiliary funds) was approved by President Hitt and CFO Merck at the time of the initial MOU, with subsequent funding (i.e., the replacement of the loaned auxiliary funds with E&G carryforward funds) approved by Provost Waldrop, and later memorialized in the Second MOU signed by Merck and Interim Provost Chase. Because the internal loan to fund the project met the $10 million threshold set in the BOG Debt Management Guidelines, the project and its financing were required to be submitted to the BOG for approval. BOG staff have indicated that Merck was involved in the revisions to the BOG Debt Management Guidelines and was present at related meetings in 2010. Merck therefore knew or should have known that BOG approval of the project was required.

f) *Knowledge and Understanding of Relevant Statutes and Regulations*

Some University officials claim to have believed the energy savings statute specifically authorized this financing arrangement. According to former interim CFO Kathy Mitchell, in conversations during the fall of 2018, Lee Kernek (Associate VP for Facilities and Safety) indicated that she believed the statute permitted using E&G funds to pay for energy savings projects like CHP. Kernek further stated that she had discussed the CHP project and its funding with BOG Assistant Vice Chancellor of Finance & Facilities Chris Kinsley, who had approved it. Mitchell explained that based on these conversations, she did not include CHP on the University's initial list of improperly funded projects that was presented to the BOT in September 2018.

However, as indicated, the energy savings statute is silent on the use of E&G funds for such projects, as well as on self-financing through internal loans to be repaid with "energy savings." Additionally, Kinsley was interviewed and stated that although he had early discussions with Kernek about CHP, these discussions were largely conceptual and dealt with whether to use third-party financing or an internal loan, and that no decision either way had been made at that time. Kinsley indicated he later understood that the project was funded with auxiliary funds (which was initially the case), and that he was never made aware of nor asked to approve the switch to using E&G funds as the principal for the internal loan. Kinsley further indicated he believed such a use of E&G would be improper and would not have approved it, as the purchase of cogeneration equipment for a new power plant, and the construction of a new building to house such equipment, is not an "operating activity" for which E&G funds may be used pursuant to BOG Reg. 9.007(3)(a)(1).

As has been discussed, Kernek and Clark declined to be interviewed as part of this investigation, and their PIE Committee testimony did not address the CHP project or whether they understood E&G funds could be loaned for energy savings projects. The extent to which other UCF officials may have understood CHP's funding to have been authorized by or otherwise appropriate under the relevant statute and BOG regulations is unclear. Hitt, Merck, Waldrop and Chase also declined to be interviewed, and among them only Merck was subpoenaed by the PIE Committee to provide testimony during its investigation. However, like Kernek and Clark, Merck's testimony did not cover the CHP project or the financing arrangement for it. Nevertheless, as stated, Merck had notice of the requirements set forth in the BOG Debt Management Guidelines (and in fact was involved with the revision thereof), and thus should have known the project needed BOG approval. As Waldrop and Chase declined to be interviewed, it is unknown whether they understood the E&G transfer or the Second MOU to have been authorized by BOG Reg. 9.007(3) or whether BOG Reg. 9.007(3) was discussed at all at the time. Chase, however, did confirm by email that she recalled no detailed discussions surrounding the Second MOU.

Regardless, Provost Waldrop clearly approved the use of E&G funds for the project on the condition that they would be replenished with energy savings. (Exhibit 38). Despite this stated requirement, no repayments were ever made into the E&G carryforward account. Instead, the energy savings were transferred to the central auxiliary reserve account with the knowledge and approval of University officials. According to Mitchell, in the fall of 2018, Kernek and Clark indicated that they believed it was appropriate to use the energy savings from CHP to pay for additional energy savings projects, such as the District Energy Plant IV, a separate plant to produce both chilled and hot water for cooling and dehumidification of campus buildings, rather than repay the CHP loan.[31] However, the central auxiliary reserve department that received the energy savings payments receives funds from a variety of sources and has been used to fund many different projects and not just other energy savings projects. Additionally, as explained, the energy savings transferred into this department partly consisted of E&G funds. This effectively changed the color of the affected E&G funds to auxiliary funds, which have no restrictions on their use.[32]

g) *Timing Concerns*

The decision to replace the auxiliary funds with E&G funds coincided with an anticipated reporting deadline and was most likely motivated by that deadline rather than any actual need for the funds at that time. As noted, we have uncovered no discussion regarding the use of E&G funds for the construction of CHP (which, again, had already been fully funded with auxiliary funds) prior to September, 2012. Instead, the first discussions regarding the proposed transfer only arose *after* September 12, 2012 when the BOG informed SUS institutions that they would need to report their E&G carryforward balance as of September 30, 2012 "in preparation for the upcoming

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[31] Kinsley indicated his understanding of CHP was that the energy savings would first be used to repay the loan in accordance with the amortization schedule, with only the excess savings going toward new energy saving projects.

[32] Because UES's metering system does not track the source of the energy consumed by each department (i.e, CHP or other university power-generating sources), the exact amount of energy savings (which only apply to energy consumed from CHP) derived from E&G department payments could not be determined.

Legislative session … ." Following this announcement, Fortier stated in an email that she and Merck wanted to proceed with the transfer of E&G funds to CHP *for the explicit purpose of ensuring the transfer was "reflected in the September 30 carry forward balance we must report to the BOG … ."* Again, although neither Fortier nor Merck agreed to be interviewed, the plain import of Fortier's statement is that they sought to reduce their carryforward balance so as to appear—to both the BOG and the Florida Legislature—that they had fewer E&G funds in reserve than would in fact have otherwise been available had the transfer not been made.

E. Global UCF Building

1. <u>Overview</u>

Global UCF is a nearly 52,000 square foot building on UCF's main campus which serves as its "international hub," with classrooms, offices, and support spaces for use by international students and internationally-focused programs. Plans for the building appear to have been first discussed in late 2013 or early 2014. Construction began in December 2014, and the building officially opened on August 31, 2016. The project was conceived from the beginning to involve the construction of a new building. The project's initial budget was approximately $15 million. Actual construction costs were $16.6 million. (*See* Appendix D at p.2).

As detailed in the chart at Appendix C, page 2, a significant portion of the funding for Global UCF came from E&G funds. In June 2014, E&G funds were first budgeted for furniture, fixtures and equipment ("FF&E") for the new building in the amount of $1.5 million for the 2015-16 fiscal year, though approximately $1.6 in E&G carryforward funds were ultimately transferred for that purpose in June 2016. Additionally, from May 2014 to December 2014, the construction account for the project was funded with $10 million in investment earnings derived from the investment of both E&G and non-E&G funds. Officials in UCF's Finance & Accounting ("F&A") Department did not allocate these investment gains to departments across the university (including E&G) in proportion to their pro rata share, as was UCF's normal practice. As a result, investment gains that would normally have been allocated to E&G accounts (and therefore unavailable for a new construction project like Global UCF) were instead included in the $10 million transferred to the project. Had the gains been allocated according to the methodology in place at the time, an estimated $3.8 million would have been treated as E&G and credited to E&G accounts. Thus, a total of approximately $5.4 million (the unallocated investment gains plus the direct transfer) of E&G funds were used to pay for the Global UCF building.

The decision not to allocate these investment earnings to E&G and other accounts and instead use them to pay for the construction of Global UCF appears to have been made by CFO Bill Merck without BOT or BOG approval and without significant BOT input. The BOT approved an amendment to the University's 2010 Campus Master Plan at its March 27, 2014 meeting, paving the way for the construction of Global UCF. Many details about the project, including its anticipated cost, were not shared with the BOT at that time, and the potential funding sources discussed during the meeting were hypothetical and ultimately not utilized. By May, however, a decision had been made to use some E&G funds for the project (specifically, for the FF&E), and internal documents began to reflect that E&G was one of the funding sources. On May 22, 2014, the BOT granted approval to proceed with the construction of Global UCF. At that time, Merck informed the BOT about the project's estimated $15 million cost as well as the plan to use the $10 million of investment gains and $3.5 million of auxiliary funds to finance the project. However, he failed to disclose the anticipated use of E&G funds for the project or the fact that the investment gains were at least partly derived from E&G funds which, according to BOG regulations, should keep their E&G "color" and therefore may only be used for operating activities, not fixed capital outlay projects.

2. Timeline of Significant Events

a) *UCF's investment program*

Over 90% of Global UCF's construction costs were funded by investment earnings, including earnings that UCF ordinarily would have treated as E&G funds but did not in this instance. By way of background, starting in 2010, UCF assumed responsibility for investing funds that are being held to meet its current expenses in response to a devolution of authority enacted by the State in 2002. *See* Fla. Stat. §§ 218.415, 1011.42(5). (Exhibit 44). Legislation enacted in connection with the 2002 devolution gave SUS institutions the ability to direct and control their own investments if done pursuant to a written investment policy. In the absence of a written policy, the University's investment options would be largely limited to participating in the State Treasury's Special Purpose Investment Account ("SPIA"), a pooled investment program that invests in short-term liquid instruments and intermediate term fixed income securities. (Exhibit 44).

On May 22, 2008, the BOT approved the UCF Investment Policy. (Exhibits 45 & 46). UCF formed an Investment Work Group chaired by Trustee Conrad Santiago which conducted a search for potential investment advisors. (Exhibits 47 & 48). Following that search, UCF engaged Orlando-based The Bogdahn Group (now known as AndCo Consulting). (Exhibit 49). With the Bogdahn Group's assistance, UCF designed a number of internally segmented portfolios with differing investment objectives, to be administered by professional investment managers. (Exhibit 50). In January, 2010, UCF entered into a custodial agreement with BNY Mellon to serve as custodian for its investment accounts. (Exhibit 51). In March, 2010, UCF transferred $210 million from its SPIA account into its newly established custodial accounts. UCF retained some of its existing investments in SPIA, and to this day continues to maintain investments in the SPIA in addition to its custodial accounts.[33]

At all relevant times, a portion of the principal invested in the BNY Mellon accounts has derived from appropriations of E&G funds, and a portion of the investment earnings from those accounts was therefore subject to BOG Reg. 9.007(5).[34] The BOG

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[33] During this period, UCF also maintained two tranches of CDARS investments with CNL Bank, which were not managed or overseen by the Bogdahn Group. (Exhibit 52).

[34] As further described below, UCF treated the makeup of the investment principal as being directly proportional to the makeup of UCF's total cash balance.

adopted BOG Reg. 9.007(5) in December, 2007, requiring "[i]nterest earnings … from the investment of current-year" E&G funds to be "subject to the same expenditure regulations" as the source E&G funds and generally prohibits their use on "fixed capital outlay projects." (Exhibit 53). The BOG proposed amending Reg. 9.007(5) in September, 2013 to clarify that "E&G interest earnings" could not be used for *any* "non-E&G related activities," in addition to fixed capital outlay projects. (Exhibit 54). These amendments were adopted in November, 2013, and also required universities to track the use of E&G interest earnings under Reg. 9.007(3). (Exhibit 54).

BOG Reg. 9.007(5) effectively requires interest generated from E&G funds to "maintain the same color" as E&G funds; that is to say, the interest is subject to the same restrictions on use as the E&G principal itself. The regulation does not explicitly state whether all types of E&G investment earnings, such as dividends and capital gains, must also maintain the same color; however, the BOG staff's interpretation of Reg. 9.007(5) is that they do. The State of Florida Auditor General shared this interpretation in a July 2019 audit report concerning Florida International University, which found that non-interest investment income (like realized gains on the sale of securities) is subject to BOG Reg. 9.007(5). (Exhibit 55). UCF's own methodology for allocating investment earnings, which we describe below, makes no distinction between different types of investment earnings, which indicates that UCF itself interpreted the regulation consistent with the interpretations of the BOG and the Auditor General.

The Investment Policy which UCF adopted shortly after the publication of BOG Reg. 9.007(5) did not prescribe any particular rules or standards regarding the investment of E&G funds and does not establish any methodology for implementing the rule. (Exhibit 46). Instead, UCF's investments were set up in a manner that contemplated that E&G and non-E&G funds would be commingled, which no law or rule prohibits. The investment portfolios held at BNY Mellon were not designed to segregate E&G funds from other funds; instead, all of the portfolios can be said to hold a mixture of E&G and non-E&G funds. UCF's agreements with its advisors and custodian do not delegate any of UCF's duties with respect to implementing Reg. 9.007(5), and in practice, UCF took upon itself the responsibility to allocate investment earnings.[35]

The Auditor General has indicated that "when restricted funds are commingled with other funds for investment purposes, it is important for records to demonstrate the equitable allocation of generated investment income to the respective funding source to ensure that restricted income is used for purposes consistent with the applicable funding restrictions." (Exhibit 55). Though UCF has no formal written policy for segregating E&G funds from other funds it invests, UCF did at all relevant times endeavor to provide E&G departments with their equitable share of investment earnings. Specifically, UCF developed a methodology for allocating investment earnings that appears to have been motivated in part by BOG Reg. 9.007(5). (Exhibits 56 & 57). Broadly stated, the goal of UCF's allocation methodology was to distribute net investment earnings (interest, dividends, and gains realized from the sale of securities,

[35] Troy Brown and Dave West, the Bogdahn Group consultants who assisted UCF, indicated that the funds were all treated as a "giant pool of money" by UCF and that E&G funds were not discussed.

minus expenses) across all major accounting departments on a pro rata basis. More precisely, on a monthly basis, F&A Department employees first determine the total cash balance held in all of its depository and investment accounts, as reflected in the statements received from the depository or investment institutions. Separately, UCF tracks how its total cash balance is allocated among its various internal departments based on what percentage of the total cash balance each department is authorized to spend. Therefore, when earnings were generated by UCF's investments, they were typically not withdrawn from the BNY account, but instead were allocated on the books as a portion of the total cash balance.[36] Details of the allocation methodology have changed over time, but this basic structure has been in place since at least 2010. The rationale for the methodology was that because each department's funds were simply treated as a portion of the total cash balance (instead of being invested in segregated accounts), each department should share equally in the risk of loss and the benefits of investment gains.

Between January, 2010 and August, 2014, UCF distributed its monthly net investment earnings across 15 to 16 different departments, including two E&G departments: Education & General - Main, and Education & General - College of Medicine. The distribution was based on a percentage of the Average Daily Cash Balance (ADB) of each department compared to the overall UCF ADB.

b) *Deviations from the distribution methodology and relation to Global UCF*

When UCF followed its distribution methodology as described above, E&G departments would be allocated a monthly distribution equivalent to their pro rata share of total realized investment earnings (interest, dividends and realized gains from securities transactions, minus expenses). The methodology, when applied faithfully, appears to have been a reasonable means of complying with BOG Reg. 9.007(5), given that UCF had decided to pool both E&G and non-E&G funds in the same investment accounts (which the regulation does not prohibit). But UCF sometimes deviated from this methodology. Between 2012 and 2014, there were at least three significant deviations that effectively deprived E&G departments of the portion of monthly earnings to which they would otherwise be entitled under the methodology. In essence, these funds were allocated to other departments where they could be spent in ways that violated the restrictions on the use of E&G funds.

(1) 2012 withdrawal of $2 million

On or about March 13, 2012, UCF decided to withdraw $2 million in realized investment gains amidst an announcement of significant state budget cuts. The decision to potentially utilize the investment gains was documented in a budget document titled "Funding Needs and Sources" which was circulated on that date between Tracy Clark

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[36] UCF has only made two cash withdrawals from the BNY account, both in 2012. The first withdrawal, in the amount of $2 million, is discussed below. The second, a $6.75 million withdrawal, was from a money market account. The second withdrawal did not include any unallocated or improperly allocated investment gains.

(then-Assistant VP for Finance and University Controller), Christy Tant (then-Associate Controller) and Lynn Gonzalez (then-Associate VP for Academic Affairs). (Exhibit 58). The report identified the $2 million as a potential funding source for various, university-wide funding needs. (Exhibit 58). One day later, CFO Bill Merck asked the Boghdan Group how UCF could liquidate $2 million in "equity gains to help us offset our legislative budget cuts … ." (Exhibit 59). Afterwards, Merck sent letters of instruction to BNY Mellon and UCF's investment managers to carry out the withdrawals.[37] (Exhibits 60 & 61).

Typically, realized gains from the sale of securities were allocated across all departments in the same manner as the monthly allocations of interest and dividends. The $2 million in realized gains liquidated here, however, were never allocated. Instead, in June 2012, UCF created a new department called "University Resources" and used all of the $2 million to fund that department. University Resources was set up as an auxiliary department, which means that its funds were considered to have been earned by the University, with no restrictions on their use. (Exhibit 62). Based on the E&G departments' share of UCF's total cash balance as of June, 2012, an estimated $947,878 would have been allocated to E&G had UCF followed its normal methodology. Over the next three years, funds from the University Resources department, including the $2 million in realized gains, were used to purchase the broadcast license for WUCF TV, a PBS-affiliated television station, as well as broadcasting equipment.[38]

(2) 2012 - 2014 distributions to pay debt service

Additionally, in July 2012 and continuing for the next two years, approximately $88,000 per month was distributed outside of the methodology to repay an internal loan for the construction of the Morgridge International Reading Center ("MIRC"), a 16,726 gross square foot building on UCF's main campus designed to support literacy programs and initiatives with an international focus. MIRC was first conceived through a significant gift from John and Carrie Morgridge and the Morgridge Family Foundation and built in 2010 and 2011. In January, 2011, CFO Merck and Provost Tony Waldrop executed a memorandum of understanding ("MOU") that called for UCF to provide additional financial support to the project through a $2 million loan. The MOU provided that the loan would be repaid with Courtelis funds from the State, but that if such funds were unavailable, Merck and Waldrop would identify an alternative source. (Exhibit 64). No payments were made between March, 2011 and June, 2012, and nearly $50,000 in interest accrued. On August 1, 2012, Merck and Waldrop decided to change the terms of the MOU. According to an internal memo, Merck and Waldrop decided that "[e]ffective 7/01/2012, interest accruals will cease and the balance outstanding at 6/30/12 ($2,118,659) will be paid off from distributions of University cash and investment interest earnings on a straight-line basis over two years." (Exhibit 65). Over

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[37] Although the first letter removed $2 million in cash from the BNY Mellon accounts, a second letter of instruction was required to ensure that the $2 million could be considered realized gains for accounting purposes.

[38] The Board of Trustees agenda item approving the purchasing of the license explicitly forbade the use of E&G funds for the purchase. (Exhibit 63).

the next two years, UCF made 24 monthly payments totaling $2,118,659 from its central investments reserve account using investment earnings that were not distributed through the established allocation methodology. Had UCF followed its methodology, an estimated $893,456 of these funds would have been allocated to E&G departments.

(3) 2013 movement of $10 million to the central reserve

The largest of the deviations—and one most relevant to this investigation—occurred in June 2013, when $10 million in realized investment gains were not distributed across all accounting departments but instead held in a central investments reserve account until 2014, when the funds were redirected to the Global UCF construction account in four installments: $206,941 on May 8, 2014, $121,685 on May 15, 2014, $380,418 on July 18, 2014 and the remaining $9,290,956 on December 17, 2014. The full history of this deviation and its relation to Global UCF is provided below. Had UCF's typical allocation methodology been applied to these $10 million in realized gains—i.e., based upon each department's share of UCF's total cash balance as of June, 2013—approximately $3.8 million should have been (but was not) distributed to E&G departments.

c) *Origins of Global UCF funding plan*

In June 2013, UCF decided to change its investment strategy by shifting to passive Vanguard funds, resulting in the realization of $10.4 million in gains.[39] (Exhibits 66 & 67). A small portion of the realized gains (totaling approximately $400,000) were allocated through the distribution methodology, but a decision was made to hold back most of it—$10 million in all. (Exhibit 66). The decision to hold back the $10 million was apparently made by Merck, as indicated in an e-mail from Tracy Clark. (Exhibit 68). Neither of those individuals agreed to be interviewed as part of our investigation and so we do not have their perspective as to why only $400,000 in realized gains were allocated pursuant to the established methodology while $10 million were held back and kept in reserve until 2014. A typical reason for holding investment gains in reserve would be to protect against a market downturn which could threaten to reduce monthly investment income, and F&A Department emails suggest that was the original purpose for holding back these funds. (Exhibit 68). Per the normal practice, none of the realized gains from this transaction were withdrawn from the BNY accounts.

There is nothing that ties the initial decision in June 2013 to hold $10 million in reserve to the Global UCF project. The earliest mention of Global UCF in FFC records appears to have been several months later, on February 12, 2014, when the Committee approved adding the project to the 2010 Campus Master Plan, though it appears no decision as to the funding source was made at that time. (Exhibit 69). On March 7, 2014, Clark raised with Merck the possibility of using the $10 million in undistributed investment earnings for Global UCF. (Exhibit 70). On March 27, 2014, the BOT approved adding Global UCF to UCF's Campus Master Plan to allow for the project to be built. (Exhibits 71, 72 & 73). At the time, Merck suggested the building could

[39] The BNY investments also generated $500,000 of other income (interest and dividends) in the same month, which were distributed according to the ordinary methodology. (Exhibit 66).

potentially "pay for itself" through fees charged by the international student program and by "rent[ing] it to ourselves a little bit," though he did not explain what this meant. Merck did not discuss the proposed plan to use undistributed investment earnings to fund the project and it is unclear at that point if he had accepted Clark's proposal. The FFC later approved a plan to finance the construction of Global UCF through an internal loan on April 3, 2014, but this plan does not appear to have materialized. (Exhibit 74).

