

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (PBC)	_____	_____	_____	_____	_____
In-Kind Match (PBC)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS	_____	_____	_____	_____	_____
(Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes ___ No ___

Budget Account Number:

Fund	Department	Unit	Object	Program Code	_____
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B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

_____	_____
OFMB	Contract Dev. and Control

B. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

Agreement to Jointly Fund Application for a Development of Approval and local zoning approval and Application for South Florida Water Management District Environmental Resources Permit between

PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, "County"

and

THE LESTER FAMILY INVESTMENTS L.P., RICHARD THALL, ROBERT THALL, PETER L. BRIGER, PAUL H. BRIGER, AND THE DAVID MINKIN FLORIDA REALTY TRUST, "Lester"

entered into this ___ day of _____, 2007. Lester and the County are collectively referred to as "the Parties."

WITNESSETH:

WHEREAS, the Parties entered into an Agreement for Donation and Purchase and Sale dated February 28, 2006 (R-2006-0423) (the "D&P Agreement"); and

WHEREAS, the Parties modified certain terms of the D&P Agreement in the First Amendment to Agreement For Donation and Purchase and Sale dated May 16, 2006 (R2006-0903) (the "First Amendment"); and

WHEREAS, the First Amendment requires the parties to file a joint Application for Development Approval under Section 380.06, Florida Statutes and required the parties to agree to cooperate with each other to seek on an expedited basis a single governmental approval for both the Property and the Retained Property as defined in the Agreement; and

WHEREAS, the County is obligated pursuant to a Grant Agreement with the Scripps Research Institute dated May 23, 2006 (R-2006-0803)(the "Grant Agreement") to seek Development Orders entitling Scripps to develop 1,600,000 square feet of Gross Floor Area of Intended Improvements on the Property; and

WHEREAS, Intended Improvements in the Grant Agreement are defined as: "Biomedical and other scientific research facilities, training and educational facilities, together with ancillary uses such as offices, classrooms, lecture halls, conference rooms, cafeteria, libraries and recreation and fitness facilities."; and

WHEREAS, Development Orders in the Grant Agreement are defined as "A rezoning approval, conditional use approval, planned unit development approval or planned community development District approval issued by the City of Palm Beach Gardens" and a South Florida Water Management District Environmental Resources Permit and;

WHEREAS, County will at the time it approves this Agreement appropriate funds to carry out this Agreement and both parties acknowledge that the Lester's are expending monies and entering into contractual obligations based on this Agreement and based on the appropriation of funds by the County and;

NOW THEREFORE, in consideration of the Sum of Ten Dollars (\$10.00) and other good and valuable consideration of which, the receipt and sufficiency of which is hereby acknowledged and the parties hereby agree as follows:

1. **Joint Funding** The Parties agree, in the manner described in Section 7 hereof, to jointly fund consultant services, fees and costs at the rate of 32% County and 68% Lester for the preparation and the approval process for: (1) an Application for Development Approval ("ADA") for a Development of Regional Impact ("DRI") and zoning approval by the City of Palm Beach Gardens for the property described in Exhibit A-1; (2) Certificate of concurrency reservation from the City of Palm Beach Gardens for (i) 1,600,000 square feet of Gross Floor Area of Intended Improvements for the property described in Exhibit A-2 (ii) 2,400,000 square feet of Gross Floor Area of Intended Improvements for the property described on Exhibit A-3; and (iii) for such uses as Lester shall determine for the Retained Property; and (3) South Florida Water Management District Environmental Resources Permit for the property described in Exhibit A-1. Both Parties acknowledge that failure to fully fund this Agreement, including, without limitation, a failure to fund by the County by reason of the provisions of Section 7 hereof, is a breach of this Agreement and that both parties have such

remedies as are available at law or equity in event of such breach by the other party. Damages on account thereof may include, without limitation, the cost of money i.e., interest on funds paid on behalf of a defaulting party.

2. **Primary Consultant** Lester is retaining Urban Design Studio as the Primary Consultant for preparation and approval of the matters referred to in Section 1 hereof. The substitution of any other firm as the Primary Consultant shall require the approval of the Palm Beach County Administrator or his designee which approval shall not be unreasonably withheld. The scope of services and budget of the contract between Lester and Urban Design Studio and a Milestone Schedule are contained in Exhibit B. Any deviation in the scope of services budget or Milestone schedule will require the prior written consent of the County Administrator or his designee.

