

3H-12

Agenda Item #:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 10, 2007

Consent Regular

Ordinance Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a license agreement with The Palm Beach County Genealogical Society, Inc., a not for profit 501(c)(3) education organization, for the use of space within the Main Library.

Summary: The Genealogical Society shall use and occupy approximately 1600 square feet of space within the Main Library for storage and display for research materials as well as free instruction in genealogical research to the public. The license agreement is for two (2) years with options to renew at the County's sole discretion of three (3) - one (1) year terms. The Genealogical Society shall pay a monthly service fee of \$150.00 for utilities and custodial costs. (FDO Admin) District 2 (JM)

Background & Justification: The Genealogical Society has been operating at the West Palm Beach City Library since 1971 but now needs to move its operation due to the City's plans to move the City Library. The Library Department has agreed to provide the Genealogical Society space within the Main Library to operate due to the Genealogical Society's valuable resources and services which will greatly enhance and expand the research materials and services available to the public. Genealogy research is one of the Main Library's most popular services so the addition of the Genealogical Society is a benefit to the Library and the public.

Attachments:

License Agreement

Recommended by: Ann Mary Wolf 6/15/07
 Department Director Date

Approved by: [Signature] 7/9/07
 County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(\$300)</u>	<u>(\$1,800)</u>	<u>(\$1,500)</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>(\$300)</u>	<u>(\$1,800)</u>	<u>(\$1,500)</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Is Item Included in Current Budget? Yes No
 Budget Account No: Fund 1180 Department 800 Unit 8000 Object R6999
 Reporting Category

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Development & Control Comments:

[Signature] 6-27-07
 OFMB
[Signature] 6/21/07
[Signature] 6/21/07
[Signature] 6/21/07

[Signature] 7/9/07
 Contract Dev. and Control

This Contract complies with our contract review requirements.

B. Legal Sufficiency:

[Signature] 7/9/07
 Assistant County Attorney

C. Other Department Review:

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made and entered into _____, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County," and the Palm Beach County Genealogical Society, Inc., a not for profit 501(c)(3) educational organization with a federal identification number of 237107721 and hereinafter referred to as "Licensee".

WITNESSETH:

WHEREAS, County is the owner of certain real property in Palm Beach County, Florida, known as the Main Library ("Main Library") with an address of 3650 Summit Boulevard, West Palm Beach, FL; and

WHEREAS, Licensee is an all volunteer non-profit educational organization which collects, preserves and disseminates genealogical and related information; and

WHEREAS, Licensee has been operating out the of the City Library of West Palm Beach since 1971; and

WHEREAS, Licensee needs to move its operations from the City Library due to the City's plans to move the City Library; and

WHEREAS, Licensee desires to move its operation to the Main Library and use and occupy certain space within the Main Library to store and display its research materials; and

WHEREAS, Licensee will bring valuable resources and services to the Main Library which will greatly enhance and expand the research materials and services available to the public; and

WHEREAS, Licensee shall operate a non-circulating library and offer instruction in genealogical research free to the public; and

WHEREAS, genealogy research is one of the Main Library's more popular services; and

WHEREAS, County is willing to grant Licensee a revocable license to use the Main Library for the purposes hereinafter defined.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby grants the Licensee a revocable license to use the Premises as hereinafter defined upon the following terms and conditions:

**ARTICLE I
BASIC PROVISIONS**

Section 1.01 Premises

The Premises which are the subject of this Agreement consist of approximately 1600 square feet in the northeast corner of the lower level of the Main Library, as depicted on Exhibit "A", attached hereto and incorporated herein.

Section 1.02 Length of Term and Commencement Date

The term of this Agreement shall be two (2) years from the effective date of this Agreement unless sooner terminated pursuant to the provisions of this Agreement. The Agreement may be renewed, in the sole discretion of the County, for three additional one (1) year terms upon written renewal by both parties. Licensee shall inform the County of its desire to extend the Agreement by written notice to the County received at least sixty (60) days prior to the expiration of the initial term of this Agreement or any renewal thereof.