On May 6, 2014, Merck granted approval via email to fund the Global UCF building with the $10 million in undistributed investment gains plus additional funds as needed coming from the University Resources Department, which, based upon a total estimated cost of $15 million, would have been approximately $5 million.[40] That same day, Christy Tant directed Associate Controller Wilson Rosario to set up a project account for UCF Global, leading to the establishment of a construction account in Facilities. Two days later, the first installment of $206,941 in undistributed investment earnings was transferred to the construction account. On May 13, 2014, Tant indicated by email that Merck's initial plan had been modified (presumably by Merck) to add $1.5 million in E&G funds for the purchase of FF&E, thus reducing the share from University Resources to $3.5 million. (Exhibit 75).

d) *Approval by the BOT and spending history*

The BOT did not officially approve of proceeding with the construction of Global UCF, or its funding source, however, until May 22, 2014. (Exhibits 76, 77 & 78). The agenda item for the meeting provided that "[f]unding for this approximately $10 million building will come from non-realized [sic] investment income that has not been previously allocated." (Exhibit 77). According to the audio recording of the May 22, 2014 meeting, Merck reported that the initial budget for the building was approximately $15 million, $5 million more than stated in the agenda item. Merck informed the Board that "10 million that we realized, got in the form of realized gains from our transfer from active funds into the S&P 500, Vanguard S&P 500 Index Fund" would be used for the Global UCF project, along with "about 3.5 [million] out of some auxiliary money that we put aside in the event that we had another cut to our budget" and "about another million and a half out of other funds, probably—well, just some other funds … ." Although the F&A Department had already decided that these "other funds" were to be E&G funds, this was not revealed to the BOT. Instead, Merck suggested that the $1.5 million "could be auxiliary funds too … ." (Exhibit 22).

Moreover, Merck did not explain to the BOT that the $10 million in investment gains had not been distributed to E&G and other accounting departments according to the typical allocation methodology. Although the BOT was regularly updated on the performance of UCF's investments, these updates did not address F&A's allocation

[40] Also, there were initial discussions within the F&A Department about funding the project with an internal loan, to be repaid by revenues earned from Shorelight Education. In 2013, UCF announced it was partnering with Shorelight Education to recruit international students to its campus. Shorelight planned to lease space in the to-be-constructed Global UCF building, which would help pay for the project. Although Shorelight does presently rent space in Global UCF, the plan to fund Global UCF through an internal loan appears to have never materialized.

methodology or the need to comply with BOG regulations regarding the investment of E&G funds. Therefore, even if the BOT had been told that F&A had deviated from its normal methodology in this case, it likely would not have understood the import of that fact. Trustees Marcos Marchena, Robert Garvy and Alex Martins, who attended both the April 3, 2014 FFC meeting and the May 22, 2014 BOT meeting, confirmed in separate interviews that this subject was never addressed with the BOT. Because Merck has declined to be interviewed in connection with this investigation, his reasons for these omissions—and whether he understood BOG Reg. 9.007(5) to apply to the $10 million in undistributed investment earnings—are unknown.

On July 17, 2014, just over a month after the BOT approved the project, Global UCF first appeared on an E&G Commitments List, indicating it was likely discussed in a "budget chat" meeting between the Provost, the CFO and their respective staffs. The list confirmed the plan outlined in internal emails (but not disclosed to the BOT) that $1.5 million in E&G funds would be used for FF&E expenses for the building during the 2015-2016 fiscal year. (Exhibit 79). The planned use of E&G funds did not appear on the Fund Balance Composition Report ("FBCR"), however, until approximately one year later, in August 2015. In that FBCR, the $1.5 million in E&G carryforward funds was categorized as being for "Equipment Replacements," apparently—according to Christy Tant in her interview—because that was the most appropriate category for furniture and equipment to fit into. Of course, the FF&E was going into a *new* building and not replacing anything. FF&E expenditures began on September 3, 2015, but the actual transfer of the E&G funds to cover these purchases, which totaled approximately $1.62 million, did not occur until June 30, 2016. (Appendix D at p. 2).

In August, 2016, Global UCF officially opened, housing the Global UCF program, the English Language Institute, International Affairs and Global Strategies, and the UCF Abroad Program. Construction spending, however, has continued through June 30, 2019, and totals approximately $16.6 million. (Appendix D at p. 2).

e) *Knowledge and Understanding of Relevant Regulations*

Internal emails indicate that Tracy Clark and other F&A employees were aware of BOG Reg. 9.007(5) around the time it was enacted in 2007, when the BNY Mellon accounts were established in 2010, and when the BOG amended BOG Reg. 9.007(5) in 2013. (Exhibits 56, 57, 81 & 82). Additionally, when questioned by PIE Committee investigators as to whether he recalled the regulation being amended in 2013 and that E&G that was invested had to keep the E&G "color," Merck testified that he "recall[ed] it being expressed. I don't remember reading particulars, but I know that when we started to allocate funds from realized gains, Tracy would be careful to make sure that she was using -- I don't know how she did it, whether it was on a percentage basis or what, but to try to make sure that she was using interest on everything but E&G, when we were trying to use those for non-E&G type things." (Exhibit 12 at 124). Clark was also questioned by PIE Committee investigators, but the scope of her testimony did not include the use of investment earnings for Global UCF, the University's investment allocation practices or her understanding of BOG Reg. 9.007(5).

The key individuals most likely involved in developing and implementing the allocation methodology, such as Merck and Clark, declined to be interviewed, and thus we do not know whether or why they believed the $10 million in investment gains used on Global UCF did not need to be allocated according to their normal methodology. Tant and Interim University Controller Brad Hodum, who were not directly involved in developing the allocation methodology and appear not to have been involved in discussions about BOG Reg. 9.007(5), suggested that these funds may have been treated differently because they were from a large, one-time selloff of securities rather than interest earnings like those explicitly mentioned in BOG Reg. 9.007(5). Tant further speculated it was the general understanding at the time that this requirement only applied to interest, and not to other kinds of investment earnings.

This speculation, however, is inconsistent with UCF's own historical practice, which generally allocated *all* investment gains—including capital gains realized from the sale of securities—in accordance with the stated methodology. Even for the Vanguard transaction that generated the funds used on Global UCF, at least $400,000 of the $10.4 million of realized gains were actually distributed in accordance with the allocation methodology, strongly suggesting that UCF understood at the time that there was no distinction between interest and other investment gains. While the BOG has no written guidance interpreting the regulation, BOG staff advised us they expected SUS institutions to treat *all* E&G investment income as E&G, and that they believed the regulation was sufficiently clear. This appears consistent with the practice of the State of Florida Auditor General, which has similarly applied BOG Reg. 9.007(5) to realized capital gains in addition to interest. (Exhibit 55). As discussed, the BOT was apparently unaware of and not informed about BOG Reg. 9.007(5) or the University's investment allocation methodology and practices.

F. CREOL Building Expansion

1. <u>Overview</u>

The CREOL Phase II expansion is a 14,000 square foot expansion of the Center for Research and Education in Optics and Lasers (CREOL) building, located on UCF's main campus and home to the College of Optics and Photonics (COP). This is the second expansion of the CREOL building and includes new labs and offices, along with the shell for an auditorium to be completed at a later date. Plans for the project appear to have first been discussed in the summer or fall of 2014. Construction began in the spring of 2017, and the new space is anticipated to open in late August 2019. Although an expansion of the existing building, the project was conceived from the start as involving new construction. The project's initial budget was $4 million, but later increased to $6.8 million. Actual construction costs through June 30, 2019 are approximately $5.2 million. (Appendix D at p. 2).

As detailed in the chart at Appendix C, page 2, a significant portion of the funding for the CREOL Phase II expansion project came from E&G carryforward funds. In July 2015, the University transferred $4 million of E&G carryforward funds from the University's central E&G reserve account to the COP's E&G carryforward account in order to fund the project. From there the funds were transferred to a construction account set up for the project in February 2016, although the first significant spending for construction design did not occur until over a year later in March 2017. The University later transferred an additional $17,000 of E&G funds to the construction account in May 2018.

The initial $4 million of E&G funding for the CREOL Phase II expansion project was recommended by the University Budget Committee ("UBC"), co-chaired at the time by Provost Dale Whittaker and CFO Bill Merck, and approved by President John Hitt, as part of an effort to identify excess E&G carryforward funds held by the University's colleges and divisions and reallocate them to fund University-wide priorities identified by the UBC. The UBC members we interviewed were unaware of any restrictions on the use of E&G funds and trusted that the funds were appropriate for the uses that were proposed, including the CREOL Phase II expansion. Hitt, Whittaker and Merck declined to be interviewed as part of this investigation, but evidence from other sources as to their respective knowledge and understanding of the restrictions is discussed below. None of the three raised any concerns about the use of E&G funds for the CREOL Phase II expansion project.

We found no evidence that the BOT approved the use of E&G funds for the CREOL Phase II expansion project. In fact, it appears the BOT was not even made aware of the UBC's plan to reallocate excess carryforward funds in 2015. While the project was included in the Capital Outlay Budget for fiscal year 2017-18, approved by the BOT in May 2017, it was identified as being "internally funded" with no further explanation.

2. <u>Timeline of Significant Events</u>

a) *The CREOL building*

CREOL started as a research center in 1987, became home to the COP in 2004, and has continued to grow since. The current CREOL building was constructed in 1996 and originally consisted of two floors of labs and offices. (Exhibit 83 at p.18). The building has since undergone two separate renovations to expand the original footprint: Phase I and Phase II. The Phase I expansion added a three-story addition onto the north side of the building around 2009, (Exhibits 83 & 84), and is beyond the scope of this investigation.[41]

Continued growth of the COP, including the planned and eventual hiring of new faculty members, created the need for additional space in the CREOL building. The Phase II expansion is another three-story addition, this time to the east side of the building, totaling 14,000 square feet. The initial project budget was $4 million, but later increased to $6.8 million. While the building plans changed over time, the final plan includes an auditorium shell on the first floor, with built-out labs and offices on the second and third floors. (Exhibits 84 & 85).

[41] Phase I included a subsequent lab build-out of the third floor in 2014 and 2015 which was funded from non-E&G sources. This was approved in late 2014 and funded in early 2015, and references to this project appear at times in materials involving the Phase II expansion.

b) *Reconstitution of the UBC in fall 2014 and decision to reallocate excess E&G carryforward funds*

In the fall of 2014, at President Hitt's request, Provost Whittaker reconvened the UBC to prioritize and make recommendations regarding the allocation of University funds.[42] The UBC was comprised of faculty, administrators, staff and students. (Exhibit 86). UBC members identified during the relevant time period include: Sydney Alexander, Debra Copertino, Maribeth Ehasz, Grant Heston, Keith Koons, CFO Merck, MJ Soileau and Provost Whittaker. (*See* Exhibit 87). Senior Finance officials Tracy Clark (Associate VP for Finance) and Christy Tant (Sr. Associate Controller for Budget, Contracts and Grants, and Compliance) did not serve on the UBC but provided support and regularly attended meetings.

Over the next several months, the UBC developed a plan to identify E&G carryforward funds held by the University's colleges and divisions that exceeded their 3-year budget commitments and reallocate them to fund University priorities recommended by the UBC. Approximately $10 million in carryforward funds were identified pursuant to this plan and pooled together. The colleges and divisions were invited to then submit proposals for how the carryforward funds should be spent for consideration by the UBC. More than 50 proposals were submitted, with 15 ultimately approved for full or partial funding by the UBC using the $10 million in E&G carryforward funds. This process was explained in a July 27, 2015 email from Provost Whittaker, with the specific recipients of the funding notified shortly after. (Exhibit 86). As will be discussed, the CREOL Phase II expansion project was one of the proposals selected to receive E&G carryforward funding under this reallocation plan.

c) *The UBC approves the CREOL Phase II expansion project for carryforward funding*

The initial plan for the CREOL Phase II expansion appears to have been developed between August and October 2014, with an initial estimated cost of $4.125 million. (Exhibits 83 & 84). From the start, and through its various plan iterations, the project plainly involved new construction that would significantly expand the existing CREOL building. (*E.g.,* Exhibits 88 & 89). In early 2015, the project was submitted to Tracy Clark and Christy Tant to be considered for reallocation funding by the UBC.

In April 2015, Clark met with Mark Wagenhauser, the Associate Director and Business Manager of CREOL, to discuss the budget requests and carryforward plans that the COP had submitted to the Academic Affairs division, including the CREOL Phase II expansion project. (Exhibits 90 & 91). This was because the UBC would soon be considering the carryforward plans and funding requests. (Exhibit 90). Wagenhauser confirmed to Clark that the expansion project was a critical need, especially given the COP's plan to hire four new faculty members. (Exhibits 90 & 91).

A list of funding requests from the University's colleges and divisions, including the COP's request to fund the CREOL Phase II expansion project, was apparently

[42] The UBC had stopped meeting several years earlier due to the recession and state budget cuts.

discussed at the UBC's May 2015 meeting. (*See* Exhibit 87). In an email sent to Committee members before the meeting, Clark explained that she had discussed the need to prioritize funding requests with the budget directors of the colleges and divisions, and cited as an example that the COP had identified the $4 million CREOL Phase II expansion project as a critical need in fiscal year 2015-16. (Exhibit 87). At the meeting, the UBC selected the CREOL Phase II expansion project, among others, for further consideration to receive funding. Wagenhauser was notified, conferred with the COP Dean, and confirmed to Clark and Tant by email on June 1, 2015 that the CREOL Phase II expansion project was in fact a "High Priority." (*See* Exhibit 92).

The UBC met again on June 9, 2015 to recommend which proposals should be funded with the E&G carryforward funds that had been collected pursuant to the reallocation plan. Meeting attendees included Provost Whittaker, CFO Merck, Clark and Tant, along with Maribeth Ehasz (VP for Student Development & Enrollment Services), Deb German (Dean and VP for Health Affairs, College of Medicine), Grant Heston (VP for Communication & Marketing), Jarell Jones (Student Government Leadership), Keith Koons (Associate Director for Personnel and Faculty Affairs for the School of Performing Arts), and M.J. Soileau (VP of the Office for Research and Commercialization). (Exhibit 93).

As its first order of business, the UBC voted to formally approve the plan to redistribute $10 million in excess E&G carryforward funds by a 7 to 1 vote.[43] The Committee then allocated the $10 million between three categories of funding requests: 1) Student Success; 2) Graduate and Research Growth; and 3) Capital, Infrastructure, and IT. Next, subcommittees were formed to consider the funding requests in each category and make recommendations to the full Committee. Whittaker and Merck were assigned to the Capital, Infrastructure, and IT subcommittee, which evaluated the proposed allocation of $4 million for the CREOL Phase II expansion project, among others. (Exhibit 93). It appears that Whittaker and Merck made the preliminary recommendation to fund the CREOL Phase II expansion project, and that their recommendation was then accepted by the full UBC.[44]

According to the UBC members we interviewed who attended this meeting, there was no discussion of any restrictions on the use of the $10 million in excess E&G carryforward funds, which is confirmed by the minutes.[45] Moreover, these UBC members reported that neither Merck nor the other Senior Finance staff who were present warned them that there was any issue or risk in using the carryforward funds to finance a construction project like the CREOL Phase II expansion, such as, for example, that using the funds might result in an audit comment by the State Auditor General.

[43] The meeting minutes indicate an estimated $12 million in carryforward funds were identified for possible reallocation, but that approximately $2 million was "to be withheld for critical needs." The minutes do not identify who cast which votes.

[44] This conflicts with Merck's PIE Committee testimony that he "wasn't personally involved" in the CREOL Phase II expansion project and "didn't really pay much attention to it." (Exhibit 12 at pp. 71-72).

[45] UBC meetings are not recorded.

These UBC members also indicated they were unaware at the time of any restrictions on the use of E&G funds, they assumed the funds to be reallocated were proper to use for the various projects under consideration, they understood they were only picking the projects to prioritize for funding, and they did not know anything was potentially improper about the recommended allocation of $4 million to the CREOL Phase II expansion project.

d) *President Hitt approves the use of E&G funds for the CREOL Phase II expansion and the funds are transferred*

On July 27, 2015, several weeks after the UBC determined which projects to recommend for funding with reallocated E&G carryforward funds, Provost Whittaker sent an email to University faculty and staff explaining the reallocation plan and announcing that 15 projects had been approved for full or partial funding. (Exhibit 86). Since the UBC only made funding recommendations which were subject to final approval by President Hitt, it can be reasonably concluded that, prior to the date of Whittaker's email, President Hitt had approved the recommendation to allocate $4 million in carryforward funds for the CREOL Phase II expansion. Confirming this, just a few weeks later, Hitt approved the University's Allocation Document, which identified the University's planned allocation of E&G funds for fiscal year 2015-16.[46] That document listed "CREOL Phase II" under "University Budget Committee allocations" with $4 million in approved funding. (Exhibit 94). As Hitt declined to be interviewed, we could not ask him what he understood about the CREOL Phase II expansion project, the propriety of its funding with E&G funds or its inclusion on the Allocation Document.

On July 31, 2015, Megan Diehl, Assistant Director, Fiscal Administration, informed the COP Dean and Wagenhauser that the CREOL Phase II expansion project had been selected for funding under the reallocation plan. (Exhibit 95).[47] That same day, UCF transferred $4 million via a budget ledger entry from the central E&G reserve account to the COP's E&G carryforward account. (Appendix C at p. 2). We found no emails requesting authorization for, or execution of, this specific transfer. That is not surprising, however, since the transfer was made via the reallocation process approved by the UBC and was part of a larger set of similar transfers to multiple colleges and divisions.

On August 18, 2015, the University submitted its FY 2015-16 Fund Balance Composition Report ("FBCR") to the BOG. (Exhibit 96). This FBCR, which shared the University's E&G carryforward balance as of the start of the new fiscal year and the date

[46] As discussed earlier in this Report, the Allocation Document sets forth the University's plans to commit E&G funds during the current fiscal year, is used as written authorization to carry out budget transfers of E&G funds, and must be recommended by the Provost and approved by the President (which is evidenced by their signatures).

[47] Wagenhauser knew the $4 million was from E&G carryforward funds, but stated he was not involved in any discussions concerning whether the funds could be used for a project like the CREOL Phase II expansion, had no understanding about restrictions on the use of E&G funds, and assumed the use of such funds had already been vetted given the personal involvement of Finance leaders like Merck and Clark, among others.

of the report, included the $4 million in E&G funds budgeted for the CREOL Phase II expansion project in the "Commitments" section. The $4 million for the project was part of $13 million included in a subcategory of Commitments called "Research Support."[48] Christy Tant was responsible for preparing this FBCR and, in her interview, explained that she believed this was the most appropriate subcategory in which to include the planned commitment for the CREOL Phase II expansion project. She credibly denied any intent to conceal the use of carryforward funds for the project from the BOG, and further explained that at the time she believed E&G funds could be used for renovation projects, including buildouts like the CREOL Phase II expansion.

On February 18, 2016, UCF transferred $4 million from the COP's E&G carryforward account to a Facilities construction account set up for the CREOL Phase II expansion project (Appendix C at p. 2). The transfer was prompted by a January 28, 2016 email request from Wagenhauser to Bill Martin, the Director of Facilities Planning. Plans for the project were still being developed, no contractor had been selected yet, and the funds did not need to be encumbered. Nevertheless, Wagenhauser requested the transfer to the construction account and asked, for his planning purposes, if it would occur before the end of February. (Exhibit 97). As Wagenhauser explained in his interview, the July 2015 budget transfer had inflated the COP's E&G carryforward balance and he wanted to reduce that balance by moving the funds out.[49] Wagenhauser's reasons for this were not clear, since we found no evidence that a carryforward report was due to the BOG around this time.

e) *Additional plans and budget for the CREOL Phase II expansion project*

After the initial $4 million award and budget transfer to the CREOL Phase II expansion project in the summer of 2015, additional design plans were developed and discussed, resulting in new, higher cost estimates for the project. (Exhibits 83 & 84). The updated plans led the COP to make an exceptional funding request in January 2016 for an additional $2 million in funding for the project. (Exhibit 83). In March 2016, contract negotiations began with a design firm for the project, though no actual work began. (Exhibit 99). Over the next few months, additional design options were developed and evaluated while the COP's exceptional funding request was considered. (Exhibit 88). The final design plan was chosen in June 2016, which added $2.8 million to the total cost of the project. (Exhibit 100). E&G funds were not used for these

[48] The $4 million had been transferred from the central E&G reserve account to the COP's E&G carryforward account as of the date of the FBCR, hence its listing under the Commitments section, but these funds would not actually be transferred to the construction account until February 2016.

[49] An additional $17,000 of E&G funds was transferred from the COP's E&G carryforward account to the CREOL Phase II expansion construction account in May 2018. (Appendix C at p. 2). This additional transfer was prompted by a construction issue involving the auditorium floor and was not part of the original 2016 decision to fund the project. (Exhibit 98).

additional costs, and the additional funding is therefore beyond the scope of this investigation.[50]

f) *BOT involvement in the project*

The CREOL Phase II expansion project was brought to the BOT's attention on only a handful of occasions, and discussion on those occasions was limited. We found no evidence that approval to proceed with the project or to use E&G funds for it was specifically requested from the BOT or granted, nor does it appear the project was even disclosed to the BOT until *after* the decision was made to fund the project with $4 million in E&G carryforward funds and the funds had already been transferred to the construction account. Instead, the project appears to have been disclosed to the BOT for the first time in the summer of 2016 when it was included in the University's Five-Year Capital Improvement Plan ("CIP") and accompanying "BOB-2" forms, and later in connection with amending the Campus Master Plan to include the expanded building. However, the fact that the project was being funded with $4 million in E&G carryforward funds was not disclosed in those documents or discussed during the related meetings.

The first clear reference to the CREOL Phase II expansion project in any BOT materials came in June 2016, when it was included in the CIP presented to the Finance and Facilities Committee ("FFC"). (Exhibit 101). The project was listed on the CIP with an estimated cost of $6,784,228 under the heading "Requests From Other State Sources", but was not included on the accompanying BOB-2 form.[51] (*See* Exhibit 102). Of course, by that point, $4 million of E&G carryforward funds had already been transferred to the construction account for the project. During the meeting, Lee Kernek (Associate VP Facilities and Safety) discussed the status of active and planned construction and renovation projects on campus. While her presentation materials included a slide on CREOL Phase II noting the $6.8 million project as "University-funded – internal sources," according to the audio recording of the meeting the only specific mention she made of the project was that it was new and being added to the CIP. (Exhibit 103 at p. 40). This CIP was subsequently approved by the BOT at its July 2016 meeting. (Exhibit 102). The Board's approval of the CIP, however, did not mean it was approving the construction or funding for the CREOL Phase II expansion project.[52]

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[50] The additional funding consisted of $1 million from CREOL and two separate $900,000 contributions from Academic Affairs. (Exhibit 100). Review of general ledger detail confirms the sources as auxiliary and contracts and grants funds, not E&G.