3. **Expedited Permitting** The Parties realize time is of the essence in the preparation of the DRI ADA and other applicable development orders and approvals. Therefore, the Parties shall request that the City of Palm Beach Gardens seek expedited permitting status for this project pursuant to s. 403.973, Fla. Stat.

4. **Budget** The budget of the Primary Consultant and Other Consultants is contained in Exhibit B. Any increase in the total budget contained in Exhibit B of 5% or more shall require an amendment to this contract approved in writing by both parties.

5. **Primary Consultant Contractual Requirements**

a. **70 Acres** The DRI ADA, local zoning applications and South Florida Water Management District ERP application will seek development orders and/or permits and a certificate of concurrency reservation that will allow development of One Million Six Hundred Thousand (1,600,000) square feet of Intended Improvements: biomedical and other scientific research, training and education, together with ancillary uses such as offices, classrooms, lecture halls, conference rooms, cafeterias, libraries and recreation and fitness facilities on the 70 acre property described in Exhibit A-2.

b. **100 Acres** The DRI ADA, local zoning applications and South Florida Water Management District ERP application will seek

development orders or permits that will allow development of TWO MILLION FOUR HUNDRED THOUSAND (2,400,000) square feet of Intended Improvements: biomedical and other scientific research, training and education, together with ancillary uses such as offices, classrooms, lecture halls, conference rooms, cafeterias, libraries and recreation and fitness facilities on the 100 acre property described in Exhibit A-3 together with such other uses as are permitted in the "Biotech Cluster Plan" as such term is defined in the Grant Agreement.

c. **Documents Required to Be Acceptable to Palm Beach County** Lester will require of the Primary Consultant that in preparation of the applications described in this contract that it cooperate fully with the County in the preparation of the applications and to submit documents that are fully acceptable to the Palm Beach County Administrator or his designee regarding the development of the property identified in Exhibit A-2; provided, however, Lester shall have no liability whatsoever with respect to any claim by the County that the Primary Consultant shall have failed to cooperate or said Primary Consultant has otherwise failed or improperly performed hereunder or by reason of any action or failure to act on the part of Primary Consultant. Palm Beach County will be named a third party beneficiary of Lesters' contract with the Primary Consultant.

d. **Insurance Requirements** Lesters' contract with its Primary Consultant shall require the Primary Consultant maintain insurance coverages and limits described herein; provided, however Lester shall have no liability to the County or otherwise in the event that Primary Consultant shall fail to do so. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by Primary Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations undertaken by Primary Consultant under the contract;

(1) **Commercial General Liability** Primary Consultant shall maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain an endorsement excluding Contractual Liability or Cross Liability unless otherwise granted in writing by County's Risk Management Department. Primary Consultant shall provide this coverage on a primary basis.

(2) **Business Automobile Liability** Primary Consultant shall maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Accident for all owned, non-owned and hired automobiles. In the event Primary Consultant doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing Primary Consultant to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. Primary Consultant shall provide this coverage on a primary basis.

(3) **Worker's Compensation Insurance & Employers Liability** Primary Consultant shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. Primary Consultant shall provide this coverage on a primary basis.

(4) **Professional Liability** Primary Consultant shall maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Per Occurrence. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of Primary Consultant's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Primary Consultant shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, Primary Consultant shall purchase a SERP with a minimum reporting period not less than 3 years. Primary Consultant shall provide this coverage on a primary basis.

(5) **Additional Insured** Primary Consultant shall endorse the COUNTY and Lester as **Additional Insureds** with a CG 2026 Additional Insured Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." Primary Consultant shall provide the Additional Insured endorsements coverage on a primary basis.

(6) **Waiver of Subrogation** Lesters' contract with Primary Consultant shall require the following: Primary Consultant hereby waives any and all rights of Subrogation against the County, its officers, employees and agents

for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Primary Consultant shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should Primary Consultant enter into such an agreement on a pre-loss basis.

(7) **Certificate(s) of Insurance** Prior to execution of this Contract, Primary Consultant shall deliver to the COUNTY'S representative as identified in Article 26, as well as to Lester a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage.

(8) **Umbrella or Excess Liability** If necessary, Primary Consultant may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

(9) **Right to Review** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.