Section 1.03 Non Exclusive License Agreement

This Agreement is non-exclusive and the County reserves the right to enter and use the Premises for its own purposes and enter into agreements with other partners to provide additional services at the Main Library. However, subsequent agreements shall not interfere with the Licensee's use of the Premises.

**ARTICLE II
LICENSE FEE**

Section 2.01 License Fee

Licensee shall pay County a monthly Service Fee of \$150 for utilities and custodial costs associated with the Premises, together with all applicable sales taxes thereon, on the first day of each month, in advance, without any prior demand therefore. If the Agreement commences on a day other than the first day of the month, Licensee shall pay the Service Fee from the commencement date to the first day of the following month on a per diem basis (calculated on the basis of a thirty (30) days month), payable in advance on the commencement date of the Agreement. Any Service Fee payments hereunder for any other fractional month shall likewise be calculated and paid on such a per diem basis. Payments shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Finance Department, Revenue Section, P.O. Box 4036, West Palm Beach, FL 33402.

**ARTICLE III
CONDUCT OF BUSINESS AND USE OF PREMISES BY LICENSEE**

Section 3.01 Use of Premises and Hours of Operation

Licensee shall use the Premises solely and exclusively for the storage and display of its research materials and use of the research materials by the public and for meetings and seminars. Licensee

shall not use, permit or suffer the use of the Premises for any other business or purpose whatsoever. Licensee shall not use, permit, or suffer the use of the Premises for any other use whatsoever by any person(s), group(s), or entity, or contract with another entity to manage or operate the Licensee's business without the prior written consent of the Director of Facilities Development Operations or her designee. Licensee shall operate on the Premises only during the scheduled business hours of the Main Library.

Section 3.02 Licensee's Work

No improvements, alterations or additions to the Premises shall be performed by the Licensee. The Licensee shall fund the purchase and installation of all communications equipment (telephone and data), furniture, non-fixed fixtures and other equipment necessary to operate on the Premises. Licensee shall coordinate with the Director of the Palm Beach County Library System on the installation of communications equipment which shall be separate from and in no way conflict with the Library's communication equipment. The Licensee shall be responsible for securing any permits required for the installation of the communications equipment including cable installation. In the event that the installation of the communications equipment requires dedicated or additional electrical circuits (beyond those already existing in the Premises) to be installed, the Licensee shall pay the County to perform the electrical work.

Section 3.03 Waste or Nuisance

Licensee shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's fee interest in the Premises. Licensee shall not store or dispose any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents, including any petroleum products, used or produced in Licensee's operations, on the Premises or in any manner not permitted by law.

Section 3.04 Governmental Regulations

Licensee shall, at Licensee's sole cost and expense, secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Licensee or its use of the Premises, and shall faithfully observe in the use of the Premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force. This obligation shall include compliance with the requirements of all titles of the Americans with Disabilities Act. Licensee shall comply with all ecological requirements to operate its business on the Premises. Licensee shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section.

Section 3.05 Non-Discrimination

Licensee shall assure and certify that it will comply with the Title VII of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age,

marital status, sexual orientation or disability with respect to any activity occurring on the Premises.

Section 3.06 Criminal History Records Check

Licensee shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance") if Licensee's employees or subcontractors are required under this Agreement to enter or work at the site of a "critical facility" as identified in Resolution R2003-1274. Licensee acknowledges and agrees that all employees and subcontractors who are to perform work in a critical facility will be subject to a fingerprint based criminal history check.

Prior to commencement of work within a critical facility, Licensee shall make arrangements through the County's Electronic Services and Security Division/Access Section for its employees and those of its subcontractors to have finger print based criminal history record checks performed. Those employees cleared of disqualifying offenses will be granted an ID badge which must be worn at all times. A list of disqualifying offenses is available of upon request. Any person found to have a disqualifying criminal offense will be denied unescorted access to the critical facility. Licensee will be charged a nominal fee for lost cards.

Although County agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, Licensee shall be solely responsible for all direct and indirect costs associated with complying with Ordinance 2003-030.