[51] The BOB-2 did include a crossed-out entry for "CREOL" for the now completed Phase I lab build-out.

[52] The CIP is a budget planning document intended to inform the BOG of capital projects the University plans to undertake during the next five fiscal years and is used primarily to identify projects for which PECO funding is sought from the Legislature. The accompanying BOB-2 form is intended to identify the University's future needs for state funding to operate and maintain academic-related facilities that may be constructed using non-state funds. During the relevant time, the CIPs were prepared by Kernek, presented to President Hitt or Provost Whittaker for review, and then presented to the BOT by Merck (or Kernek as his designee). The purpose of the CIPs was not to inform the BOT what projects were under way or how they were being funded, nor was the BOT voting to approve any specific projects or their funding. Instead, the BOT was approving what projects would be submitted for PECO requests. (*See* TCH Report at pp. 14-15).

Rather, it merely authorized the staff to submit the CIP to the BOG and to seek funding for the capital projects listed in the manner indicated on the form.

Even less information about the project was presented to the BOT when it approved the following year's CIP at its July 2017 meeting. CREOL Phase II was crossed out on the CIP but was now included as one of 23 projects on the BOB-2 form, with "E&G" listed as the funding source. (Exhibit 104). However, according to the audio recording of the BOT meeting, there was no specific discussion of this project, or its funding source, during the brief discussion of the CIP and BOB-2 during the meeting. (Exhibit 105). Similar information was submitted to the BOG as part of UCF's Fixed Capital Outlay Plan in July 2016 and August 2017, respectively. (Exhibits 106 & 107).

The FCC and BOT were also informed of the CREOL Phase II expansion project in December 2016 and January 2017, respectively, when asked to approve a minor amendment to the 2015-25 Campus Master Plan to include the CREOL Phase II expansion and certain other capital projects. The Capital Improvements List submitted in connection with these meetings did identify "E&G" as the "Fund Type" for the CREOL Phase II expansion project, but we found no evidence this was discussed with, or otherwise brought to the attention of, FFC or BOT members. (Exhibits 108, 109, 110 & 111).

Finally, the CREOL Phase II expansion project was not included in any of the University's Capital Outlay Budgets during the relevant time period except one for FY 2017-2018, approved by the BOT in May 2017. The project was listed in the budget under "Projects constructed or acquired with proceeds from other state sources," at an estimated cost of $6.8 million, and identified as being fully funded. (Exhibit 112). This was technically accurate; the University was, in fact, committing funds from state sources other than PECO, i.e., E&G, to the project. However, the very cursory discussion of the Capital Outlay Budget during the BOT meeting did not convey this fact to trustees. Rather, the FFC Chair merely noted that the budget had been presented by Kernek at the FFC meeting, and unanimously approved, after which the full Board voted to approve the budget. In her earlier presentation of the budget to the FFC, Kernek did not mention the CREOL Phase II project and merely explained that the category for projects constructed or acquired with proceeds from other state sources were "internally funded" and were merely included to give notice of them to the state. She did not explain what she meant by internally funded, nor did she reference E&G funds. While the BOT technically approved this project by approving the Capital Outlay Budget, based on the audio recordings of the FFC and BOT meetings, the document itself, and interviews of trustees, we conclude that the BOT did not know or understand that E&G funds had been transferred to the construction account for the project and was not approving their use after-the-fact.

In interviews, BOT members reported that they were not aware of the UBC, the decision to reallocate excess carryforward funds, or how those funds were spent, and some could not recall or said they were not aware of the CREOL Phase II expansion project at that time. None were aware that the project was funded in part with $4 million in E&G carryforward funds. Further, all but one trustee we interviewed indicated they were unaware of any restrictions on the use of E&G funds for capital projects at that time, and thus even if the source of funding for the project had been disclosed, it would have meant nothing to most Board members.

g) *Construction and actual costs of the CREOL Phase II expansion*

Construction of the CREOL Phase II expansion began in the spring of 2017. Although $4 million in E&G carryforward funds had been budgeted to the project in July 2015, and the funds had been transferred to the construction account for the project in February 2016, the first significant spending for design-related costs did not occur until March 2017, with construction spending continuing to the present. The total amount spent on the project as of June 30, 2019 is approximately $5.2 million. (Appendix D). The substantial completion date under the contract was May 31, 2019, but the project has experienced delays and no Certificate of Occupancy has issued yet. While some work remains to be completed, the expansion is expected to open by the end of August 2019.

h) *Knowledge and understanding of relevant regulations*

As discussed above, the UBC members we interviewed who voted to recommend that the CREOL Phase II expansion project receive funding (namely, $4 million of the $10 million in excess E&G carryforward funds) reported that they were unaware at the time of any restrictions on the use of E&G funds for capital projects. They further reported that there was no discussion of such restrictions during the UBC's June 2015 meeting or any concerns raised at all with regard to awarding E&G carryforward funds to the CREOL Phase II expansion project, either by CFO Merck or the other Senior Finance officials present (Clark and Tant), and that they assumed and trusted the funds were appropriate for all of the various uses proposed, including the CREOL Phase II expansion. We found no evidence to the contrary.

Provost Whittaker and Merck, who co-chaired the UBC, attended the June 2015 meeting, and at that meeting served on the subcommittee that actually recommended to the full Committee that the CREOL Phase II expansion project receive funding, declined to be interviewed as part of this investigation. As a result, their explanation for funding the project with E&G carryforward funds could not be fully determined or assessed. However, evidence of their awareness of the BOG regulations generally, and their understanding of the limits on the use of E&G funds specifically, is summarized below. More detailed discussion of this subject may also be found in the TCH Report.

With regard to Whittaker, during the TCH Investigation, he stated that he was not familiar with any restrictions on the use of E&G funds. (*See* TCH Report at pp. 10-11). During his PIE Committee deposition, Whittaker further testified he was never told that E&G funds could not be used for new construction, or that the use of E&G funds for TCH violated BOG regulations or state law. (Exhibit 113 at pp. 19-20).

Evidence collected during the TCH Investigation raises questions about those claims, however. First, in August 2014, shortly after Whittaker joined UCF, the

University's General Counsel, Scott Cole, emailed him links to the BOG regulations, including BOG Reg. 9.007 (which addresses the permissible uses of E&G funds in subsection (3)), and further indicated that he would provide copies of the regulations to him in a notebook. (Exhibit 114). Additionally, in December 2014, Whittaker was copied on an email from Merck to Clark, in which Merck commented on an email Clark had sent to another employee regarding a request to transfer E&G funds to the UCF Foundation to establish endowments. Clark wrote in the email that "BOG regulation 9.007 limits the use of E&G funds for E&G operating activities only - namely instruction, research, public service, plant operations and maintenance, student services, etc." (Exhibit 115). It is unclear if Whittaker read Merck's email (or Clark's earlier email)—we found no evidence he responded—but even if he did, Clark's email did not address whether E&G funds could be used for capital projects. Still, these emails at least suggest that Whittaker *may* have been familiar with the BOG regulations, including possibly the limits they place on the use of E&G funds.

Perhaps most significant, however, is that Whittaker admitted to hearing Merck state during a meeting with President Hitt that the funding for TCH might result in an "audit comment." (TCH Report at p. 36). As discussed in the TCH Report, it is unclear when this meeting occurred, although it may have been on May 20, 2015, just a few weeks before the UBC meeting where he and Merck recommended that the CREOL Phase II expansion project be funded with $4 million of E&G carryforward funds. (TCH Report at p. 36).[53] In his interview during the TCH investigation, Whittaker credibly explained why Merck's comments did not concern him at the time. It is also unknown if Whittaker, like Merck and others discussed below, believed that whatever issues there may be with using E&G funds for new construction like TCH, they did not apply to a renovation or buildout project like the CREOL Phase II expansion. In the end, due in part to Whittaker's failure to cooperate with this investigation, we are unable to answer these questions or to determine conclusively Whittaker's state of mind with regard to the funding of the CREOL Phase II expansion.

The same is generally true for Merck, although his awareness of the BOG regulations is less in doubt. Merck served as UCF's CFO for over 22 years, since 1996. In that role, he regularly dealt with the BOG and its staff, serving on the SUS Council for Administrative & Financial Affairs, and he was also at the University in December 2007 when the BOG adopted Reg. 9.007. As a member of the SUS Council for Administrative & Financial Affairs, he received any proposed amendments to the regulations, such as in July 2013 when BOG Reg. 9.007(3) was amended to clarify that "…E&G funds are to be used for E&G operating activities only… ." (Exhibit 118). In his PIE Committee testimony, Merck denied having ever actually read this regulation but admitted being generally aware of restrictions on the use of E&G funds, such that it was important to maintain their "color." (Exhibit 12 at pp. 124-126, 151). Additionally, Merck admitted that the use of E&G funds for TCH "was not a conventional way of paying for a

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[53] Lee Kernek took notes during the May 20, 2015 meeting, which she translated for us in connection with the TCH investigation. According to Kernek's translation, Merck remarked during the meeting: "Not looking likely will get $ from state for Colbourn; have to do ourselves and may have to pull $ from CF balances; may take audit ding, but can't let it wait, and state after us on CF." Kernek further noted "pres agrees we have to do, no choice." (Exhibits 116 & 117).

building," which, together with his remarks in May 2015 concerning a possible "audit comment" based on the funding of TCH, shows he had some understanding of the limits on how E&G funds could be used. (Exhibit 12 at p. 29; TCH Report at pp. 8, 35). While Merck denied being aware of, or involved in, the CREOL Phase II expansion project or its funding, he nevertheless testified that he generally believed E&G funds could be used for renovation projects, which he explained in his mind included building expansions or buildouts. (Exhibit 12 at p. 37).

As for Clark and Tant, who did not serve on the UBC but provided support to the Committee and attended meetings, including the June 2015 meeting, they explained their understanding of the relevant regulations similarly. While Clark declined to be interviewed, emails prove she was familiar with BOG Reg. 9.007 and that E&G funds could only be used for operating activities.[54] Nevertheless, she testified to PIE Committee investigators that no one on the UBC, including herself, believed the allocation of E&G funds for the CREOL expansion project was improper. (Exhibit 13 at p. 75-80). She explained that in her mind the project was like a renovation project, for which she believed E&G funds could be used, and thus she did not question the use of E&G funds for the project even in light of earlier discussions regarding the use of such funds for TCH. (Exhibit 13 at p. 69). Tant provided a similar explanation in her interview during this investigation. Both had also stated when interviewed during the TCH Investigation that they believed E&G funds could be used for renovation projects; it was the use for new construction that concerned them. Clark confirmed this in her PIE Committee testimony: "I mentioned to [Merck] that I wasn't aware that we were able to use E&G funds for new construction ... it hadn't been done before." (Exhibit 13 at 49). While a significant building expansion like the CREOL Phase II project seems more like new construction than renovation, Clark and Tant genuinely may not have appreciated the difference, and neither seems to have understood that even if it was renovation, no more than $2 million in E&G funds could be used.

Finally, President Hitt, who formally approved the funding for the CREOL Phase II expansion project, declined to be interviewed and also did not provide testimony to the PIE Committee. While Hitt was interviewed during the TCH investigation, he was not asked about the funding for the CREOL Phase II expansion. He did indicate, however, that he was not familiar with restrictions on the use of E&G funds and, while not disputing they could have been made, he also did not recall Merck's statements concerning an audit comment with respect to using E&G funds for TCH. (TCH Report at pp. 10-11).

[54] *See, e.g.*, Clark's aforementioned December 2014 email to an employee regarding a request to transfer E&G funds to the UCF Foundation to establish endowments. (Exhibit 115).

G. Research I Building - Furniture, Fixtures & Equipment and Lab Buildouts

1. Overview

The Research I building ("Research I") is a three-story, nearly 106,000 square foot interdisciplinary research building located on the University's main campus.[55] The building provides research space for faculty members from various colleges and centers. Construction on the building began in 2016 and it opened in January 2018, although some minor construction work continues. The total budget for the project was $46.6 million, but actual costs through June 30, 2019 are approximately $51.3 million. (Appendix D at p. 3).

The majority of funding for Research I did not come from E&G funds and is therefore beyond the scope of this investigation. However, as detailed in the chart at Appendix C, page 3, the purchase of furniture, fixtures and equipment ("FF&E") for the building and the cost of constructing and customizing its labs did come from E&G funds. Specifically, in May 2017, the University transferred a total of $9 million in E&G funds to Research I construction accounts for FF&E ($3 million) and for lab buildouts ($6 million). The FF&E funding originated from the University's central E&G reserve account and consisted solely of E&G carryforward funds, while the funding for the lab buildouts originated from six different E&G accounts, nearly all of which consisted of carryforward funds. The University primarily incurred expenses related to the lab buildouts and FF&E purchases during fiscal year 2017-18.

We found that Provost Dale Whittaker and CFO Bill Merck approved the $3 million in E&G funding for the FF&E for Research I, and that this was also later approved by President John Hitt. As for the $6 million in E&G funding for the lab buildouts, we found that Whittaker, Merck and Associate Vice President Tracy Clark were all involved in developing a funding plan for the lab buildouts, which involved pooling together E&G funds from various sources. We found no evidence that President Hitt was aware of this plan before the funds were transferred, and the evidence of his knowledge and approval afterwards was inconclusive. While $2.3 million (of the $6 million) in E&G funds from the central E&G reserve was listed on the University's FY 2017-18 Allocation Document, that document was not signed, and we cannot say for certain whether Hitt approved the funding allocations in it or what he understood about them (assuming he even reviewed it), in part because Hitt declined to be interviewed as part of this investigation.

Finally, we found no evidence that the BOT approved of the funding for Research I, including specifically the use of E&G funds for the FF&E and lab buildouts. Instead, the BOT received only limited and often conflicting information about the project and its funding.

[55] The building was originally referred to as the Interdisciplinary Research and Incubator Facility or "IRIF," and many documents related to the project use the original name or acronym.

2. Timeline of Significant Events

a) *The Research I building*

Research I is a new, three story, 105,775 square foot interdisciplinary research building on the University's main campus. It contains 84 individual offices and 79 labs, along with conference rooms, break rooms, and support rooms, and is occupied and used by faculty from several different colleges and centers. The building opened in January 2018 but minor construction work continues and the University has not closed out the project as of the date of this Report. (*See* Exhibits 119, 120, 121 & 122).

The initial total budget for the project was approximately $46 million. Due to funding limitations, the building was designed to be constructed in two phases. Phase 1 covered two-thirds of the building, while phase 2 covered the remaining third. The preconstruction and initial design stages of the project took place between 2011 and 2016. Construction on phase 1 began in January 2016, while phase 2 construction started in July 2016. The labs that were included in the phase 1 construction were initially built as generic labs, as it was unclear who would occupy the labs and what their specific needs were. After that was decided, the labs had to be redesigned and customized, resulting in additional construction work and expense as part of the Research I lab buildouts. However, the delay allowed for the project schedules for phase 1 and 2 to be aligned so that they could be completed together.

b) *Initial plans to secure funding*

UCF officials began to discuss the need for additional research space for the University's growing faculty, and how to fund such a project, as early as 2009. That year, references to the Research I project (as "Interdis. Research and Incubator Fac.") began to appear on the University's Capital Improvement Plan ("CIP") among the projects for which the University sought PECO funding. The University would continue to request PECO funds for the Research I project through the FY 2018-19 CIP, approved by the BOT in July 2017, to no avail.[56] During this period, the project's PECO priority ranking moved up from number 8 to number 2, while the estimated cost of the project increased from $39.8 million to $47.3 million. (Exhibits 104, 125, 126, 127 & 128).

The BOT approved the CIPs in these years and therefore was presumably aware of the planned Research I project and that PECO funding was being requested for it but not received. The Research I project also appeared in Capital Outlay Budgets approved by the BOT from 2011 through 2014 under the category of PECO projects, but was always identified as unfunded. (Exhibits 123, 129, 130, 131, 132, 133 & 134). No other plans to fund the project were shared with the BOT or presented for approval during these years. President Hitt was also likely familiar with the project because it was included in periodic "Status of UCF Projects Updates" given to him by Facilities staff.

[56] The University received $5.9 million in PECO funds for Research I in 2012, but decided to use those funds for another, higher priority project. (*See* Exhibits 123 & 124). We did not investigate whether this was permissible.

Those presentations also identified PECO funds as the anticipated funding source for the project. (*E.g.,* Exhibits 124 & 135).

In sum, UCF continuously sought PECO funds for the Research I project, but never received them (with the one exception noted above). As a result, UCF ultimately funded the project itself. As detailed below, this included using E&G funds for the FF&E and lab buildouts.

c) *The University opts to use E&G funds for the FF&E and lab buildouts*

The events leading up to the University's decision in May 2017 to transfer $9 million in E&G funds for the Research I FF&E and lab buildouts took place over several years. Accordingly, we address these events by fiscal year below.

(1) 2014-15 fiscal year (July 2014 through June 2015)

Despite repeatedly seeking PECO funding for the Research I project, and representing to the BOT and President that this was how the project would be funded, in January 2015, University officials began to consider instead using E&G funds to pay for the building's FF&E. On January 13, 2015, Provost Whittaker, CFO Merck, and their respective senior staff held one of their regularly scheduled "budget chat" meetings (referred to during this time period as "Budget Operations Group" or "BOG Jr." meetings). At this meeting, they discussed a document called the "Capital Projects Funding Update," intended to track all of the University's current capital projects and plans for their funding. The January 7, 2015 version of the document, which was circulated at the January 13 meeting and forwarded to Whittaker's budget officer afterwards, indicated under the "Proposed Funding Plan" that the $30 million needed for phase 1 of the Research I project would be funded using "Investments," "Interest Earnings," "Auxiliary - AA," and "E&G." The amount listed under E&G was $3 million and identified as being for FF&E. The document also noted that $46.6 million in PECO funds had been requested for both phases of the project. (Exhibit 136).

While the use of $3 million of E&G funds for FF&E for Research I appears to have been discussed at this January 2015 meeting, we did not find evidence that a decision was made to allocate the funds for this purpose until a budget chat meeting in June 2015. This evidence is in the form of the "E&G Commitments List" from a June 23, 2015 meeting, which includes a planned $3 million E&G expense in fiscal year 2015-16 for "Furniture for Interdisciplinary Research building."[57] (Exhibit 137). Based on this document, it is reasonable to conclude that Whittaker and Merck approved the decision to allocate $3 million in E&G funds for the Research I FF&E at this budget chat meeting. According to Christy Tant, who primarily maintained the E&G Commitments List at that time, a planned allocation of funding like this would not be added to the list unless it was approved by the Provost and CFO. As Whittaker and Merck declined to be

[57] As discussed in the TCH Report, the "E&G Commitments List" was a spreadsheet (actually titled "Planned E&G Budget Allocations") used by F&A employees to track decisions made in these budget planning meetings regarding the allocation of E&G funds. (*See* TCH Report at pp. 17-18, 23, 31).

interviewed, we were unable to ask them about this meeting or confirm that they approved the planned allocation. However, other witnesses confirmed the process described by Tant. This document did not indicate any planned E&G funding for the Research I lab buildouts, presumably because at that time the University was still seeking PECO funding for the rest of the project.

The Research I project was included in the FY 2016-17 CIP approved by the BOT at its June 29, 2015 meeting.[58] The project was actually listed twice: first as the number 2 priority PECO project with a total estimated cost of $46.6 million, and second as the number 5 priority project under "Requests From Other State Sources" with a total estimated cost of $3 million. (Exhibit 138). Witnesses indicated that funding for the lab buildouts was included in the $46.6 million PECO request (likely the $6 million listed for FY 2018-19). It appears from the amount that the $3 million from "Other State Sources" referred to the planned allocation of E&G funds for the FF&E for the building. However, this was not disclosed to the Board by Merck or Lee Kernek when they presented the CIP. During the meeting, Kernek explained that no PECO funding had been received for the project yet—which is why they were requesting funding again—and that the $3 million listed under "Requests From Other State Sources" (which she did not identify as E&G funds) had actually already been spent.[59] She further explained that the balance of funds spent on the project to date had come from non-state sources. (Exhibits 139 & 140).

To further confuse things, the BOT had been told the month before when it approved the FY 2015-16 Capital Outlay Budget that the University had received $6.04 million in PECO funding for the Research I project. (Exhibit 141). The following year's Capital Outlay Budget, however, would show the same budgeted amount and indicate it was not funded. (Exhibit 142).

Similarly confusing (and conflicting) information about the Research I project was included in the University's FY 2016-17 Fixed Capital Outlay Plan submitted to the BOG on June 30, 2015. In addition to being listed in the PECO section, the project was listed under "Requests From Non-State Sources, Including Debt" with a cost estimate of $27 million. (Exhibit 143). As with the CIP, the costs related to the FF&E and lab buildouts were not specifically identified.

(2) 2015-16 fiscal year (July 2015 through June 2016)

The University did not expend $3 million of E&G funds on FF&E for Research I in fiscal year 2015-16 as had been planned. Instead, Provost Whittaker and CFO Merck appear to have decided in August 2015 to push back the expense a whole year, to fiscal year 2016-17, presumably because of construction delays that had pushed back the

[58] As discussed earlier, CIPs were prepared by Lee Kernek and her staff, reviewed with the Provost and President, and presented for approval to the BOT by Merck.

[59] This statement conflicts with the conclusion that the "Other State Sources" listing was for the planned FF&E expenditure, as those funds were not transferred to the construction account until May 2017 and spent some time thereafter, as will be discussed.

building's opening date to June 2017. (Exhibit 144). As further evidence of this, the FY 2015-16 Allocation Document signed by President Hitt and Provost Whittaker on August 19, 2015, did not include the $3 million allocation of E&G funds for the FF&E. (Exhibit 94).

