



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Grant Expenditure	\$240,000	_____	_____	_____	_____
External Revenue	(\$240,000)	_____	_____	_____	_____
Program Income (PBC)	_____	_____	_____	_____	_____
In-Kind Match (PBC)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>0</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes X No \_\_\_\_\_

Budget Account No: Fund 1541 Department 764 Unit 2109 Object 8201

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

Source of funds will be from the DOE Energy Efficiency and Conservation Grant Revolving Loan Program.

C. Departmental Fiscal Review: Amanda Hughes  
Economic Development

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Administration Comments:**

[Signature] 11/28/11  
OFMB  
WS 11/23/11  
11/22/11

[Signature] 11/28/11  
Contract Administration  
This Agreement meets all review requirements.

B. Legal Sufficiency:  
[Signature] 11/29/11  
Assistant County Attorney

C. Other Department Review:  
\_\_\_\_\_  
Department Director

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

**ENERGY LOAN PROGRAM AGREEMENT  
BETWEEN  
PALM BEACH COUNTY  
AND  
SCIENTIFIC REAL ESTATE HOLDINGS, LLC**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011 by and between Palm Beach County, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners, herein referred to as COUNTY, and Scientific Real Estate Holdings, LLC, a corporation authorized to do business in the State of Florida, hereinafter referred to as the COMPANY, whose mailing address is 4800 N. Federal Highway, Suite 300B, Boca Raton, FL 33431, and whose Federal I.D. number is 204418257.

**WITNESSETH:**

**WHEREAS**, the COUNTY is administering an Energy Loan Program under the Rules and Regulations of the U.S. Department of Energy (hereinafter referred to as "DOE"); and

**WHEREAS**, the COUNTY has determined that the Energy Loan is an eligible loan to the COMPANY per DOE Assistance Agreement (R2009-1743) for a grant totaling \$6,587,600 to implement the Energy Efficiency and Conservation Block Grant (EECBG) Program which included a revolving loan fund for businesses totaling \$1,100,000, approved by the Board of County Commissioners on October 20, 2009; and

**WHEREAS**, the COUNTY intends to grant financing to the COMPANY in an amount not to exceed TWO HUNDRED FORTY THOUSAND DOLLARS (\$240,000) subject to the terms and conditions outlined in the Loan Commitment dated \_\_\_\_\_, 2011 as well as those certain loan documents which include, but are not limited to the Energy Loan Promissory Note, the Loan Agreement, the Mortgage and Security Agreement, the Guaranty Agreement, UCC-1 Financing Statements and all other documents required by the Loan Agreement (collectively the "Loan Documents"); and

**NOW, THEREFORE**, in consideration of the promises and mutual covenants hereinafter contained, the parties agree as follows:

**ARTICLE I  
GENERAL CONDITIONS**

**Employee: Bona Fide**

COMPANY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for COMPANY to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for COMPANY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

### **Non-discrimination**

COMPANY agrees that no person shall on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, be excluded from the benefits of, or be subjected to discrimination under, any activity carried out by the performance of this Agreement.

### **Worker's Compensation & Employer's Liability**

COMPANY shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. COMPANY shall provide this coverage on a primary basis.

### **Convicted Vendor List; Debarment**

(a) As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, COMPANY certifies that neither COMPANY, its affiliates nor its principals who will perform hereunder have been placed on the Convicted Vendor List maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date of execution of this Agreement by the COUNTY. This notice is required by F.S. 287.133(3)(a).

Florida Department of Management Services, Division of Purchasing  
4050 Esplanade Way, Tallahassee, FL 32399-0950  
(850) 488-8440  
[http://dms.myflorida.com/dms/purchasing/convicted\\_suspended\\_discriminatory\\_vendor\\_lists/convicted\\_vendor\\_list](http://dms.myflorida.com/dms/purchasing/convicted_suspended_discriminatory_vendor_lists/convicted_vendor_list)

(b) By entering into this Agreement or performing any work in furtherance hereof, COMPANY certifies that neither COMPANY, its affiliates nor its principals who will perform hereunder is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency, as such terms are defined in Executive Order 12549, nor is any such action pending or proposed.

### **Inspector General**

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the COMPANY, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

### **Compliance with DOE Regulations**

The COMPANY shall be responsible for complying with all DOE Regulations.

### **Successors & Assigns**

All covenants, agreements and conditions of this Agreement are binding upon and inure to the benefit of the COUNTY and COMPANY, and their respective partners, officers, directors, employees, agents, executors, administrators, successors and assigns. Except as otherwise permitted hereunder, neither the COUNTY nor COMPANY shall assign, convey or transfer its rights, interests, benefits, duties or obligations under this Agreement without the prior written consent of the other party. Nothing herein shall be construed as creating any personal liability on

the part of any officer, director, employee or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and COMPANY.