Despite this decision, funding for the Research I FF&E *was* included in the University's FY 2015-2016 FBCR, submitted to the BOG in August 2015, indicating a plan to use E&G carryforward funds for the project during the current fiscal year. (Exhibit 145). The $3 million was part of approximately $4.5 million included in a subcategory of Commitments called "Equipment Replacements". Tant was responsible for preparing this FBCR, and even though the FF&E was for a new building, and therefore would not be replacing anything, she explained in her interview that she believed this was the most appropriate subcategory in which to include the commitment. She credibly denied any intent to conceal the use of carryforward funds for the project from the BOG, and further explained that at the time she believed E&G funds could be used for FF&E without limitation. Tant further explained that the FBCR is a multi-year plan which permits the inclusion of amounts planned to be spent in future years, which BOG staff confirmed. Accordingly, the inclusion of this commitment in the FY 2015-16 FBCR is not necessarily inconsistent with the decision to delay spending the E&G funds until FY 2016-17.

Phase 1 construction of Research I began about six months later, in January 2016. Around the same time, different groups were discussing options for creating additional research space to accommodate the University's growing faculty, including at a January 26, 2016 University Budget Committee ("UBC") meeting and a February 12, 2016 Critical Laboratory Space Needs Meeting. Use of the new labs in the Research I building was among the options discussed. (Exhibits 146, 147 & 148). We found no discussion of how to fund any of the options at this time, however.

At a March 3, 2016 meeting between Whittaker, Merck and Tracy Clark regarding the need for additional research space, Whittaker and Merck decided to move forward with phase 2 of the Research I project, despite the apparent absence of funding for it. (Exhibit 148). Emails related to the meeting indicate that Lee Kernek was to coordinate funding with Clark and/or Tant. The lack of funding at the time is perhaps not surprising given that the estimated costs for phase 2 were in flux, as the building was being re-designed to maximize the amount of lab space. (Exhibit 148). By late March 2016, the University had begun to assign specific user groups to the various lab spaces in the building and determine their specific needs for the labs. (Exhibit 149).

On March 23, 2016, Whittaker called a meeting with President Hitt, which Merck and Mike Morsberger, CEO of the UCF Foundation, also attended, in an effort to better understand the University's growing list of unfunded capital projects, and develop a process for deciding how to prioritize them.[60] This meeting was described at length in the TCH Report. In advance of the meeting, at Whittaker's request, Clark and Tant updated the Capital Projects Funding Update document, and it was circulated to and

[60] The calendar invitation identified the topic of the meeting as, "An initial discussion to determine a sequence of building priorities at the university." (Exhibit 150).

reviewed by attendees at the meeting. The document included Research I (both phases) among the list of funded projects. Funding for Phase 1 was identified as coming from "Interest & Other" ($26 million), "Division/Unit Resources" ($3 million) and "E&G" ($3 million). Funding for phase 2 was identified as coming entirely from "Interest & Other" ($17 million). (Exhibit 151). Based on the amount and aforementioned budget chat discussions, it appears likely that the $3 million in E&G funding for phase 1 was for the FF&E. It is unclear if the Research I project, or the $3 million in E&G funding for phase 1, were discussed during the meeting. Notes from the meeting indicate that Merck was asked about the use of E&G funds for projects involving academic space (which included both TCH and Research I), and that the response he gave may have caused attendees to believe that such projects were being internally funded with interest earnings or other non-state funds rather than with E&G. (TCH Report at 40.)

At some point during 2016, a funding plan was developed for the Research I lab buildouts that involved having the occupants' colleges contribute to the cost of the buildouts. These discussions began sometime before April 2016 and continued into the following year. (*See* Exhibit 149). In her PIE Committee deposition, Clark testified that she and Whittaker worked on this cost-sharing plan together. (Exhibit 13 at pp. 66-67). Relevant documents (including those discussed below) confirm this, and also indicate that Merck was aware of and involved with the plan, and that Kernek was at least generally aware of it.

Although funding for Research I's FF&E had already been decided, and funding discussions were underway concerning the lab buildouts, it does not appear that the BOT received any specific information about these aspects of the Research I project during fiscal year 2015-16. For example, while the BOT approved the FY 2016-17 Capital Outlay Budget in May 2016, which listed planned expenditures for Research I of $6.04 million in PECO funds and $27 million in non-state funds (none of which had actually been received), the BOT was not provided with a breakdown of how the funds were to be spent and was not informed that any E&G funds had been allocated to any part of the project. (Exhibit 142).

The Research I project continued to be included on the aforementioned Capital Projects Funding Update, an internal document. A draft circulated on June 27, 2016 continued to list the $3 million in E&G funding for the building's FF&E. New listings were included for the lab buildouts (for both phases of the project), but no cost estimates were included and no funding sources were identified. (Exhibit 152).

(3) 2016-17 fiscal year (July 2016 through June 2017)

At the start of the 2016-17 fiscal year, University officials continued to provide limited information to the BOT and BOG regarding the Research I project. For example, the FY 2017-18 CIP approved by the BOT at its July 2016 meeting included the project, but the project was not discussed at all during the meeting.[61] (Exhibit 102). The FY 2017-18 Fixed Capital Outlay Budget Request submitted to the BOG in July 2016

[61] The CIP continued to list the project under PECO, but the $3 million listing under other state sources was crossed out and replaced with a new entry for $16.6 million for FY 2017-18.

included the same limited information. (Exhibit 106). Additionally, the $3 million in E&G funding for the Research I FF&E was once again included in the FBCR submitted to the BOG (in August 2016), although this time it was part of a $12 million line item entry for "Research Support" in the "Commitments" section. (Exhibit 153). This was a change in the classification by Tant, who had included the amount in the "Equipment Replacements" subcategory the prior year.[62]

President Hitt approved the allocation of $3 million in E&G funds for the Research I FF&E when signing the FY 2016-17 Allocation Document on August 31, 2016. The Allocation Document included $3 million for "Furniture for Interdisciplinary Research Building," from the central E&G reserve account. (Exhibit 154) As Hitt declined to be interviewed, we could not ask him what he understood about the Research I project, the propriety of funding the FF&E for the building with $3 million in E&G funds or its inclusion in this Allocation Document.

University officials continued to discuss the funding plan for the Research I lab buildouts throughout fiscal year 2016-17. A November 16, 2016 email from Clark to Kernek, copying Merck, indicates that funding for the lab buildouts was still undecided and might be brought before the UBC at its next meeting. Based on the UBC materials we were provided, however, the matter was not presented to the UBC at its next meeting, or at any subsequent UBC meeting. (*E.g.,* Exhibits 155 & 156).

By January 2017, the cost estimate for the lab buildouts had increased to $6.5 million. (Exhibit 157). Funding was still not finalized, but E&G funds were now being considered, as reflected in emails dated January 5, 2017 from Clark to Provost Whittaker, and from Clark to the representatives of the various colleges whose faculty would be occupying the labs. (Exhibits 158, 159 & 160). In her emails to the college representatives, Clark explained that the University would "centrally handle" $1.7 million in basic build out and infrastructure costs; that another $1.7 million would come from the Faculty Cluster Initiative (FCI); and that the colleges would have to cover the remaining costs using "startup funds, E&G funds, Aux. or C&G monies." Clark's email made no mention of any restrictions on the use of E&G funds or of any potential risk in using such funds for the lab buildout costs. (Exhibits 159 & 160). In March 2017, Clark reiterated to the colleges that certain costs would be funded centrally (by F&A) or using carryforward funds from the FCI, and further stated that one of the colleges "needs to reallocate carry forward/start up to fund the full $1 million [of its] build out." (Exhibits 161 & 162).

Although the precise date is unclear, it seems the approval to use E&G funds for the Research I lab buildouts was given by Provost Whittaker and CFO Merck no later than March 2017. This is based on the fact that the lab buildouts appear for the first time on the March 16, 2017 E&G Commitments List as "Base buildout - IRIF" with a

[62] Tant's work papers used to prepare this FBCR, and subsequently used to respond to a PIE Committee inquiry earlier this year, reflect that the $3 million for the FF&E was actually not included in calculating the $12 million for the Research Support subcategory. Instead, $3 million for a different item was included. Tant explained this was the result of a formula error, in which the wrong item was pulled into the calculation, and that she intended to include the $3 million allocation for the Research I FF&E.

planned expenditure of $2.3 million in fiscal year 2016-17. (Exhibit 163). The addition of the lab buildouts to the E&G Commitments List on this date indicates that the subject was most likely discussed at a Budget Operations Group meeting around that time, and that Whittaker and/or Merck approved the allocation of E&G carryforward funds for the project.[63]

In early May 2017, Clark asked representatives of the colleges and FCI to confirm their commitment to the cost-sharing plan for the lab buildouts. Her email copied Whittaker, Merck and Kernek, among others. (Exhibit 166). By responsive emails, the colleges and FCI confirmed their commitment to contribute a total of $4.2 million to the project, and it appears that Whittaker and Clark both confirmed the commitment of $2.3 million from the University's central E&G reserve account.[64] (Exhibits 166, 167, 168, 169 & 170). The entire $6.5 million committed to the project pursuant to this cost-sharing plan consisted of E&G funds. (Exhibit 157). Following this, on May 9, 2017 or shortly thereafter, Facilities established a separate construction account for the lab buildouts portion of the Research I project. (Exhibit 171).

On May 8, 2017, F&A employee Donna DuBuc (Associate Director, Budget, Planning and Administration) sent an email to the UCF Budget Office requesting a budget transfer of $3 million in E&G carryforward funds from the central reserve to Facilities to fund FF&E for Research I. DuBuc supported the request by referencing the FY 2016-17 Allocation Document, signed by Hitt and Whittaker in August 2016, which had authorized the allocation. (Exhibit 172). The budget transfer was made the same day, and the funds were later transferred to the construction account for the Research I FF&E on May 25, 2017 via a general ledger entry. (Appendix C at p. 3).

Between May 16 and 25, 2017, $6 million in E&G funds were also transferred to a construction account set up for the Research I lab buildouts.[65] The budget transfer requests were sent on May 16, 2017, apparently prompted by an email from Tant asking to have the funds transferred and attaching the May 2017 commitment emails as support. (Exhibits 174 & 175). Tant also stated: "We should work toward making these transfers prior to June 30, 2017." (Exhibit 173). Tant was unable to explain this statement or why the transfers needed to take place before the end of June, which was also the end of the fiscal year. On May 16 and 18, the Budget Office transferred $1.7 million from an Academic Affairs E&G carryforward account and $2.3 million from the central E&G reserve account, respectively, to the Office of Research's E&G carryforward

[63] We further note that the Research I lab buildouts appeared for the first time on the March 2, 2017 version of the Capital Projects Funding Update document, maintained at that time by Lee Kernek, with an estimated cost of $5.7 million for both phases but no funding identified. (Exhibit 164). Funding for the lab buildouts was still not identified in the April 21, 2017 version of the document. (Exhibit 165).

[64] We did not interview the representatives of the colleges and FCI who confirmed these commitments, and do not know their understanding of restrictions on the use of E&G funds or whether they had any concerns about using such funds from their respective departments. However, Clark did tell them in her January 5, 2017 email that E&G was one type of fund they could use to cover their portion of the project.

[65] Although $6.5 million had been approved, only $6 million of budget was actually transferred because one of the colleges contributed $500,000 less than the original commitment amount.

account. On May 25, 2017, these amounts, plus an additional $2 million from four more E&G departments (for the colleges and FCI), were transferred to the Research I lab buildouts construction account via a general ledger entry. (Appendix C at p. 3).

The Capital Outlay Budget presented for the BOT's approval on May 18, 2017 did not disclose that E&G funds were being used for any portion of the Research I project, nor was this shared with Board members during the meeting. Instead, Research I, with no indication as to which phase, was listed as one of the PECO funded projects (with $6 million being requested and $0 funded), while phase 2 for Research I was under projects funded from "other state sources" (with $16.6 million identified as funded, but no indication of the specific fund type(s) or what exactly the funding was for). (Exhibit 112). Hence, it does not appear the BOT was informed that $9 million in E&G funds had just days earlier been transferred to the Research I construction accounts to fund the FF&E and lab buildout costs.

(4) 2017-18 fiscal year (July 2017 through June 2018)

As with the Capital Outlay Budget presented in May, the FY 2018-19 CIP presented to the BOT in July 2017 contained limited (and conflicting) information regarding Research I. As with the prior year's CIP, this year's CIP still listed the project as number 2 on the PECO priority list with an estimated cost of approximately $47 million over the next three fiscal years, but apparently referenced the deletion of phase 2 of the project under "Requests From Other State Sources" with an estimated cost in FY 2018-19 of $16.6 million by striking through it. (Exhibit 104). This conflicted with how the Capital Outlay Budget, approved by the BOT just two months earlier, had described the project.

In August 2017, the University's F&A department prepared the FY 2017-18 Allocation Document, which included a $2.3 million allocation from the central E&G reserve account to the Office of Research and Commercialization and Graduate Studies for the "Interdisciplinary Research buildout" (apparently referring to the Research I lab buildouts). (Exhibit 176). The inclusion of this allocation is hard to understand and may have been a mistake, as the funds had already been transferred to the construction account for the project back in May. Regardless, this is the only evidence we found that President Hitt may have approved or was even apprised of some of the funding for the Research I lab buildouts.[66] The other $3.7 million in E&G funding for the lab buildouts (which had already been provided by Academic Affairs, various colleges and the FCI) was not included on the document. (Exhibit 176). Notably, this Allocation Document was never signed. We were told that the handling of the document was being transferred from the Controller to the Budget Office at this time, and its preparation was significantly delayed for various reasons. By the time the document was finally completed, the University's presidential transition was underway. As Hitt declined to be interviewed, we could not ask him if he ever reviewed this document, and if he did review it, what he understood about the lab buildouts for Research I, their fund source,

[66] As discussed earlier in this Report, we did not receive a signed copy of this document and therefore cannot confirm that President Hitt approved of the allocations.

this listing in the Allocation Document, or whether he understood and approved of this specific use of E&G funds.

The University's FY 2018-19 Fixed Capital Outlay Budget Request, submitted to the BOG in August 2017, included Research I and requested funding from both PECO funds and Other State Sources ($23.6 million each, for a total of $47.2 million), even though construction of the building had started in January 2016, approximately $32.7 million had been spent by that time, and the building would be substantially completed less than six months later in January 2018. (Exhibit 107). Nevertheless, UCF officials were invited to present the project at the BOG's annual PECO workshop, held on October 3, 2017. As discussed in the TCH Report, to be eligible for PECO funds, a project must be added to the BOG's 3-year "PECO priority list," which is a key component of the BOG's annual Legislative Budget Request ("LBR") to the Legislature. The Legislature then selects projects from the PECO priority list for inclusion in its annual appropriations bill. The BOG compiles its PECO priority list by reviewing the CIPs submitted by each SUS institution and consulting with the institutions to determine which projects should be included on the PECO priority list. The BOG holds its PECO workshop as part of this process, to learn more about projects it is considering for inclusion on its PECO priority list. (*See* TCH Report at 14-15).

At the BOG's October 3, 2017 PECO workshop, CFO Merck gave a recorded presentation on the Research I project in support of UCF's request for PECO funding. Merck explained that the University was only seeking funding for half of the project's total cost (apparently a change from what was requested in the FY 2018-19 Fixed Capital Outlay Budget Request), and that the PECO funds would be used to reimburse the University for other internal funds it had used to finance the project. Merck explained:

> … since we so desperately needed this building, we, since we are a large university, we have some fairly large cash balances. We also have significant overhead we're charging our auxiliaries and our grant & contract folks. So we've taken some of the cash that we have to fund the actual construction and created internal loans from the sources that those monies are coming from.
>
> This last 20, 20-um-3 million dollars, we, we've, uh, internally, um, committed that over the next five to seven years. So it'll take us about seven years of those accumulated overhead charges, interest, dividends, things like that, to pay our cash, that the accounts that cash came from back.

Merck further explained: "It's all internal money that we're shuffling around to be able … to handle this." (Exhibit 177). Merck did not specify the "internal money" being used for the project or disclose that it included $9 million of E&G funds, most of which were carryforward funds.[67] Also, despite his reference to the use of internal loans, we found

[67] Immediately prior to Merck's presentation, there was discussion of another institution's funding request, where it was explicitly stated that because the institution was new, it had special legislative authority to use operating funds (i.e., E&G) for capital projects, in contrast to other SUS institutions. Merck was present for this discussion according to the video of the workshop.

no indication that these E&G funds were loaned or that there was any intention to repay them. The BOG elected not to include the Research I project on its PECO priority list and, as a result, UCF did not receive PECO funding for the project from the Legislature. UCF opted not to include the project on any subsequent CIPs. (*See* Exhibits 178 & 179).

d) *Construction of Research I is substantially completed*

Construction of the Research I building began in January 2016 and was substantially completed by January 2018, when the building opened. The project is now expected to cost a total of $53.8 million, but through June 30, 2019, actual costs were only $53.1 million. Approximately $1.9 million of this amount was spent between June 2016 and September 2018 on the FF&E for the building. (Appendix D at p.3). As for the lab buildouts, design work for them began in November 2016. Construction work on the lab buildouts started in April 2017 and was substantially completed by the building's opening. As of June 30, 2019, the total amount spent on the lab buildouts was approximately $5.1 million. (Appendix D at p. 3).

e) *Knowledge and understanding of relevant regulations*

The individuals principally involved in the decision to use E&G funds for Research I, Provost Whittaker, CFO Merck and Tracy Clark, all declined to be interviewed, and therefore we cannot say with certainty what their rationale was or if they knew the funding was improper. Evidence of their respective knowledge of the BOG regulations, including the restrictions on the use of E&G funds, has already been discussed elsewhere in this Report.

In their PIE Committee depositions, Merck and Clark were asked about Research I generally but did not testify whether they believed the use of E&G funds for the building's FF&E and lab buildouts was proper. However, both testified they believed at the time that E&G funds could be used for FF&E. They also testified that they believed E&G could be used for building renovations, including building expansions or buildouts, as opposed to new construction. (Exhibit 12 at p. 37; Exhibit 13 at p.69-70). It is hard to see how this latter belief would justify the E&G expenditures on the lab buildouts for Research I, which was of course a new building. While the construction and customization of the labs was referred to internally as "lab buildouts," the construction work was clearly taking place inside a new building and was part of the completion of that building's construction. For her part, Clark testified that she did not distinguish between buildouts of existing buildings and buildouts of new buildings; she thought E&G funds could be used for both types. (Exhibit 13 at p. 69). The scope of Whittaker's testimony in his PIE Committee deposition did not include Research I or whether he believed E&G funds could be used for FF&E and buildout projects.

f) *Timing concerns*

Of the $9 million of E&G funds that were transferred to the construction accounts for the Research I FF&E and lab buildouts, $8.9 million came from E&G carryforward accounts, and the remaining $100,000 would have become carryforward as of June 30, 2017. The timing of these transfers—during May 2017, near the end of the fiscal year—raises questions about whether they were made at least in part to report a lower carryforward balance to the BOG in the University's FY 2017-18 FBCR due in August but dated as of July 1, 2017. Our findings on this point, however, are inconclusive. On the one hand, a May 16, 2017 email from Christy Tant expressly requested that the transfers related to the $6 million in E&G funds for the lab buildouts be completed prior to the end of the fiscal year. On the other hand, the funding for both the lab buildouts and the FF&E were actually needed at this time because construction was underway. The Research I building would open just eight months later, in January 2018, and most of the funds transferred to the construction accounts for the lab buildouts and FF&E were spent during fiscal year 2017-18.

H. Downtown Campus Projects

1. Overview

In 2014, UCF decided to expand its limited presence in downtown Orlando and create a satellite campus there (the "Downtown Campus"). The Downtown Campus was conceived as a multi-phase, long term development in collaboration with Valencia College. The BOT approved the initial proposal for the development in January 2015. That summer, however, the Governor vetoed the initial State funding for it, resulting in a revised plan that included constructing several new buildings and renovating an existing building as the first phase of the project. The first phase is slated to open on August 26, 2019 and includes an academic commons building, a central energy plant, a parking garage, a student housing building developed by a third-party with leased space for a campus student center, a renovation of the existing Center for Emerging Media ("CEM") building and various infrastructure to support these buildings.

The State agreed to fund a portion of the costs for the academic commons building in summer 2015, but made it clear at that time that no additional state funding for any Downtown Campus capital projects would be available for several years. Nevertheless, the University moved forward with the first phase of the Downtown Campus and internally funded four of the aforementioned capital projects with a total of $26.7 million in E&G carryforward funds, as follows: 1) the CEM renovation, $5 million; 2) the Downtown Central Energy Plant ("Energy Plant"), $11.5 million; 3) the Downtown Student Services Center ("Student Center"), $5.4 million; and 4) the Downtown Infrastructure ("Infrastructure"), $4.8 million. We found that the decision to use E&G funds for the CEM project occurred prior to the decision for the other three projects, which occurred at the same time and also involved the use of internal loans. We further found that the timing of the E&G transfers to the latter three projects was driven at least in part by a desire to reduce the balance of E&G carryforward funds that the University would have to report to the BOG. Accordingly, the funding of CEM is discussed separately from the other projects. These four projects are the only Downtown Campus projects within the scope of this investigation.

a) *The use of E&G carryforward funds for the CEM project*

The CEM project involves the renovation of an existing building that the University was already occupying in downtown Orlando. It is a 28,000 gross square foot remodel of approximately one half of the building. The budget for the project was $5 million, and actual costs through June 30, 2019 are approximately $2.1 million. (*See*

Appendix D at p. 3). As detailed in the chart at Appendix C, page 2, E&G funds were used for the CEM renovation. Specifically, in November 2016, the University transferred $5 million in E&G carryforward funds from the University's central E&G reserve account to the CEM construction account. We found that the timing of this transfer was consistent with the need for funds to proceed with the project and not related to the timing of reporting of carryforward balances to the BOG.

We found that Provost Dale Whittaker and CFO Bill Merck approved the $5 million in E&G funding for the CEM renovation, and that Associate Vice President Tracy Clark was involved in the decision. The evidence is inconclusive as to President John Hitt's involvement, as will be discussed. We found that other University officials involved in developing the Downtown Campus, including current Interim UCF President Thad Seymour (who became Vice Provost for the Downtown Campus in July 2016), may have received documents indicating that the CEM project was being funded with E&G, but did not understand the significance of this and were not told of any risks associated with such funding. Finally, we found no evidence that the BOT approved of the use of E&G funds for CEM or was informed that E&G funds were being used, although the BOT was informed of the project generally.

b) *The use of E&G carryforward funds for the Energy Plant, Student Center and Infrastructure projects*

The Energy Plant is a new, 9,500 square foot central energy plant designed to meet the chilled water needs of the Downtown Campus. The budget for the project was $15.1 million, and actual costs through June 30, 2019 are approximately $9.4 million. (*See* Appendix D at p. 5). As detailed in the chart at Appendix C, page 3, in October 2017, the University transferred $11.5 million in E&G carryforward funds for this project from its central E&G reserve account.

The Student Center project involves the design and buildout of approximately 47,000 square feet of leased space in the UnionWest at Creative Village building, a privately owned and developed building that includes student residences. The leased space for the Student Center includes the Office of Student Services for the Downtown Campus and other student resources. The budget for the project was $6.7 million, which included a $1.4 million tenant improvement allowance pursuant to the lease. Excluding this allowance, actual costs through June 30, 2019 are approximately $2 million. (*See* Appendix D at p. 4). As detailed in the chart at Appendix C, page 3, in October 2017, the University transferred a total of $5.4 million in E&G carryforward funds for this project, with $2.7 million each coming from the University's central E&G reserves and the Academic Affairs E&G carryforward account.

The Infrastructure project involves the construction of telecommunications, data network systems, plumbing, sanitation, landscaping and other infrastructure needs for the Downtown Campus buildings. The budget for this project was $5 million, and actual costs through June 30, 2019 are approximately $4.2 million. (*See* Appendix D at p. 6). As detailed in the chart at Appendix C, page 3, in October 2017, the University transferred $4.8 million in E&G carryforward funds for this project from its central E&G reserve account.

The University transferred the $21.7 million of E&G carryforward funds to these three projects on the same day—November 1, 2017. However, the transfers were made effective as of October 31 in order to decrease the balance of carryforward funds that the University would have to disclose in an interim report to the BOG due a few weeks later. The BOG's request for this interim report, which the University received on October 17, specifically called for all SUS institutions to report their carryforward balances as of October 31, 2017.

The University recorded the E&G transfers to these three projects as internal loans, created a new budget account to track the transfers and repayments, and developed various plans to repay the loans. These plans included using donations to be raised by the UCF Foundation, auxiliary sources and anticipated future E&G reserves. However, no such plan was ever finalized or implemented, and no repayments had been made towards the $21.7 million of E&G funds loaned to these three projects as of late August 2018, when the University's use of E&G funding for capital projects came under scrutiny in the wake of the TCH scandal.

We found that Provost Whittaker likely approved the funding of these projects in consultation with Associate Vice President Clark, and that others were likely involved in the decision, including CFO Merck. Merck was clearly aware of the BOG's request for updated carryforward balance information that prompted the transfers, and it is highly unlikely that the University would make such large transfers without his knowledge and approval. We could not be more definitive, however, due to the limited documents that exist relating to this decision and because none of these individuals agreed to be interviewed.

The evidence is inconclusive as to whether President Hitt approved of the E&G transfers to these three projects or was even aware of them at the time. To be clear, Hitt was aware of the Downtown Campus projects generally, but he appears to have received only limited information about their funding. Significantly, he did not sign the University's FY 2017-18 Allocation Document, which listed the planned allocation of E&G funds to the three projects, and may not have even seen it, as it was prepared during the presidential transition period. We were unable to ask Hitt about these projects since he declined to be interviewed.

Once again, we found that other University officials involved in developing the Downtown Campus, including current Interim UCF President Seymour, either did not know that E&G carryforward funds were being loaned to fund the Energy Plant, Student Center and Infrastructure projects, or knew but did not understand the significance of this and were not told of any risks associated with such funding.

In March 2018, the University Budget Committee ("UBC") was presented with information about the status of funding for the Downtown Campus, including the aforementioned repayment plan. At that meeting, the UBC was told that "university resources" were being used to fund some of the projects. Although Merck and other senior Finance personnel attended this meeting, they did not disclose the fact that nearly $22 million in E&G carryforward funds had been loaned to three of the projects (or for that matter that $5 million in E&G carryforward funds had been transferred to the CEM renovation project), or that there was anything potentially improper about the use of such funds.

Finally, we found no evidence that the BOT was informed of the use of E&G funds for the Energy Plant, Student Center or Infrastructure projects or that the Board approved of such funding. Indeed, as will be discussed, the BOT received only limited information about these projects and their funding. For instance, Merck initially told the BOT's Finance and Facilities Committee ("FFC") that the Energy Plant would be funded with a loan of auxiliary funds which would be repaid with future energy cost savings. When plans for the project changed, resulting in an increased budget that would not be repaid with energy savings, Merck did not tell the FFC that the source of funding for the project had also changed or that E&G funds would be used. With regard to the Student Center, the FFC was told that it would be paid for using auxiliary funds and "central funding," but was never told that "central funding" meant E&G carryforward funds. We found no evidence that the FFC or BOT were told anything about the funding for the Infrastructure project. Even when Merck addressed the BOT about these projects on various occasions *after* the November 1, 2017 transfers, he did not inform them that the transfers had happened, that they were being treated as internal loans or how they would be repaid.

2. <u>Timeline of Significant Events</u>

a) *Early plans to renovate the CEM building and secure funding*

For many years, UCF had a small presence in downtown Orlando with two academic facilities. The University leased one of these facilities, the CEM building, from the city of Orlando for $1 per year. By 2009, the University was discussing renovating the CEM building, but this was considered a low priority, long term project. As evidence of this, from 2009 to 2011, the University included the project on its Capital Improvement Plan ("CIP") for PECO funding but ranked it very low (ranging from 38 to 40) and projected that $6.3 million would be needed in the fourth fiscal year of each five-year plan. (Exhibits 125, 126 & 180). The project was listed the same way in the CIPs approved in 2012 and 2013, except it was moved from the PECO category to the lowest priority project under "Requests From Other State Funding." (Exhibits 127 & 181). Despite this, we found no evidence the University asked the State for other funds for the project during this time. A fair interpretation is that the University did not expect to obtain state funding during this time, but included CEM on the CIPs to inform the BOT and BOG that this was a significant, long term project under consideration.

The CEM building is shared with Valencia College and prior to the renovation was used by UCF for multidisciplinary graduate and undergraduate course offerings, including three graduate programs for Interactive Entertainment, Digital Media, and Emerging Media through the Florida Interactive Entertainment Academy ("FIEA"). The renovation project which the University eventually funded in November 2016 (as discussed below) is a 28,000 gross square foot remodel and renovation of the CEM building (roughly half of the building) to upgrade the existing structure and provide modern teaching facilities. The renovation also includes minor updates throughout the entire building such as new carpeting and painting. The renovation adds general education classrooms, collaborative student learning environments and additional offices to support the Downtown Campus. The renovated CEM building (now called the Communication and Media Building) will house FIEA, the Center for Research and Education in Arts, Technology and Entertainment, and the Nicholson School of Communication and Media, and will offer both graduate and undergraduate programs. (*See* Exhibits 182, 183, 184, 185 & 186).

b) *The University decides to build the Downtown Campus*

By May 2014, the University was discussing expanding its presence in downtown Orlando and establishing a satellite campus there, to be developed in multiple phases. (Exhibit 186). The first phase would ultimately come to include several different capital projects, and is slated to open in August 2019. As part of the planning for this phase of the development, in July 2014, the University added several Downtown Campus projects to its FY 2015-16 CIP, specifically, a "UCF Downtown Presence" project with an estimated cost of $75 million and a "UCF Downtown Presence Garage" project with an estimated cost of $15 million, both listed under "Requests From Non-State Sources, Including Debt." The University continued to include the CEM project under "Requests From Other State Sources" with a slightly higher estimated cost of $6.5 million. (Exhibit 128).

In September 2014, President Hitt publicly announced that UCF and Valencia College wanted to build a joint campus in downtown Orlando and would seek funding from the State. (Exhibit 187). The University continued developing its Downtown Campus plan with many details still to be determined. As shown by a status of capital projects presentation given to President Hitt by the Facilities department in October 2014, the estimated cost for the initial "Downtown Presence" project was $57.8 million with funding to come from the State or to be determined, while the total size of the project, projected construction dates, and the architect and contractor were also undetermined. (Exhibit 135).

President Hitt delegated responsibility for the Downtown Campus project to Provost Whittaker, who in turn formed a working group comprised of individuals from different University departments, including the Downtown Campus, Facilities and the Finance & Accounting ("F&A") departments, to assist with the project. The Downtown Campus department members included Fred Kittinger (Senior Associate VP for University Relations and Director of State & Local Government Affairs), Paul Lartonoix (Assistant Vice President), and Mike Kilbride (Associate Director, UCF Downtown), along with Thad Seymour who was brought in as a contractor in September 2015 after a career in private practice. The Facilities department members included Bill Martin (Director of Facilities, Planning and Construction) and later Allen Bottorff (Director, Downtown Campus Facilities), who assumed Martin's role overseeing construction of the Downtown Campus projects once he joined UCF in 2016. The F&A department members included CFO Merck and Tracy Clark, with assistance from Christy Tant. In July 2016, Thad Seymour was named Vice Provost of the Downtown Campus and assumed primary responsibility for the development of the campus while still in his contractor role (he did not become a UCF employee until January 2018). Notably, during the relevant time frame, Seymour, Kilbride and Bottorff received no training on the BOG regulations and were not even informed of them. In interviews, Seymour, Kilbride and Bottorff reported that they relied upon Merck and the F&A staff to handle funding issues, with Clark taking the lead.

c) *Initial plans for and approval of the Downtown Campus, and alternative plans in response to Governor veto*

The BOT approved the University's formal proposal for a Type I downtown campus at its January 29, 2015 meeting. Executive Vice Provost Diane Chase prepared the Downtown Campus proposal and Provost Whittaker presented it to the Board. The proposal described a multi-phase, long-term project with an estimated cost of $135.5 million for the capital projects portion to be incurred in the first two years. The proposal did not, however, address the funding sources for these projects. As part of the proposal, the city of Orlando agreed to gift 15-20 acres of land (valued at between $20-22 million) to the University and also transfer to it title to the CEM building (valued at $22.5 million). (Exhibits 186 & 188).

During the spring 2015 Legislative session, the University, with support from the city of Orlando, sought $57.8 million in funding from the State for the Downtown Campus project. (Exhibits 189 & 190). The Legislature allocated $15 million for one of the Downtown Campus buildings in the State budget for fiscal year 2015-16, but Governor Rick Scott vetoed that allocation as part of a larger set of state budget cuts on June 23, 2015. (Exhibits 191, 192 & 193).

Days after the Governor's veto, the BOT approved the University's FY 2016-17 CIP, which listed a number of different Downtown Campus projects. These included the CEM renovation ($6.7 million) and the Energy Plant ($15.1 million), which were both listed in two places, under "Requests From Other State Sources" and "Requests From Non-State Sources," each with planned expenditures in FY 2016-17. Two other Downtown Campus projects were also included in the PECO section of the CIP, UCF Downtown Campus Building I ($57.8 million) and UCF Downtown Campus Building II ($77.7 million). (Exhibit 138). The Fixed Capital Outlay Plan submitted to the BOG on June 30, 2015 included these same project listings. (Exhibit 143). These documents indicate the University was beginning to consider funding sources for specific parts of the Downtown Campus, but now had to develop an alternative plan in light of the Governor's funding veto.

During the summer of 2015, University officials negotiated a new funding plan for the Downtown Campus with the Governor and legislators. Under this plan, referred to by some as the "20-20-20 plan," the $60 million estimated cost of a new downtown academic building (what is now the Dr. Phillips Academic Commons building) would be split evenly between the State, the University, and the UCF Foundation (whose portion would come from fundraising efforts). (Exhibit 194). In agreeing to this plan, the Governor made it clear that the State would not provide any other funding for the Downtown Campus before fiscal year 2018-19, leaving the University on its own to fund any additional Downtown Campus projects it wished to undertake before then. (Exhibit 195).

In September, 2015, the BOT approved the University's updated proposal for a Type I downtown campus, which incorporated this new 20-20-20 plan. (Exhibits 196 & 197). The updated proposal, presented by Provost Whittaker, included the academic commons building, but also the CEM renovation, Energy Plant, Student Center and other projects. Provost Whittaker discussed the 20-20-20 funding plan for the academic commons building and explained that the CEM renovation would be paid for using "already allocated university resources." (Exhibit 194). Whittaker did not specify what these resources were or identify the specific funds that had been allocated. Despite this statement, and as discussed in subsection d) below, we found that discussions concerning the use of E&G funds for CEM did not begin until early 2016, and that the funds were not transferred to the project until November 2016.

On January 7, 2016, the BOT approved a Memorandum of Understanding ("MOU") with Governor Scott concerning the Downtown Campus project which, among other things, memorialized the 20-20-20 plan, including that there would "... be no further State of Florida investment for the UCF Downtown Campus beyond the current request of $20 million prior to fiscal year 2018-2019." (Exhibit 195). The following day, President Hitt signed the MOU on behalf of the University. (Exhibit 198). Given this MOU, the University and BOT knew that no additional State funds would be available for any Downtown Campus projects until July 2018 at the earliest.

Knowing that additional State funding for the Downtown Campus would not be forthcoming, the University looked to other sources, resulting in the decision—at two distinct points in time—to commit E&G carryforward funds towards the four projects at issue here. Below we first discuss the November 2016 decision to fund the CEM project, and then turn to the Energy Plant, Student Center and Infrastructure projects and the November 2017 decision to fund those projects through internal loans of E&G carryforward funds.

d) *The University opts to use E&G carryforward funds to renovate CEM*

We found that University officials began discussing the use of E&G carryforward funds to pay for the CEM renovation in early 2016, culminating in the transfer of $5 million to the project in November 2016. We could not pinpoint the precise date when this funding decision was made, but as discussed below, conclude it was made by Provost Whittaker and CFO Merck, with involvement from Associate VP Tracy Clark.

According to Christy Tant, Whittaker, Merck, Clark, Tant and others began discussing the need to find funding for the CEM project in February 2016. Tant bases this on a February 19, 2016 email she sent to Assistant Vice President Lartonoix, who was involved in the early planning for the Downtown Campus, to confirm the $5-$8 million cost estimate for CEM. (Exhibit 199). Also on February 19, Clark sent an email to Whittaker and Merck attaching a schedule she said Whittaker had asked her to prepare for an upcoming meeting they had with President Hitt. The schedule, entitled "Facilities Funding Plan as of 2/20/16," listed various capital projects and their anticipated funding sources. The schedule included the CEM renovation (identified as "FIEA Renovation") with the source of funding for its estimated cost of $8 million identified as "Central Carryforward." Clark explained in her email that the cost estimate for the CEM project was being confirmed with Lartonoix. (Exhibit 200).

On February 20, Merck responded to Clark's email, stating "this plan will work." Merck also asked Whittaker and Clark to meet with him the following week "... to see if we can come up with additional options to put into the funding mix." Whittaker responded "agreed" on February 22. (Exhibit 201). It is unclear if Whittaker was agreeing to the proposed funding plan or merely agreeing to meet. Because Whittaker, Merck and Clark declined to be interviewed, we could not ask them about these emails or what they discussed in meetings about this funding plan. It is also unclear if Whittaker and Merck met with President Hitt at this time about the funding plan, and what was discussed if they did.

In early March, Whittaker, Merck and Clark continued to discuss funding options for the CEM project. In emails exchanged on March 11, Merck stated that he had never committed to find more than $4 million in funding for the project, to which Clark responded: "We have $5 million set aside right now." (Exhibit 201).[68] Based on the earlier Facilities Funding Plan, Clark appears to have been indicating that she had $5 million in the University's central E&G reserve earmarked for the project.

On March 23, Whittaker called a meeting with President Hitt, which Merck and Mike Morsberger, CEO of the UCF Foundation, also attended, in an effort to better understand the University's growing list of unfunded capital projects, and develop a process for deciding how to prioritize them. In advance of the meeting, at Whittaker's request, Clark and Tant updated a document listing the funding status of various planned capital projects at the University, and it was circulated to and reviewed by attendees at the meeting. The document, entitled "Capital Projects Current Funding Plan Updated 3/22/16," identified CEM as a funded project and indicated that the funding source for its $5 million estimated cost was "E&G." (Exhibit 151). It is unclear if the CEM project or its funding source was discussed during the meeting.[69] However, as detailed in the TCH Report and in this Report's discussion of Research I, meeting notes indicate certain questions were asked of Merck regarding the use of E&G funds for projects involving academic space (which included TCH and CEM) and his response may have caused attendees to believe such projects were being funded with internal funds other than E&G. (TCH Report at 40.)

As of July 2016, the University's FY 2017-18 CIP and Fixed Capital Outlay Plan no longer included the CEM project, indicating that the Facilities and Finance personnel who prepared these documents understood the project to already be funded, although Tant advised us that she still considered the funding to be in flux. (Exhibits 102 & 106). The funds, however, were not actually transferred to the project until late November 2016.

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[68] According to UCF Downtown Associate Director Kilbride, in a meeting with CannonDesign, a firm consulting on the Downtown Campus, Merck said he could find $4 million for the CEM project, and the firm followed up with a $5 million renovation proposal.

[69] Notes from the meeting indicate the need for site improvements was discussed with respect to CEM, but do not reflect a discussion about funding. (Exhibits 202 & 203).

On November 22, 2016, Assistant Controller Rebeca Richards emailed the University's Budget Office to request the transfer of $5 million in E&G funds from the central E&G carryforward account to the CEM construction account. Richards copied Christy Tant on this transfer request, which was made by forwarding an email string discussing the need to transfer the funds in response to the project architect's request for approval to proceed with work on the project. In support of this request, Richards attached a one-page document titled "Draft Budget Without Square Footages UCF Downtown CEM Renovation" and dated November 14, 2016. The document set forth the total project cost but did not indicate who had approved its funding or when such approval was received. (Exhibit 204). The Budget Office processed Richards' request and $5 million was transferred from the central E&G reserve account to the Facilities E&G carryforward account on November 22. The funds were then transferred to the Facilities construction account for the CEM project on November 28. (Appendix C at p. 2).

We were unable to pinpoint exactly when the decision to transfer this $5 million in E&G carryforward funds was made. The use of such funds for the CEM project had been discussed for some time at this point by senior level employees, with the planned funding reflected in various planning documents.[70] We found no indicator of when Provost Whittaker and/or CFO Merck specifically authorized the transfer, but such authorization presumably came after the architect began pushing in late October and early November for approval to begin work.

In April 2017, the Facilities department gave one of its periodic status of capital projects updates to President Hitt. The CEM project was included in the presentation, with its funding source described as "University." (Exhibit 205). The presentation materials for subsequent updates to the President would similarly describe the funding for CEM in this vague manner.

Construction work began on the CEM project in November 2017. As discussed earlier, the project budget was $5 million. As of June 30, 2019, $2.1 million had been spent on the project. (Appendix D). The main renovation work is complete and the University has obtained a Temporary Certificate of Occupancy. University faculty members have moved into the building and the renovated portion opens to students August 26, 2019.

e) *The University loans E&G carryforward funds to pay for the Energy Plant, Student Center and Infrastructure projects*

On November 1, 2017, the University transferred a total of $21.7 million in E&G carryforward funds to the Energy Plant, Student Center and Infrastructure projects but made the transfers effective as of October 31 so they would not be included in an interim carryforward balance report the University had to provide to the BOG in November.

[70] While the CEM project appeared for the first time on an E&G Commitments List dated March 10, 2017, with a commitment of $5 million in FY 2016-17, Tant explained its omission in prior versions was an error and the project's funding decision had been made earlier than this. (Exhibit 163).

These transfers were recorded and tracked as internal loans, although no repayments had been made to the E&G accounts that provided the loans as of late August 2018. The events leading up to this funding decision are addressed chronologically below, followed by a discussion of the University's various plans for repaying the loans which were never finalized or followed. We begin, however, with a brief description of each project, including its status.

(1) The Energy Plant, Student Center and Infrastructure projects

The Energy Plant is a standard central energy plant that utilizes a chilled water system to provide for the cooling needs of the Downtown Campus. Heating for the Downtown Campus is provided by boilers at each building, while electrical power is provided by local utilities. The plant is housed within a 9,500 square foot building, and there is a large equipment yard for the exterior components (cooling towers, pumps and transformers). The University originally pursued a tri-generation plant option to provide electrical, heating and cooling with the idea of using future energy cost savings to repay the project, but ultimately determined that was not feasible and opted instead for the chilled water plant. The relevant significance of this decision is that it impacted the cost of the Energy Plant project and eliminated the possibility of repaying the project with future cost savings. The project budget was $15.1 million, and $11.5 million in E&G funds were transferred to the project account. As of June 30, 2019, approximately $9.4 million had been spent on the project. (Appendix D). The project is approximately 95% complete, with an anticipated substantial completion date of late September 2019 and final completion date of December 2019.

The Student Center is part of UnionWest at Creative Village, a privately funded and developed 15-story building with residences on the top floors and other amenities. The University is leasing approximately 47,000 square feet of space within the building's first five floors, and shares that space with Valencia College. The Student Center project includes the design and buildout of the leased space, as well as FF&E for the space. The leased space includes the Office of Student Services for the Downtown Campus, a welcome area, classroom and office space, and a recreation center. It also includes Valencia College's School of Culinary Arts and Hospitality. The University's expenditures for this project are subject to its lease agreement with the UnionWest developers, which included a $1.4 million tenant improvement allowance which was used as part of funding the buildout. The project budget was $6.7 million, and $5.4 million in E&G funds were transferred to the project account. Excluding the $1.4 million tenant improvement allowance, as of June 30, 2019, approximately $2 million had been spent on the project. (Appendix D). The Student Center is slated to open on August 26, 2019. While the University has a Temporary Certificate of Occupancy for the Student Center space, some work remains and the anticipated completion date is January 2020.