#### **Material Change of Circumstances**

COMPANY shall immediately notify the COUNTY of any material change of circumstances of COMPANY'S business operations in Palm Beach County. For the purposes hereof, material change of circumstance shall include, but not be limited to, the failure of COMPANY to diligently and actively pursue fulfillment of the terms hereof, the sale or transfer of all or substantially all of COMPANY'S assets; the sale of a controlling interest (i.e., more than 50%) of the stock or other equity interest in COMPANY; the suspension, closing, dissolution, liquidation or cessation of business operations of COMPANY; the voluntary or involuntary filing of any petition in bankruptcy; or an assignment for the benefit of COMPANY'S creditors. In the event of a material change of circumstances, the COUNTY shall have the right to terminate this Agreement, whereupon the COUNTY shall have no further obligation to COMPANY under this Agreement.

#### **Entire Agreement Between Parties**

The COUNTY and COMPANY agree that this Agreement and all attachments hereto, including but not limited to the Energy Loan Documents, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

#### **Invalid or Unenforceable Terms**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

#### **Remedies**

In the event of a default or breach by the COMPANY hereunder, under the Energy Loan Documents, the COUNTY shall consult with DOE as to the appropriate remedy, which may include acceleration of the principal balance due under the Energy Loan, including defeasance provisions if applicable. The COMPANY recognizes the authority of DOE to direct and establish appropriate remedies in connection with any such default or breach.

#### **Law and Remedy**

This Agreement shall be governed by the laws of the State of Florida and the laws of the United States and the Rules and Regulations of DOE. Any and all legal action necessary to enforce the Agreement shall be held in Palm Beach County or such other jurisdiction as is directed by DOE. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **Indemnification and Hold Harmless**

The COMPANY hereby protects, defends, reimburses, indemnifies and holds the COUNTY and DOE, its agents, employees, directors and officers (whether elected or appointed) and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees, and suits, proceedings and causes of action of every kind and character which may arise out of this Agreement. COMPANY recognizes the broad nature of the indemnification and hold harmless provisions set forth in this Section, voluntarily makes this agreement and covenant and expressly acknowledges

the receipt of good and valuable consideration provided by COUNTY and DOE in support of this clause in accordance with the laws of the State of Florida. This Section shall survive the termination of the Agreement.

**Assignability**

It is recognized by the COUNTY and the COMPANY that this Agreement is part of the Loan Documents respecting the closing of the Energy Loan and such Loan Documents are held in trust by the Palm Beach County Clerk and Comptroller, for the benefit of DOE, and DOE has the final discretion as to its enforcement.

**Amendment: No Waiver**

This Agreement may not be amended or the terms or provisions hereof waived unless such amendment or waiver is in writing and signed by the parties. No delay or failure by the COUNTY to exercise any right, power, or remedy shall constitute a waiver thereof by the COUNTY, and no single or partial exercise by the COUNTY of any right, power, or remedy shall preclude other or further exercise thereof or any exercise of any other rights, powers, or remedies.

**Counterparts**

This Agreement may be executed in any number of counterparts, all of which together shall constitute one agreement.

**Further Actions**

The COMPANY shall execute and deliver such documents and instruments, and shall take such other actions as the COUNTY deems necessary to more fully carry out the terms of this Agreement.

**(REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY)**

**Notice**

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

Sherry Howard, Director  
Palm Beach County Economic Development Office  
P.O. Box 1989  
West Palm Beach, FL 33402-1989

With a copy to:

Dawn Wynn, Senior Assistant County Attorney  
Palm Beach County Attorney's Office  
301 N. Olive Ave. 6<sup>th</sup> Floor  
West Palm Beach, FL 33401

And if sent to the COMPANY shall be mailed to:

Dr. Sasson E. Moulavi  
Scientific Real Estate Holdings, LLC  
4800 N. Federal Highway, Suite 300B  
Boca Raton, FL 33431

**(REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY)**

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of COUNTY, and COMPANY has hereunto set its hand the day and year above written.

**ATTEST:**  
**SHARON R. BOCK**  
**CLERK AND COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA**  
**BOARD OF COUNTY**  
**COMMISSIONERS:**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Shelley Vana, Chair.

**WITNESS:**

**COMPANY:**

**SCIENTIFIC REAL ESTATE**  
**HOLDINGS, LLC**

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Dr. Sasson E. Moulavi

\_\_\_\_\_  
Name (type or print)

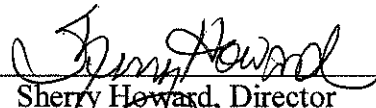
\_\_\_\_\_  
Title

(company seal)

**APPROVED AS TO FORM**  
**AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS**  
**AND CONDITIONS:**

By: \_\_\_\_\_  
Dawn Wynn  
Senior Assistant County Attorney

By:  \_\_\_\_\_  
Sherry Howard, Director  
Economic Development Office