The Infrastructure project involves the construction of various types of infrastructure needed for the Downtown Campus. This includes the underground infrastructure consisting of the telecommunications and data network system connections, along with the storm water, sanitation and power infrastructure that connect to the different Downtown Campus buildings. It also includes the data network system connections for the UnionWest building, including the Student Center. The project also includes above ground infrastructure such as street lights and landscaping. The project budget was $5 million, and $4.8 million in E&G funds were transferred to the project account. As of June 30, 2019, approximately $4.2 million had been spent on the project. (Appendix D). There remains some additional work to be performed, which is expected to be completed in September 2019.

(2) University officials consider using auxiliary funds for the Energy Plant but have no funding plans for the other projects

As discussed earlier, by early 2016, the BOT had approved the revised proposal for the Downtown Campus which incorporated the 20-20-20 plan for the academic commons building, and the University had signed an MOU with the Governor, confirming the plan and that no additional state funding would be provided to the Downtown Campus for several years. Against this backdrop, University officials began considering how to fund the other facilities they wished to build as part of the Downtown Campus, including the Energy Plant, Student Center and Infrastructure projects. Between March 2016 and August 2017, the University developed an initial plan to fund the Energy Plant using a loan of auxiliary funds, which would be repaid with future energy cost savings. The University also signed the lease for the Student Center during this time period, but does not appear to have identified funding for the project or even developed a funding plan. Funding for the Infrastructure project also received little attention during this time.

The Capital Projects Funding Plan document prepared for, and discussed at, Provost Whittaker and CFO Merck's March 23, 2016 meeting with President Hitt included the Energy Plant and Infrastructure projects, but identified them as unfunded. The Infrastructure project did not even have an estimated cost, while the estimated cost of the Energy Plant was $20 million, indicating these projects were still in the early planning stages. (Exhibit 151). The status of capital projects presentations given by the Facilities department to President Hitt in April 2016 and to the FFC in June 2016 similarly indicated that funding options for the Energy Plant were still being explored, and did not include the Infrastructure or Student Center projects at all. (Exhibits 103 & 206).

In May and July 2016, the BOT approved the FY 2016-17 Fixed Capital Outlay Budget and the FY 2017-18 CIP, respectively, each of which included the Energy Plant with an estimated cost of $15.1 million. The Fixed Capital Outlay Budget listed the project under non-state sources and indicated it was unfunded. The CIP listed the project as an anticipated expenditure in FY 2017-18 under Requests From Other State Sources as well as Request From Non-State Sources, indicating uncertainty as to its anticipated funding source, despite apparent plans to proceed with construction in the following year. Neither the Student Center nor Infrastructure projects were included on these documents, signaling that they were not yet being meaningfully pursued. (Exhibits 102 & 142).

The Energy Plant and Student Center projects were discussed with the FFC at its August 17, 2016 meeting. With respect to the Student Center, the FFC approved an MOU between the University and the private developer of the downtown student housing project. According to the agreement, UCF would lease approximately 30,000 square feet in the building for the Student Center and other uses. UCF would be responsible, however, for the costs to buildout and furnish the leased space, but would receive a tenant improvement allowance of approximately $1.4 million which would be applied first to such expenditures.[71] According to the FFC meeting minutes, Merck and John Pittman (Associate Vice President for Administration and Finance, Debt Management) also discussed the Energy Plant and recommended pursuing a state-approved performance-based contract for an outside company to finance and build the facility. This was a discussion item only, and the FFC was not asked to approve anything. Nevertheless, the FFC had reservations about this approach, and asked that alternative financing options be presented at a future meeting. (Exhibit 209).

The alternative plan which evolved from this was to finance the Energy Plant with a loan of auxiliary funds. This is reflected in meetings and emails during September 2016 involving a large number of people, including Merck, Clark, Tant, Pittman, Lee Kernek (Associate VP for Facilities & Safety), Lynn Gonzalez (Director of Budget Initiatives) and Brad Hodum (Associate Controller). Emails indicate that staff knew there were not enough auxiliary funds available to serve as principal for the proposed loan; nevertheless, they continued to pursue the plan anyway. (Exhibits 210, 211 & 212).

Merck, Pittman and Kernek presented the Energy Plant again at the FFC's October 12, 2016 meeting.[72] Materials they submitted to the FFC clearly identified the funding source for the project, stating: "Auxiliary cash balances will fund the construction of the facilities and purchase of the equipment, and the balances will be replenished with funds from the energy savings." (Exhibit 215). These materials did not disclose any concerns that insufficient auxiliary funds were available to make the loan. According to the audio recording of the meeting, Pittman told the FFC that the University planned to "self-fund" the construction, but did not elaborate on the description of funding provided in the meeting materials. FFC Chair Alex Martins asked that the project be brought back to the Committee once a final financing plan was in place. Merck responded that projects were not typically brought back before the FFC once they were approved and the funding source identified, but agreed nonetheless to bring the project back before the FFC at a later date as an informational item. (Exhibit 216).

In January 2017, the BOT approved a minor amendment to the 2015-25 Campus Master Plan to add the Energy Plant and various other Downtown Campus projects. A

[71] The BOT subsequently approved the Student Center MOU at its September 15, 2016 meeting. (Exhibit 208).

[72] In preparing for this meeting, Merck, Clark, Pittman and others compared the costs of the various options that had been requested by the FFC. Given the project's high cost and attention given to it by the FFC at the last meeting, Merck raised the question of whether it should be an approval item on the agenda, requiring a vote by the FFC and full BOT, or merely an informational item, and apparently decided to make it an informational item only. (Exhibits 213 & 214).

Capital Improvements List included in the meeting materials identified "E&G" as the "Fund Type" for the Energy Plant, but we found no evidence this was discussed with or otherwise brought to the attention of BOT members during the meeting. (Exhibits 110 & 111). This listing was inconsistent with the plan to fund the project with a loan of auxiliary funds that had been presented to the FFC just a few months earlier.

In or around March 2017, F&A staff prepared an internal loan repayment schedule for the Energy Plant, although the source of the internal loan funding was not specifically stated. (Exhibit 218). Internal emails from the same month, however, indicate that an auxiliary loan for the project had been approved, although it is not clear by whom. They also indicate that in May, the University signed a design contract for the Energy Plant, which reflected an increased budget from $10.3 million to $12.2 million. (*See* Exhibit 217). In July, Facilities established a construction account for the project, and Clark, Tant, Lee Kernek and others, including Allen Bottorff (Director, Downtown Campus Facilities), discussed how to address the project's increased budget, including the need for revised payback schedules and to present the new estimated costs to the BOT if the budget was not brought back in line. They also discussed the need for an MOU for the auxiliary loan, although we are aware of no such document being signed. On July 14, the University established a $1.5 million budget in the Downtown Energy Plant construction account to cover the design contract, although no official budget or general ledger (funding) transfers were made until later. (Exhibits 219 & 220).

In May 2017, the BOT approved the FY 2017-18 Capital Outlay Budget, which listed the Energy Plant as fully funded under "Other State Sources" with an estimated cost of $15.1 million. (Exhibit 112). This listing is curious since auxiliary funds are self-generated and not received from the state. When the FFC approved the budget earlier that same day, Lee Kernek explained (in reference to the CIP) that projects in the "Other State Sources" category were merely intended to "notice the Board of Governors" that the University was undertaking the projects and that they were all "internally funded." (Exhibit 221). Kernek did not specify that the internal funds to be used for the Energy Plant were auxiliary funds or that they were being loaned. The Capital Outlay Budget did not list the Student Center or Infrastructure projects and Kernek did not discuss them. There was no substantive discussion of the Capital Outlay Budget or any of the Downtown Campus projects during the BOT meeting.

The FY 2018-19 CIP approved by the BOT on July 20, 2017 did not include any of the three projects at issue (the Energy Plant was listed but crossed out, apparently indicating that funding was no longer needed for it). However, the accompanying "BOB-2" form listed "E&G" as the funding source for the Energy Plant. (Exhibit 104). According to the audio recording of this BOT meeting, the BOB-2 and the Energy Plant project were not specifically discussed. As noted in the TCH Report, BOT members interviewed were unfamiliar with the purpose of the BOB-2 form and likely would not have reviewed it specifically during the process of approving the CIP. (TCH Report at 29-30). Further, the BOB-2 listing conflicts with the Energy Plant plan to fund the project with an auxiliary loan previously disclosed to the FFC.

(3) University officials consider using E&G carryforward funds for the Energy Plant, Student Center and Infrastructure projects

We found that by August 2017, University officials were considering using E&G carryforward funds for some combination of the Energy Plant, Student Center and Infrastructure projects, although a final decision was not made until October.

For example, the FY 2017-18 Fund Balance Composition Report ("FBCR") submitted to the BOG on August 21, 2017 included $5.4 million in planned E&G funding for the Student Center (under the "Infrastructure, Capital Renewal, Roofs, Renovation, Repair" subcategory of E&G funds that were restricted or subject to a contractual obligation), but did not include the Energy Plant or Infrastructure projects. (Exhibit 210).[73] This is the earliest reference we found to funding the Student Center project with E&G funds. Christy Tant, who prepared the FBCR using the E&G Commitments List, said she did not include the Energy Plant or Infrastructure projects because the plan at the time was to use auxiliary funds for those projects, and she was not told that E&G funds would be used for them until October 2017. None of the projects, however, appear in the August 2017 version of the E&G Commitments List which would have been used to prepare the FBCR.[74] (Exhibit 223).

Adding further confusion, the FY 2017-18 Allocation Document includes all three projects, allocating E&G funding to them in the same amounts that were ultimately transferred on November 1, 2017 (as discussed in the next section).[75] The Allocation Document for a fiscal year is normally prepared in August of that fiscal year and signed by the President and Provost, authorizing the E&G allocations. However, as has been discussed, preparation of the FY 2017-18 Allocation Document was significantly delayed due to various reasons and never signed. There is no date on the copy of the Allocation Document we were provided, and therefore we cannot say when the three projects were added to the document, and it is possible they were added after the E&G transfers to the projects occurred in November.

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[73] According to emails, Christy Tant shared a draft of this report with Provost Whittaker, who in turn appears to have shared it with BOT Chair Marcos Marchena. However, the draft did not include any amount under the "Infrastructure, Capital Renewal, Roofs, Renovation, Repair" subcategory for "Restricted/Contractual Obligations," and thus does not appear to have included or referenced the planned expenditures on the Student Center project. (Exhibits 210, 211 & 212). It is noteworthy that the emails between Tant and Whittaker indicate that Whittaker is unfamiliar with these reports.

[74] Tant explained that funding for the Downtown Campus projects was continuously being discussed and evaluated, the tracking documents were regularly being revised or corrected as costs and funding sources changed, that she did not attend many of the meetings where downtown funding was discussed, and that she would not normally update the E&G Commitments List until she was told that funding decisions had been approved. Nevertheless, it is curious that she included a planned allocation of E&G funds to the Student Center on the FBCR but did not also update the E&G Commitments List.

[75] The Allocation Document actually combines the Energy Plant and Infrastructure projects as "Chilled water and infrastructure" with a $16.3 million allocation (the combined total of both projects) from the F&A department, and lists the Student Center in two different entries for a combined allocation of $5.7 million, split equally between the F&A and Academic Affairs departments — all consistent with the actual transfers made in November 2017. (Exhibit 176).

The Energy Plant appears on the September 25, 2017 version of the E&G Commitments List, and is the first of these three projects to appear on this budget tracking document. This version lists the Energy Plant in the "Recurring allocations from nonrecurring funds" section, with anticipated installment payments over fiscal years 2018-19 through 2022-23 instead of the full $11.5 million expenditure in FY 2018-19. (Exhibit 224). The placement of this project under recurring allocations, and other notes in the document, reflect that the plan was still to treat the funding for this project as a loan, although now a loan of E&G funds rather than auxiliary funds. However, Tant's statements that the funding plans for all three projects remained in flux at this time, and that she was not told until October that E&G funds would be used, suggest that a final decision to loan E&G funds to pay for the Energy Plant may not have been made yet, despite the project's inclusion on this document.

On September 26 and 27, 2017, the building lease for the Student Center project was presented to, and approved by, the FFC and BOT, respectively. CFO Merck, Thad Seymour (Vice Provost for UCF Downtown) and Jennifer Cerasa (Associate General Counsel) presented the lease to the FFC, while Merck presented it to the BOT. (Exhibits 225 & 226). Mike Kilbride, the Associate Director for UCF Downtown, prepared talking points for Seymour to use at the FFC meeting which, among other things, addressed funding for the $5.3 million in buildout costs for the Student Center space. The written talking points and audio recording of the meeting confirm Seymour told the FFC this cost would be split between "auxiliary fund reserves and central funding." (Exhibits 227 & 228). In presenting the lease to the BOT the next day, Merck did not share the cost amount for the Student Center buildout or the specifics of the project funding.

Seymour and Kilbride cooperated in this investigation, answered questions about the talking points and Seymour's FFC presentation, and provided copies of relevant emails. Both confirmed that Kilbride used funding information provided to him by Tracy Clark to prepare the talking points, and both understood "central funding" to mean funds controlled by Merck's F&A department that were not committed to any colleges or units. They did not understand "central funding" to refer to E&G funds, although neither were aware of the BOG regulations limiting the use of such funds, and so the use of such funds for the Student Center project would not have concerned them anyway. Neither Seymour nor Kilbride were told after this meeting that auxiliary funds would not be used for any portion of the project, and that the entire cost of the project would be funded with a loan of E&G carryforward funds. Further, according to Seymour, he was not involved with the decisions on funding sources for any of the Downtown Campus projects, and understood that was being handled by the F&A department, specifically Merck and Clark. We found both witnesses to be candid and credible, and found no evidence contradicting their statements.

(4) University officials decide to fund all three projects using E&G carryforward loans

The decision to use E&G carryforward funds for the Energy Plant, Student Center and Infrastructure projects appears to have been made in the second half of October 2017, coinciding with a request from the BOG at that time to provide an interim FBCR in November, reporting the University's carryforward balances as of October 31, 2017.

As will be discussed, on November 1, the University transferred a total of $21.7 million in E&G carryforward funds to the construction accounts for these three projects but made the transfers effective October 31, so that the funds would not be included in the BOG report a few weeks later.

On October 17, 2017, BOG staff emailed a "Fund Balance Update" memorandum to all university CFOs, including Merck, through its standard data requests process. The memorandum explained that the BOG needed to provide an update on university carryforward fund balances to the Legislature, attached the fund balance report data each university had submitted in August 2017, and asked each university to provide their updated information (as of October 31, 2017) by no later than November 17. Merck received this email and forwarded it to Clark and Tant the same day, stating: "And, here it is." (Exhibit 229). According to Tant, this email and the BOG's request for an interim fund balance report prompted the E&G transfers for the three downtown campus projects two weeks later.

Clark instructed Tant to make the transfers of E&G funds to these Downtown Campus projects and have them posted in October. Clark did not inform Tant who had authorized the transfers. However, Tant explained that Clark gave her these instructions after returning from a meeting with Provost Whittaker and possibly others, and that Clark did not make these types of decisions on her own. We found no direct evidence that Merck was present at such meeting or authorized the transfers. However, the fact that he received the BOG Fund Balance Update memorandum and as CFO would likely need to authorize or at least be apprised of funds transfers of this size (exceeding $21 million) suggests he either approved the transfers or, at a minimum, was aware of them. We found no evidence that President Hitt approved the transfers or was even aware of them, with the exception of the aforementioned unsigned FY 2017-18 Allocation Document that listed the E&G allocations to the projects. Hitt, Merck, Whittaker and Clark all declined to be interviewed and thus could not be questioned about these events.

In his PIE Committee testimony, Merck stated that "there would have been a number of us involved in" funding decisions for the Downtown Campus projects. (Exhibit 12 at p. 75). He did not testify about the Energy Plant project specifically, but stated with regard to the Infrastructure project that "while I was involved in the discussions of what to do and that sort of thing, I wasn't directing money to be transferred from any particular place to do it." Merck further stated that the "commitments" to the Energy Plant and Infrastructure projects were discussed at University Budget Committee ("UBC") meetings prior to the actual transfers taking place, although we found no evidence of that, or that the Student Center project was discussed. (*Id.*). For her part, Clark testified that the transfers to the Downtown Campus projects "should have been discussed in a budget chat meeting, yes;" she did not know if they were also discussed in a UBC meeting. (Exhibit 13 at p. 66). The scope of Whittaker's testimony in his PIE Committee deposition did not include the funding of the Downtown Campus projects. In sum, none of them specifically identified the person(s) who actually approved the transfers.

On October 31, 2017, Tant met with Donna DuBuc (Associate Director, Budget, Planning and Administration) to discuss the fund transfers for the Downtown Campus projects requested by Clark, and asked DuBuc to set up a method to track these transfers as internal loans and post them effective as of October 31. (*See* Exhibit 230). The next morning, November 1, DuBuc sent an email titled "Downtown Construction Transfers" to staff accountants Meghan Nelson and Lea Mignone, copying Tant and Associate Controller Brad Hodum, among others, requesting that both budget and cash transfers of carryforward funds totaling $21.7 million be made as of October 31 to the construction accounts for the Energy Plant ($11.5 million), Student Center ($5.4 million), and Infrastructure ($4.8 million) projects. The email itemized the specific accounts and amounts of the transfers, but did not attach or reference any authorization or support for the transfers, as was normally required. (Exhibit 231).

The transfers were made on November 1, 2017, but as instructed, were recorded as of October 31. (Appendix C at p. 3). The transfers of $11.5 million to the Energy Plant construction account and $4.8 million to the Infrastructure account originated from a new budget account DuBuc opened to track this budget transfer and subsequent repayments separately from other E&G carryforward funds held in the central E&G reserve (the "E&G Central Carryforward Internal Projects Account"). The transfer of $5.4 million to the Student Center account originated in equal amounts from the E&G Central Carryforward Internal Projects Account and Academic Affairs' E&G carryforward account.[76]

On November 17 2017, the University submitted its interim FBCR to the BOG which reported its E&G carryforward fund balance as of October 31, 2017. This balance did not include the $21.7 million because it had already been transferred to the construction accounts for these Downtown Campus projects. (This amount was included in the "Expenditures to Date" line as part of the roll-forward of the E&G carryforward fund balance from July 1, 2017 to October 31, 2017, which had the effect of decreasing the reported E&G carryforward balance). (Exhibit 222).

Following this, one of the projects, the Energy Plant, was presented to the BOT, but its funding source was not disclosed as E&G funds. Indeed, the fact that $21.7 million in E&G funds had just been loaned to the Energy Plant and other two projects was not shared at all. In December 2017 and January 2018, the FFC and BOT approved the change in plans for the Energy Plant from a tri-generation plant to a central energy plant (providing cooling only) along with a budget increase to $12.3 million. The FFC and BOT members were not told that the project had already been funded with $11.5 million, or that those funds were E&G carryforward funds that had been loaned to the

[76] After the fund transfers on November 1, all three projects appeared on the E&G Commitments List. The November 16, 2017 version (which has an updated date of November 1) listed the Energy Plant the same way it was listed in the September version, and added the Student Center and Infrastructure projects with no amounts indicated. (Exhibit 232). The November 30, 2017 version includes all three projects and their respective E&G funding amounts that were transferred from F&A: Energy Plant ($11.5 million), Infrastructure ($4.8 million) and Student Center ($2.7 million). (Exhibit 233). The other $2.7 million transferred for the Student Center was not listed because it came from the Academic Affairs division's E&G carryforward account, not F&A.

project. (Exhibits 234, 235, 236 & 237). During the December 13, 2017 FFC meeting[77], FFC (and BOT) Chair Marchena asked Merck specifically about the funding source for the Energy Plant in the following exchange:

MARCHENA	Bill, what is the source of funding, uh, for the $12.3 million?
MERCK	We are using and, I'm going to get Christy to correct me if I'm wrong on this. Like I said, I like to have all my subject matter experts here to back me up so if I go astray they can corral me and-. But we're, **we're using the same source which is our internal, um, r-, uh, returns on investments, our interest earnings and so forth on, um, our auxiliary accounts and other accounts that are legitimately available for those purposes**. And then we let those, we'll, we'll borrow from our cash balances which are enough to handle it and then as those earning come in then we replenish the, the amounts that we took out of the cash that actually belongs to the people the different departments. Is that fair?
TANT	Yes.

(Exhibit 239 (emphasis added)). Merck did not clearly say the University was using E&G carryforward funds, even though such funds had just been transferred six weeks earlier, and Tant did not clarify this either. Nor did Merck say that the funds being loaned were not permissible for this purpose or that there was any possibility they were impermissible, even though the Energy Plant plainly involved new construction. As such, the Board members could not reasonably have been expected to understand that E&G funds were being used to finance the Energy Plant project, that such funds were being loaned to the construction account through an internal loan, or that there was anything possibly improper or risky about the funding. FFC members we interviewed

[77] Mike Kilbride prepared talking points for Merck to use at this FFC meeting which were shared with Merck, Seymour and Bottorf, and edited by Merck. These talking points indicated the University would use "central reserves" to fund the Energy Plant. (Exhibit 238). As discussed previously, Kilbride and Seymour did not understand "central funding" to mean E&G funds and would not have appreciated the significance of using E&G funds for this project at the time even if told such funds were being used.

who were present for this meeting, including Chair Marchena, confirmed they did not understand these points.[78]

The BOT did not receive any further specific information about the funding of the Energy Plant, Student Center or Infrastructure projects until September 2018 in connection with the TCH investigation. The FY 2018-19 Capital Outlay Budget approved by the BOT on May 24, 2018 included the Energy Plant but only under the "Plant Operations and Maintenance" category, indicating the University would seek state funds for the project's operating costs after it was completed. The other Downtown Campus projects at issue were not included. (Exhibit 207). Accordingly, the BOT did not approve the capital outlay for the construction of any of these projects during FY 2018-19, although construction began and funds were expended.

Similarly, the FY 2019-20 CIP approved by the BOT on July 19, 2018 did not list any of these projects. This makes sense considering that University officials knew the projects were already fully funded with E&G carryforward funds. However, the BOB-2 form accompanying this CIP did list the Energy Plant and Student Center as projects that may require State funding to operate and maintain, and identified their funding sources as "E&G (Reserve)-Private" and "Private," respectively. (Exhibit 178). As noted in the TCH Report, BOT members were unfamiliar with the BOB-2 from and likely would not have reviewed it specifically during the process of approving the CIP. (TCH Report at 30). Lee Kernek, who was responsible for preparing the CIPs and BOB-2 forms and presenting them at Board meetings, declined to be interviewed.

(5) University officials develop plans to repay the E&G loans, but no plan is ever finalized or implemented, and no repayments occur

Between October 2017 and August 2018, Tracy Clark and other F&A staff developed various plans to repay the $21.7 million in E&G carryforward funds that were loaned to the Energy Plant, Student Center and Infrastructure projects, including using donations to be raised by the UCF Foundation *and future E&G carryforward funds*. These plans, which were discussed early on by a group led by Clark that included Thad Seymour (Vice Provost for the Downtown Campus) and Mike Morsberger (CEO of the UCF Foundation), also addressed the funding of other Downtown Campus projects beyond the scope of this investigation. We found that none of these plans were actually implemented and that as of late August 2018, when the funding of TCH came under scrutiny, no repayments had been made towards the internal loans for the Energy Plant, Student Center and Infrastructure projects.

The primary document evidencing this repayment plan is called the "Repayment Schedule for Internally Financed Capital Projects," one version of which was titled "Downtown Funding Plan" (the "Repayment Schedule"). The Repayment Schedule was

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[78] The BOT approved the change in facility type, budget increase and name change for the Energy Plant project at its January 18, 2018 meeting. Trustee Martins briefly explained the reasons for the changes provided by Merck and Kernek at the FFC meeting, but made no mention of project funding. (Exhibit 240).

an internal working document created to identify the proposed method of repaying internal loans that were used to finance the construction of various Downtown Campus capital projects. All of the different versions of the schedule include the Energy Plant, Student Center and Infrastructure projects. They also include the CEM renovation project, although it is clear there was never any plan to repay the E&G carryforward funds used for that project (which were not, after all, loaned). The Repayment Schedule lists each project in the first column with the repayment source(s) identified underneath or to the side of the project name, and then includes the total project cost, funded amount and planned repayment amounts by year in the columns to the right of the project. Clark and Christy Tant were initially responsible for updating and maintaining this document, with responsibility later shifting to Associate Controller Hodum and staff accountant Nelson.

The earliest version of the Repayment Schedule we identified is from mid-October 2017. Tant sent this version of the document to Clark, at her request, on October 19. This version indicated that "Central E&G reserve" would be used to repay the entire amount loaned for the Energy Plant, "Provost reserves" would be used to repay at least half of the amount loaned for the Student Center, while auxiliary funds would be used to repay the Infrastructure loan. None of the projects were identified as being funded, which makes sense as the transfers to their construction accounts would not be made for two more weeks, until November 1. (Exhibit 241).

On November 2, 2017, the day after $21.7 million in E&G carryforward funds was transferred to the three Downtown Campus projects at issue, staff from F&A, UCF Downtown, and the Foundation met to discuss funding plans for the Downtown Campus, including plans to repay internal loans that were being used to finance some of the projects.[79] In a follow-up email sent to the group members the next day, UCF Downtown Associate Director Kilbride summarized the meeting outcome that the group was "setting our next philanthropic goal (capital) for the current phase of the downtown project at **$12 Million**" and that one of the ways the funds would be used as they were raised was for "[a]ccelerated repayment of central university resources contributed towards the capital projects in Phase 1." After the meeting, Clark was to update the Repayment Schedule and share it with the group, which would then meet again in late January 2018. (Exhibits 242 & 243).

Clark emailed the updated Repayment Schedule to the group the next day. The new plan called for $6.5 million in future donations raised by the Foundation to be used to repay the $11.5 million that was loaned for the Energy Plant during fiscal years 2018-19 through 2021-22, with the remaining balance of $5 million to be repaid using "Central E&G reserve" funds during fiscal years 2019-20 and 2020-21.[80] Donations

[79] The attendees at this meeting were Clark, Seymour, Kilbride, Dorcas Wilkinson (Associate VP Advancement/Alumni Affairs), Karen Cochran (Associate VP Advancement/Alumni Affairs), Paul Baker (Senior Philanthropic Advisor, UCF Foundation) and Tamara Smith Darby (Coordinator Administrative Services).

[80] According to Tant, "Senior Leadership" (who she identified as Whittaker, Merck, Clark, Kernek, Pittman and others) sometimes redirected E&G funds committed to the additional utilities expenses anticipated at the Lake Nona medical school campus towards other needs. In the case of the Energy

would not be used to repay any portion of the loans for the Student Center and Infrastructure projects.[81] Instead, $2.7 million from "Housing reserves" and $2.7 million from "Provost E&G reserves" would be used to repay the Student Center loan in fiscal years 2018-19 and 2019-20, respectively, and the Infrastructure loan would be repaid using $2.5 million from the "Central E&G reserve" in fiscal year 2021-22 and $2.5 million from auxiliary funds in fiscal years 2021-22 and 2022-23. For reasons that are unclear, the Repayment Schedule included a column showing the amount funded for each project listed "*as of June 30, 2017*," so the Energy Plant, Student Center and Infrastructure projects were all shown as unfunded, even though they were fully funded only a few days earlier. (Exhibit 244).

Clark noted in her email that the group needed to meet with CFO Merck to get his support for this new plan.[82] Based on a calendar invitation, that meeting was scheduled for November 27, 2017. (Exhibit 245). It is unclear, however, if the meeting actually took place. Regardless, emails and other documents reflect that discussions about the Repayment Schedule continued into the following months and that the general plan did not change over that time, except for small changes in estimated project costs. (Exhibits 246, 247 & 248). Accordingly, it can reasonably be assumed that Merck concurred with the plan.

On March 26, 2018, Seymour and Kilbride presented an update on the funding for Phase I of the Downtown Campus to the UBC.[83] Because UBC meetings are not recorded, the meeting minutes are the best evidence of what was discussed. The minutes for this meeting indicate that Seymour and Kilbride began by giving an overview of the projects included in Phase I of the Downtown Campus. Kilbride then outlined the funding plan for each project, including using $12 million in donations to be raised by the Foundation, $6.5 of which would be used for "repayment of university

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Plant, Clark informed Tant to redirect these utilities commitments to the Energy Plant over time to "make central whole for funding the project." In other words, the University planned to repay the costs of the Energy Plant with central E&G carryforward funds over time. This was reflected in notes in the September 26, 2017 version of the E&G Commitments List and subsequent versions thereafter, and confirmed in follow up conversations with Tant.

[81] The remaining $5.5 million of the $12 million philanthropic goal was earmarked for repaying portions of the Downtown Academic Building ($5 million) and the Downtown Centroplex ($500,000) projects.

[82] Clark's suggestion was to meet with Merck and Curtis Sawyer, the Associate VP of University Services, to get their support for the plan. Clark previously sent Sawyer the October 2017 Repayment Schedule, and was likely including him because he was with the University's direct support organization responsible for parking and transportation and the repayment plan included the downtown parking garage.

[83] UBC member attendees were Cristina Barreto (Student Government Leadership), Scott Cole (General Counsel), Maribeth Ehasz (VP for Student Development & Enrollment Services), Grant Heston (VP for Communication & Marketing), Elizabeth Klonoff (Vice President for Research and Dean of the College of Graduate Studies), CFO Merck, John Pittman (Associate Vice President for Debt Management), and, attending by phone, Deb German (Dean and VP for Health Affairs, College of Medicine). Non-member attendees were Donna DuBuc, Lisa Jones (Associate Provost of Strategy and Special Assistant to the President), Robert Taft (Chief Audit Executive), Mark Wray (Information Systems Training Specialist Lead), and, attending by phone, Mike Morsberger (CEO, UCF Foundation).

resources." The minutes do not indicate that UBC members were told what types of funds comprised "university resources" or that the University had loaned E&G carryforward funds to pay for some of the Phase I projects. For their part, Seymour and Kilbride advised us that they did not understand how the University was internally financing these projects or what specific funds were being used, and that the information they presented at this meeting had been supplied by Merck and/or Clark. They also indicated that they were not familiar with the BOG regulations or restrictions on the use of E&G funds and had no idea there was anything potentially improper about the funding of these projects. The UBC was not asked to vote or take any action on the funding update presented by Seymour and Kilbride. (Exhibit 249).

The minutes for this meeting do not reflect that the Repayment Schedule was shared with UBC members or discussed during the meeting. It was not included with the agenda or other meeting materials that were circulated in advance of the meeting or included in the PowerPoint that was presented. (Exhibit 250). In connection with the investigation, we received a copy of the December 2017 version of the Repayment Schedule (titled "Downtown Funding Plan") in a PDF file that also contained the UBC agenda and meeting minutes for March 26, 2018. This version of the Repayment Schedule indicates that "central E&G reserve" funds were used for the CEM project, but still shows the Energy Plant, Student Center and Infrastructure projects as unfunded. It does show, however, a plan to repay the costs of those projects using E&G funds. (*See id.* at 4-5). We found that, despite being included in the PDF file, this document was not provided to or discussed with UBC members in connection with the March 2016 meeting.[84] Moreover, UBC members we interviewed confirmed that they had never seen the document before.

University officials (primarily F&A staff) continued discussing plans to repay the loans for the Downtown Campus projects intermittently from April through at least September 2018. As reflected in the corresponding versions of the Repayment Schedule, as of April 2018 the University still planned to use E&G funds to repay portions of these three projects, but by September 10 had changed the plan so E&G funds would not be used, presumably in response to the TCH controversy. (Exhibits 248, 252 & 253).

We found no evidence that the University made any repayments towards these loans as of late August 2018, when the funding of TCH came under scrutiny and officials began repaying E&G funds that had been used to fund its construction. The Budget Office's intent with setting up the E&G Central Carryforward Internal Projects Account was to track the outstanding balances and repayments, but a review of the ledger for activity in this account confirmed the University made no repayments towards these projects as of August 23, 2018. Similarly, Associate Controller Hodum, who helped prepare the draft amortization and repayment schedule for the Energy Plant in March

[84] Donna DuBuc requested the 2017 Repayment Schedule from Mike Kilbride following the meeting and then apparently created a PDF that included it, as well as the meeting agenda and minutes. Kilbride advised us that he does not believe the Repayment Schedule was discussed or distributed at the UBC meeting, and that DuBuc asked him for it because she did not receive a copy at the meeting (which she attended). (Exhibit 251).

2017, confirmed no payments matching the repayment schedule were made through 2018.

Furthermore, it does not appear that the plans to institute a fundraising campaign to assist in repaying the Energy Plant loan and funding other Downtown Campus projects ever got past the planning stage. Multiple witnesses from the Foundation, including CEO Morsberger, confirmed there was never a formal fundraising campaign established for this purpose. Despite attending at least one meeting where the $12 million fundraising goal was discussed, Paul Baker (who was hired in 2017 as the Foundation's dedicated person for the Downtown Campus philanthropic efforts) remembered nothing about the goal or any plan to solicit donations to repay loans made by the University to fund some of the downtown projects. While the Foundation did raise approximately $1.65 million in donations for the Downtown Campus beyond the initial $20 million it raised for the Dr. Phillips Academic Commons building (as part of the 20-20-20 plan), Baker confirmed these additional donations were earmarked for specific purposes, such as naming rights for the plaza and fountain for the Dr. Phillips Academic Commons building and a Downtown Campus mentoring program. We found no evidence these funds were transferred to the central E&G reserve account that funded the loans for the Energy Plant, Student Center and Infrastructure projects.

While apparently not pursued—at least as of late August 2018—it is notable that the University's plan for repaying these loans included using *future* E&G carryforward funds from its central reserve. Thus, this is not a situation where the University was merely planning to temporarily fund these capital projects using impermissible E&G funds and then subsequently replace them with funds that could be permissibly used.

The absence of a viable plan to repay the loans is further reason why they should not have been made in the first place. As Merck himself explained at a BOT meeting in January 2017 in response to a question from Chair Marchena about the process for using internal loans to fund capital projects and the related limitations: "... we've gotta have a plan for replenishing that with some revenue source. ... if we can't figure out how to pay it back, we can't borrow from ourselves." (Exhibit 254).

f) *Knowledge and understanding of relevant regulations*

The individuals principally involved in the decisions to use E&G funds for all four of the Downtown Campus projects at issue (CEM, Energy Plant, Student Center and Infrastructure), namely Provost Whittaker, CFO Merck and Tracy Clark, all declined to be interviewed, and therefore we cannot say with certainty what their rationale was or if they knew the funding for these projects was improper or potentially improper. Evidence of their respective knowledge and understanding of the BOG regulations, including limits on the use of E&G funds, has already been discussed elsewhere in this Report. Notably, the Energy Plant and Infrastructure projects involved new construction, which Merck and Clark have previously acknowledged E&G funds could not be used for (at least without risking an adverse audit finding by the State Auditor General). As indicated earlier in this section, while Whittaker, Merck and Clark each gave a deposition to PIE Committee investigators, their testimony did not address who approved the funding for these Downtown Campus projects, the rationale for the funding or whether they personally believed the use of E&G funds for the projects was permissible.

Interim President Seymour, who served as the Vice Provost for the Downtown Campus during the relevant time, did not make the decisions to use E&G funds for any of these projects. Nevertheless, he received documents after the fact indicating that at least the CEM project, if not the others, was funded with E&G. He also received materials to present on the Student Center funding which included a vague description of the funding source. Seymour received no training on the BOG regulations, nor was he told about limits on the use of E&G funds or warned of any risks associated with using such funds for any of the Downtown Campus projects. We find, therefore, that if Seymour knew of the specific funding for CEM or any of the other three projects from these documents, he did not understand the significance of using E&G funds or that such funding was improper.

g) *Timing concerns*

We found that the timing of the transfer of E&G carryforward funds to the construction account for the CEM project ($5 million in November 2016) was based on a legitimate need for at least some of the funds; namely, a request from the architect to start design work. It does not appear to have been motivated solely by an impending carryforward balance report to the BOT or a desire to reduce the University's carryforward balance.

On the other hand, the timing of the transfers to the construction accounts for the Energy Plant, Student Center and Infrastructure projects ($21.7 million on October 31, 2017) does not appear to have been based on any immediate need for funding, but rather seems to have been driven primarily by the updated carryforward report due to the BOG a few weeks later and a desire to report a balance that did not include the transferred funds.

V. REPAYMENT OF IMPROPERLY TRANSFERRED E&G FUNDS

As part of this engagement, BCLP was asked to determine the current status of the E&G funds that UCF improperly transferred to the In-Scope Projects, as discussed in the preceding sections and summarized in Appendix B. BCLP asked PwC to perform this analysis, and specifically to determine whether the E&G funds that were transferred and/or spent have been returned or replaced with non-E&G funds.

As relevant background, in late August and September 2018, following the report by the State Auditor General that E&G funds had been misused for the construction of Trevor Colbourn Hall ("TCH"), UCF replaced the $38.2 million of E&G funds spent on TCH with non-E&G funds. Additionally, UCF Finance & Accounting and Facilities personnel, led by Interim CFO Kathy Mitchell, reviewed records from the previous ten years and identified other potentially inappropriate transfers of E&G funds to construction accounts for additional capital projects ("UCF Identified Additional Projects"). UCF determined that $46.5 million of E&G had been transferred to these projects, of which $14.1 million had been spent. In September 2018, UCF returned from the construction project accounts for the UCF Identified Additional Projects the $32.4 million of unspent E&G funds and replaced the $14.1 million of spent E&G funds with funds from non-E&G sources.

Some of the projects identified by BCLP during this investigation as having received improper transfers of E&G funds were also among the UCF Identified Additional Projects. For those projects, PwC performed procedures to verify that the University returned unspent E&G funds to E&G accounts and replaced spent E&G funds with funds from non-E&G sources. PwC discussed this effort to return or replace these E&G funds with Kathy Mitchell and requested and reviewed related accounting records and other documents including journal entries and supporting spreadsheets, email communications, internal memos and BOT materials.

We found that because the methodology used by UCF to identify the UCF Identified Additional Projects was different than the methodology used by BCLP in this investigation, the University replaced the E&G funds improperly transferred to some, but not all, of the projects identified by BCLP. Specifically, of the approximately $61.3 million of E&G funds improperly transferred to the projects identified by BCLP, UCF returned or replaced approximately $41.3 million. The table below provides these details[85]:

[85] The University also replaced approximately $5.1 million of E&G funds that had been transferred to four other UCF Identified Construction Projects which were not identified by BCLP as part of this investigation and are therefore outside the scope of this Report. Those four projects are: Facilities Surplus Showroom ($2 million of E&G transferred), Main Campus District Energy Plant ($1.2 million transferred), The Venue ($1.075 million transferred) and The Band Building ($862,704 transferred).

Project Name	Total E&G Transferred	Total E&G Returned	Difference
College of Medicine FF&E	$ 2,412,989	$ -	$ 2,412,989
CREOL Building Roof	2,622,723	-	2,622,723
Combined Heating and Power Plant	11,137,183	-	11,137,183
Global UCF	5,405,055	1,626,588	3,778,467
CREOL Phase II Expansion	4,017,000	4,017,000	-
Research I - FF&E	3,000,000	3,000,000	-
Research I - Lab Buildouts	6,000,000	6,000,000	-
Center for Emerging Media	5,000,000	5,000,000	-
Downtown Student Center	5,400,000	5,400,000	-
Downtown Energy Plant	11,500,000	11,500,000	-
Downtown Infrastructure	4,800,000	4,800,000	-
	$ 61,294,950	$ 41,343,588	$ 19,951,362

We determined that the University returned unspent E&G funds in the amount of $31,640,899 for the projects listed in the table above back to E&G accounts. We further determined that the University replaced spent E&G funds in the amount of $9,702,689 for the projects listed in the table above from the following non-E&G sources:

Research contracts and grants overhead accounts	$ 7,573,456
Various auxiliary accounts	2,129,233
	$ 9,702,689

Regarding the funds transferred from the contracts and grants overhead accounts, Kathy Mitchell explained that these funds were earmarked in University research contracts and grants for administrative overhead and were therefore legally available to be used on capital projects, and that these funds were used to replace the E&G funds that had been spent on Research I. We relied upon this representation and did not review the related research contracts and grants.

To summarize, we conclude that UCF has either returned or replaced $41.3 million of the $61.3 million in E&G funds that were improperly transferred to the In-Scope Projects, and that any replacement of spent E&G funds was done using non-E&G funds. Additionally, as noted in Section IV.C. above, we found that of the $2.6 million that was transferred for the CREOL roof, a portion was returned to E&G accounts and the balance was ultimately spent on deferred maintenance projects, which were an appropriate use of E&G funds. Accordingly, it is our conclusion that approximately $17.4 million of E&G funds still need to be returned or replaced by UCF as of the date of this Report.

APPENDIX
A

List of Witnesses Interviewed

Interviewee	Date(s) of Interview	Position
Baker, Paul	7/22/2019	Senior Philanthropic Advisor, UCF Foundation
Bottorff, Allen	5/2/2019	Former Director of Downtown Campus Facilities
Bradley, Dale	7/30/2019	University Budgets Director, Board of Governors
Brown, Troy	5/22/2019	The Bogdahn Group
Brown-Neal, Lashanda	6/28/2019 7/9/2019	Associate Director, Business Office, Facilities & Safety Resource Management
Cochran, Karen	7/1/2019	Associate VP, Central Advancement
Coelho, Keith	7/2/2019	Manager Energy Management
Cole, Scott	5/1/2019 7/2/2019	Vice President and General Counsel
Daelo, Ren	4/30/2019	Director, Facilities Planning
DuBuc, Donna	6/10/2019	Associate Director, Budget, Planning and Administration
Francis, Albert	5/1/2019 6/11/2019	Assistant Controller
Garcia, Nester	6/11/2019	Accountant III, Business Office, Facilities & Safety Resource Management
Garvy, Robert	7/22/2019	Member, Board of Trustees
German, Deb	6/11/2019	Dean and VP for Health Affairs, College of Medicine
Gonzalez, Lynn	5/1/2019	Associate Vice Provost for Academic Budget and Personnel Administration
Hagan, Isabel	5/2/2019	Project Coordinator II
Hartman, Joel	6/10/2019	Vice President Information Technologies & Resources
Heston, Grant	7/2/2019	Vice President for Communications and Marketing
Hill, Cathy	6/11/2019	University Accountant II
Hodum, Brad	6/12/2019	Interim University Controller
Jones, Tim	5/1/2019 7/30/2019	Vice Chancellor, Finance and Administration, and Chief Financial Officer, Board of Governors
Kilbride, Mike	5/2/2019	Assistant VP, Downtown Campus
Kinsley, Chris	7/1/2019 7/26/2019	Assistant Vice Chancellor, Finance and Facilities, Board of Governors
Lartonoix, Paul	4/30/2019	Assistant Vice President of Theatre UCF and Assistant Dean in the College of Arts and Humanities
Marchena, Marcos	7/18/2019	Former Chair, Board of Trustees
Martin, Bill	5/1/2019	Director of Facilities, Planning and Construction
Martinez, Melody	5/1/2019	University Accountant III
Martins, Alex	7/22/2019	Vice Chair, Board of Trustees
Mitchell, Kathy	7/17/2019	Associate Director, University Audit; former Interim CFO
Morseberger, Mike	7/2/2019	Vice President for Advancement and CEO, UCF Foundation

List of Witnesses Interviewed

Interviewee	Date(s) of Interview	Position
Norvell, David	7/1/2019	Assistant Vice President of Sustainability Initiatives
O,Hara, Barbara	6/19/2019	Director of Life Sciences at the College of Medicine
Omli, Steven	6/19/2019	Assistant Dean, Medical School Finances
Rogers, Tiffani	4/30/2019	Administrative Coordinator III
Santiago, Conrad	5/2/2019	Former Member, Board of Trustees
Seabrook, Gina	5/2/2019	Construction Specialist
Seymour, Thad	7/2/2019	Interim University President
Soileau, M.J.	6/11/2019	University Distinguished Professor of Optics & Photonics, ECE & Physics
Tant, Christina	6/12/2019	Former University Controller
Wagenhauser, Mark	6/11/2019	Associate Director and Business Manager of CREOL
Walsh, David	7/1/2019	Member, Board of Trustees
West, David	5/22/2019	The Bogdahn Group

APPENDIX

B

List of In-Scope Projects

Project Name	Total E&G Transferred	Timing of E&G Transfer(s)
College of Medicine – FF&E	$2,412,989	April 2012 – June 2012
CREOL Building Roof	$2,622,723	May 2012 – June 2012
Combined Heating & Power Plant	$11,137,183	March 2012 – December 2012
Global UCF	$5,405,055*	May 2014 – June 2016
CREOL Phase II Expansion	$4,017,000	February 2016 – May 2018
Center for Emerging Media	$5,000,000	November 2016
Research I – FF&E	$3,000,000	May 2017
Research I – Lab Buildouts	$6,000,000	May 2017
Downtown Student Services Center	$5,400,000	October 2017
Downtown Energy Plant	$11,500,000	October 2017
Downtown Infrastructure	$4,800,000	October 2017
Total E&G Transferred	**$61,294,950**	

*This amount includes direct transfers of E&G funds as well as the estimated portions of transfers from an investment earnings auxiliary account that should have been allocated to E&G

APPENDIX
C

Summary of E&G Transfers to In-Scope Projects

Project	Ledger	Fiscal Year	Date	E&G Transfer Amount	Transfer Source Account	Transfer Destination Account
College of Medicine - FF&E	General Ledger	2011-2012	4/18/2012	$4,441	Admin & Finance (A&F)-Land & Nat Resources E&G	UCF522-COM ADDL RESOURCES
	Budget Ledger	*2011-2012*	*6/25/2012*	*$2,384,676*	*Central Carryforward*	*COM Biomedical Science Department Carryforward*
	General Ledger	2011-2012	6/26/2012	$2,384,676	COM Biomedical Science Department Carryforward	UCF522-COM ADDL RESOURCES
	Budget Ledger	*2011-2012*	*6/28/2012*	*$23,873*	*Central Carryforward*	*COM Biomedical Science Department Carryforward*
	General Ledger	2011-2012	6/28/2012	$23,872	COM Biomedical Science Department Carryforward	UCF522-COM ADDL RESOURCES
Total E&G Transferred to College of Medicine - FF&E				**$2,412,989**		
CREOL Building Roof	General Ledger	2011-2012	5/23/2012	$57,200	A&F-Physical Plant Carryforward	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$1,365,232	A&F-Phys. Plant FO-Operations E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$729,723	A&F-Phys. Plant Fac & Saf-Carryforward	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$100,660	A&F-General DSEM-Operations E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$70,589	A&F-Phys. Plant Fac & Saf-Business Office E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$40,175	A&F-Land & Nat Res Land & Nat Res-Operations E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$28,900	A&F-Phys. Plant FO-Rosen Operations E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$27,674	A&F-Phys. Plant FO-Utilities E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$21,136	A&F-Energy Sustain UES-Energy Projects E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$20,506	A&F-Phys. Plant FO-Operations Reserve E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$18,978	A&F-Phys. Plant FO-Carryforward	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$13,761	A&F-Energy Sustain UES-Carryforward	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$12,095	A&F-Phys. Plant FO-Postal Services E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$11,454	A&F-Phys. Plant FO-Maintenance E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$11,425	A&F-Facilities Pln Fac Pln-Operations E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$10,821	A&F-Police UN Pol-Operations E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$10,277	A&F-Phys. Plant FO-Film And Digital Media E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$9,686	A&F-Phys. Plant FO-Solid Waste & Recycling E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$8,979	President-Univ Compli & Ethics UN Compl Ethics-Dept Insur E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$8,741	A&F-Phys. Plant FO-Building Services E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$8,018	A&F-Phys. Plant FO-Central Receiving E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$7,915	A&F-Phys. Plant FO-Shared Fleet E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$5,027	A&F-Land & Nat Res Land & Nat Res-Carryforward	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$3,868	A&F-Phys. Plant FO-Lake Nona Operations E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$3,634	A&F-Land & Nat Res Land & Nat Res-Campus Enhance E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$3,006	A&F-Env Health & Safety EHS-Biological Safety E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$2,901	A&F-Env Health & Safety EHS-Radiation Control E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$2,066	A&F-Phys. Plant FO-Work Control Center E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$1,767	A&F-Phys. Plant FO-Roofing & Contracted Repair E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$1,651	A&F-Phys. Plant FO-Transportation E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$1,178	A&F-Env Health & Safety EHS-Chemical Waste Mgmt E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$809	A&F-Env Health & Safety EHS-Air Quality E&G	FI PROJECT #12053006 N

Summary of E&G Transfers to In-Scope Projects

Project	Ledger	Fiscal Year	Date	E&G Transfer Amount	Transfer Source Account	Transfer Destination Account
CREOL Building Roof, cont.	General Ledger	2011-2012	6/28/2012	$709	A&F-Phys. Plant FO-FSEC E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$575	A&F-Phys. Plant FO-Service Blankets E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$545	A&F-Phys. Plant FO-Burnett House E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$468	A&F-Env Health & Safety EHS-Fire Extinguisher Maint E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$396	A&F-Phys. Plant FO-POM Civic Theatre E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$175	A&F-Phys. Plant FO-Special Projects E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$1	A&F-Phys. Plant FO-Rdwy Maint And Traffic Sign E&G	FI PROJECT #12053006 N
	General Ledger	2011-2012	6/28/2012	$1	President-Univ Compliance & Ethics Property Insurance E&G	FI PROJECT #12053006 N
Total E&G Transferred to CREOL Building Roof				**$2,622,723**		
Combined Heating and Power Plant	General Ledger	2011-2012	3/1/2012	$87,222	A&F-UES-Energy Projects E&G	UCF555-COMBINED HEAT/PWR PLNT
	General Ledger	2011-2012	3/1/2012	$25	A&F-UES-Energy Projects E&G	UCF555-COMBINED HEAT/PWR PLNT
	General Ledger	2011-2012	4/19/2012	$74,288	A&F-UES-Energy Projects E&G	UCF555-COMBINED HEAT/PWR PLNT
	Budget Ledger	*2012-2013*	*9/21/2012*	*$10,853,000*	*Central Carryforward*	*Facilities Carryforward*
	General Ledger	2012-2013	9/26/2012	$10,853,000	Facilities Carryforward	UCF555-COMBINED HEAT/PWR PLNT
	General Ledger	2012-2013	11/29/2012	$2,000	A&F-UES-Operations E&G	UCF555-COMBINED HEAT/PWR PLNT
	General Ledger	2012-2013	12/5/2012	$120,648	A&F-UES-Energy Projects E&G	UCF555-COMBINED HEAT/PWR PLNT
Total E&G Transferred to Combined Heating and Power Plant				**$11,137,183**		
Global UCF	General Ledger	2013-2014	5/8/2014	$84,171	Investment Earnings Auxiliary	UCF572-GLOBAL UCF ACHIEVEMENT
	General Ledger	2013-2014	5/15/2014	$49,494	Investment Earnings Auxiliary	UCF572-GLOBAL UCF ACHIEVEMENT
	General Ledger	2014-2015	7/18/2014	$149,483	Investment Earnings Auxiliary	UCF572-GLOBAL UCF ACHIEVEMENT
	General Ledger	2014-2015	12/17/2014	$3,495,319	Investment Earnings Auxiliary	UCF572-GLOBAL UCF ACHIEVEMENT
	General Ledger	2014-2015	4/20/2015	$6,588	Communications and Marketing E&G	UCF572-GLOBAL UCF ACHIEVEMENT
	Budget Ledger	*2015-2016*	*6/30/2016*	*$1,620,000*	*Central Carryforward*	*Facilities Carryforward*
	General Ledger	2015-2016	6/30/2016	$1,620,000	Facilities Carryforward	UCF572-GLOBAL UCF ACHIEVEMENT
Total E&G Portion of Inv. Earnings Transferred to Global UCF				$3,778,467		
Total E&G Transferred to Global UCF				$1,626,588		
Total E&G Portion of Inv. Earnings and E&G Transferred to Global				**$5,405,055**		
CREOL Phase II Expansion	*Budget Ledger*	*2015-2016*	*7/31/2015*	*$4,000,000*	*Central Carryforward*	*College of Optics and Photonics Carryforward*
	General Ledger	2015-2016	2/18/2016	$4,000,000	College of Optics and Photonics Carryforward	UCF581-CREOL PHASE II EXPANSION
	General Ledger	2017-2018	5/21/2018	$17,000	College of Optics and Photonics Carryforward	UCF581-CREOL PHASE II EXPANSION
Total E&G Transferred to CREOL Phase II Expansion				**$4,017,000**		
Center for Emerging Media	*Budget Ledger*	*2016-2017*	*11/22/2016*	*$5,000,000*	*Central Carryforward*	*Facilities Carryforward*
	General Ledger	2016-2017	11/28/2016	$5,000,000	Facilities Carryforward	UCF578A - CEM RENOVATION
Total E&G Transferred to Center for Emerging Media				**$5,000,000**		

Summary of E&G Transfers to In-Scope Projects

Project	Ledger	Fiscal Year	Date	E&G Transfer Amount	Transfer Source Account	Transfer Destination Account
Research I - FF&E	*Budget Ledger*	*2016-2017*	*5/8/2017*	*$3,000,000*	*Central Carryforward*	*Facilities Carryforward*
	General Ledger	2016-2017	5/25/2017	$3,000,000	Facilities Carryforward	UCF554-INTERDISC. RES & INCUB
Total E&G Transferred to Research I - FF&E				**$3,000,000**		
Research I - Lab Buildouts	*Budget Ledger*	*2015-2016*	*5/16/2017*	*$1,700,000*	*Academic Affairs Faculty Commitments Carryforward*	*Office of Research Carryforward*
	Budget Ledger	*2015-2016*	*5/18/2017*	*$2,300,000*	*Central Carryforward*	*Office of Research Carryforward*
	General Ledger	2016-2017	5/25/2017	$4,000,000	Office of Research Carryforward	UCF554-INTERDISC RES & INCUB BO
	General Ledger	2016-2017	5/25/2017	$500,000	College of Engr/Comp Sci "IT Perform Fund" Carryforward	UCF554-INTERDISC RES & INCUB BO
	General Ledger	2016-2017	5/25/2017	$500,000	College of Engr/Comp Sci Carryforward	UCF554-INTERDISC RES & INCUB BO
	General Ledger	2016-2017	5/25/2017	$900,000	College of Sciences Carryforward	UCF554-INTERDISC RES & INCUB BO
	General Ledger	2016-2017	5/25/2017	$100,000	Research – Nanoscience Central Reserve E&G	UCF554-INTERDISC RES & INCUB BO
Total E&G Transferred to Research I - Lab Buildouts				**$6,000,000**		
Downtown Student Services Center	*Budget Ledger*	*2017-2018*	*10/31/2017*	*$2,700,000*	*Academic Affairs Division Carryforward*	*Student Development & Enroll Svc Carryforward*
	Budget Ledger	*2017-2018*	*10/31/2017*	*$2,700,000*	*Central Carryforward Internal Projects*	*Student Development & Enroll Svc Carryforward*
	General Ledger	2017-2018	10/31/2017	$5,400,000	Student Development & Enroll Svc Carryforward	UCF578C-DOWNTOWN STUDENT CENTER
Total E&G Transferred to Downtown Student Services Center				**$5,400,000**		
Downtown Energy Plant	*Budget Ledger*	*2017-2018*	*10/31/2017*	*$11,500,000*	*Central Carryforward Internal Projects*	*Facilities Carryforward*
	General Ledger	2017-2018	10/31/2017	$11,500,000	Facilities Carryforward	UCF586-DOWNTOWN CENTRAL ENERGY
Total E&G Transferred to Downtown Energy Plant				**$11,500,000**		
Downtown Infrastructure	*Budget Ledger*	*2017-2018*	*10/31/2017*	*$4,800,000*	*Central Carryforward Internal Projects*	*Facilities Carryforward*
	General Ledger	2017-2018	10/31/2017	$4,800,000	Facilities Carryforward	UCF578B-CIVIL, INFRASTRUCTURE
Total E&G Transferred to Downtown Infrastructure				**$4,800,000**		

APPENDIX D

Summary of Expenditures for In-Scope Projects

College of Medicine – FF&E
Summary of Project Expenditures by Category/Fiscal Year

	Fiscal Years July 1 through June 30				
Category	**2008-2009**	**2009-2010**	**2010-2011**	**2011-2012**	**Total**
Furniture Fixtures & Equipment	$ 4,118	$ 1,185,167	$ 1,102,256	$ 93,135	**$ 2,384,676**

CREOL Building Roof
Summary of Project Expenditures by Category/Fiscal Year

	Fiscal Years July 1 through June 30						
Category	**2011-2012**	**2012-2013**	**2013-2014**	**2014-2015**	**2015-2016**	**2016-2017**	**Total**
Construction	$ -	$ -	$ -	$ -	$ 440,403	$ 126,257	**$ 566,660**
Roof Study	25,865	-	-	-	-	-	**25,865**
Total	**$ 25,865**	**$ -**	**$ -**	**$ -**	**$ 440,403**	**$ 126,257**	**$ 592,525**

Combined Heating and Power Plant
Summary of Project Expenditures by Category/Fiscal Year

	Fiscal Years July 1 through June 30					
Category	**2010-2011**	**2011-2012**	**2012-2013**	**2013-2014**	**2014-2015**	**Total**
Design	$ 283,546	$ -	$ -	$ -	$ -	**$ 283,546**
Permits & Inspections	3,727	24,550	-	-	-	**28,277**
Construction	491,086	4,248,511	943,437	110,343.00	445,000.00	**6,238,377**
Furniture Fixtures & Equipment	5,638,595	87,247	612,927	-	-	**6,338,769**
Total	**$ 6,416,954**	**$ 4,360,308**	**$ 1,556,364**	**$ 110,343**	**$ 445,000**	**$ 12,888,969**

CREOL Phase II Expansion
Summary of Project Expenditures by Category/Fiscal Year

	Fiscal Years July 1 through June 30			
Category	**2016-2017**	**2017-2018**	**2018-2019**	**Total**
Design	$ 304,005	$ 114,292	$ 69,861	**$ 488,158**
Permits & Inspections	-	26,291	16,454	**42,745**
Construction	133	394,555	4,313,477	**4,708,165**
Total	**$ 304,138**	**$ 535,138**	**$ 4,399,792**	**$ 5,239,068**

Global UCF
Summary of Project Expenditures by Category/Fiscal Year

	Fiscal Years July 1 through June 30				
Category	**2014-2015**	**2015-2016**	**2016-2017**	**2017-2018**	**Total**
Design	$ 584,135	$ 148,698	$ 384,369	$ 11,184	**$ 1,128,386**
Permits & Inspections	88,350	23,717	6,837	20	**118,924**
Construction	2,682,980	9,510,258	1,121,048	17,345	**13,331,632**
Furniture Fixtures & Equipment	51	1,861,045	158,599	5,851	**2,025,546**
Total	**$ 3,355,516**	**$11,543,718**	**$ 1,670,853**	**$ 34,401**	**$ 16,604,488**

Center for Emerging Media
Summary of Project Expenditures by Category/Fiscal Year

Category	Fiscal Years July 1 through June 30 2016-2017	2017-2018	2018-2019	Total
Design	$ 17,600	$ 65,407	$ 242,330	**$ 325,337**
Permits & Inspections	-	4,600	17,296	**21,896**
Construction	12,533	15,662	1,723,671	**1,751,866**
Furniture Fixtures & Equipment	-	-	884	**884**
Total	**$ 30,133**	**$ 85,669**	**$ 1,984,181**	**$ 2,099,983**

Research I – FF&E
Summary of Project Expenditures by Category/Fiscal Year

Category	Fiscal Years July 1 through June 30 2016-2017	2017-2018	2018-2019	Total
Furniture Fixtures & Equipment	$ 785,909	$ 1,091,467	$ 56,424	**$ 1,933,800**

Research I - Lab Buildouts
Summary of Project Expenditures by Category/Fiscal Year

Category	Fiscal Years July 1 through June 30 2016-2017	2017-2018	2018-2019	Total
Design	$ -	$ 130,000	$ 65,000	**$ 195,000**
Construction	264,103	4,679,353	6,968	**4,950,424**
Total	**$ 264,103**	**$ 4,809,353**	**$ 71,968**	**$ 5,145,424**

Downtown Student Services Center
Summary of Project Expenditures by Category/Fiscal Year Month

	Fiscal Year 2018-2019												
Category	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**June**	**Total**
Construction	$ -	$ -	$ -	$ -	$ -	$ -	$ 276,032	$ -	$ 593,428	$ 325,532	$ 443,926	$ -	**$ 1,638,919**
Furniture Fixtures & Equipment	-	-	-	-	90,908	-	153,668	-	6,190	55,692	5,694	14,224	**326,377**
Total	**$ -**	**$ -**	**$ -**	**$ -**	**$ 90,908**	**$ -**	**$ 429,701**	**$ -**	**$ 599,618**	**$ 381,225**	**$ 449,620**	**$ 14,224**	**$ 1,965,296**

Downtown Energy Plant

Summary of Project Expenditures by Category/Fiscal Year Month

	Fiscal Year 2017-2018												
Category	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**June**	**Total**
Design	$ -	$ -	$ -	$ -	$ 200,000	$ -	$ 1,350	$ 1,620	$ -	$ -	$ -	$ -	**$ 202,970**
Permits & Inspections	-	-	-	-	-	-	-	8,108	1,750	-	-	-	**9,858**
Construction	-	-	-	-	-	-	1,230	-	-	-	-	14,405	**15,635**
Furniture Fixtures & Equipment	-	-	-	-	-	-	-	-	-	-	-	-	**-**
Total	**$ -**	**$ -**	**$ -**	**$ -**	**$ 200,000**	**$ -**	**$ 2,580**	**$ 9,728**	**$ 1,750**	**$ -**	**$ -**	**$ 14,405**	**$ 228,463**

	Fiscal Year 2018-2019												
Category	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**June**	**Total**
Design	$ -	$ 250,895	$ 90,454	$ -	$ 336,074	$ -	$ 3,650	$ -	$ 4,750	$ -	$ -	$ 90,614	**$ 776,437**
Permits & Inspections	-	-	4,375	-	-	-	3,866	11,522	23,742	-	435	31,396	**75,336**
Construction	-	139,541	108	8	2,705	3,465	222,055	455,847	180,259	3,725,516	1,160,012	2,352,733	**8,242,250**
Furniture Fixtures & Equipment	-	-	-	-	-	-	-	1,687	36,724	-	-	-	**38,411**
Total	**$ -**	**$ 390,436**	**$ 94,937**	**$ 8**	**$ 338,779**	**$ 3,465**	**$ 229,571**	**$ 469,055**	**$ 245,476**	**$ 3,725,516**	**$ 1,160,447**	**$ 2,474,743**	**$ 9,132,434**

Category	**Total All Months**
Design	**$ 979,407**
Permits & Inspections	**85,194**
Construction	**8,257,885**
Furniture Fixtures & Equipment	**38,411**
Total	**$ 9,360,897**

Downtown Infrastructure
Summary of Project Expenditures by Category/Fiscal Year Month

	Fiscal Year 2016-2017												
Category	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**June**	**Total**
Design	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 83,399	$ -	**$ 83,399**
Permits & Inspections	-	-	-	-	-	-	-	-	-	-	-	-	**-**
Construction	-	-	-	-	-	-	-	-	-	-	-	-	**-**
Total	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 83,399**	**$ -**	**$ 83,399**

	Fiscal Year 2017-2018												
Category	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**June**	**Total**
Design	$ -	$ 19,024	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	**$ 19,024**
Permits & Inspections	-	-	-	-	-	17,350	-	16,030	-	-	-	10,746	**44,126**
Construction	-	-	-	-	-	-	-	11,832	-	-	-	-	**11,832**
Total	**$ -**	**$ 19,024**	**$ -**	**$ -**	**$ -**	**$ 17,350**	**$ -**	**$ 27,862**	**$ -**	**$ -**	**$ -**	**$ 10,746**	**$ 74,981**

	Fiscal Year 2018-2019												
Category	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**June**	**Total**
Design	$ 63,013	$ -	$ 61,725	$ -	$ -	$ -	$ 73,478	$ 16,095	$ 92,700	$ 38,572	$ 8,075	$ 40,587	**$ 394,246**
Permits & Inspections	-	-	3,150	1,200	3,468	2,300	3,825	4,799	250	-	10,062	-	**29,055**
Construction	-	-	-	-	34,497	11,832	-	293,056	578,173	745,243	1,243,360	705,044	**3,611,205**
Total	**$ 63,013**	**$ -**	**$ 64,875**	**$ 1,200**	**$ 37,966**	**$ 14,132**	**$ 77,303**	**$ 313,951**	**$ 671,123**	**$ 783,814**	**$1,261,497**	**$ 745,631**	**$4,034,506**

Category	**Total All Months**
Design	**$ 496,668**
Permits & Inspections	**73,180**
Construction	**3,623,037**
Total	**$4,192,886**