Section 3.07 Surrender of Premises

Upon expiration or earlier termination of this Agreement, Licensee, at its sole cost and expense, shall remove all of its personal property and equipment from the Premises and shall surrender the Premises to the County in at least the same condition the Premises were in as of the date of this Agreement, reasonable wear and tear excepted.

ARTICLE IV REPAIRS AND MAINTENANCE OF PREMISES

Section 4.01 Responsibility of Licensee

Licensee has no responsibility for maintenance of the Premises, but for to use it only for its intended purpose. Upon expiration or earlier termination of this Agreement, Licensee shall deliver the Premises to County in good repair and condition as specified herein. In the event of any damage to the Premises by the Licensee, County may complete the necessary repairs and Licensee shall reimburse County for all expenses incurred by County in doing so.

Section 4.02 Responsibility of County

County agrees to maintain, repair and keep the Premises in good condition and repair at County's sole cost and expense. Licensee agrees to adopt and enforce any reasonable operational rules and regulations necessary to assist the County in carrying out its maintenance responsibilities pursuant to this Section.

Section 4.03 County's Right to Enter

County shall have the right to enter the Premises at any time necessary, without notice, to implement its responsibilities pursuant to this Section and for purposes of inspection of the Premises generally. The County agrees to exercise reasonable efforts to minimize interference with or disruption of Licensee's operations on the Premises; provided, however the County shall not be required to expend additional sums of money in order to comply with the foregoing requirement. In the event that a County work activity must take place within the Licensee's operating hours and will disrupt with or interfere with the Licensee's operation, the County's designee will provide 48 hours notice to the Licensee.

Section 4.04 Utilities

The County shall be solely responsible for and promptly pay directly to the utility company or the provider of such service all charges and assessments for electricity, water, sewer, trash collection and removal, gas, security, and internet access used or consumed on the Premises. In no event shall County be liable for an interruption or failure in the supply of any such utility to the Premises.

Licensee shall pay directly to the utility company or the provider of services all charges and assessments associated with its telephone service.

ARTICLE V INSURANCE AND INDEMNITY

Section 5.01 Insurance

Licensee shall, during the entire Term hereof, keep in full force and effect General Liability Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability. The General Liability policy shall include coverage for Premises - Operations, Contractual and Product Liability, Independent Contractors, Contractual Liability and Broad Form Property Damage Liability coverages.

Licensee shall, during the entire Term hereof, keep in full force and effect Workers Compensation insurance covering all employees in accordance with Chapter 440 Florida Statutes.

Licensee shall maintain business automobile liability insurance with limits of liability not less than \$1,000,000 each occurrence for owned, non-owned and hired automobiles. In the event that Licensee has no owned automobiles, the requirement shall be to maintain only hired and non-owned auto liability. This amended coverage may be satisfied by way of endorsement to the Commercial General liability or separate business auto liability. This coverage shall be provided on a primary basis.

Licensee shall provide County with a certificate of insurance evidencing limits, coverages and endorsements required herein. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is

canceled or not renewed during the life of this Agreement, Licensee shall furnish thirty (30) days prior to, but in no case later than the expiration of such insurance, a new certificate of insurance evidencing replacement coverage. Should Licensee fail to maintain the insurance required herein, the County shall have the right, but not the obligation, to purchase or maintain said insurance, and Licensee shall promptly pay, upon demand from County, all premiums and expenses incurred by County.

Section 5.02 General Provisions

Except for Workers Compensation, all insurance policies shall name the County as an Additional Insured. Such insurance shall be with an insurance company licensed to do business in the State of Florida and subject to the approval of the County's Risk Management Department. The Additional Insured endorsements shall read "Palm Beach County Board of County Commissioners, a political Subdivision of the State of Florida, its Officers, Employees and Agents." Such Certificate shall include at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

In no event shall the limits of said insurance policies be considered as limiting the liability of Licensee under this Agreement. In the event that Licensee shall fail to obtain and maintain in full force and effect any insurance coverage required to be obtained by Licensee under this Agreement, County shall have the right of injunction, or County may immediately terminate this Agreement, notwithstanding any provisions herein to the contrary. Notwithstanding the foregoing, Licensee shall and does nevertheless indemnify, defend and hold County harmless from any loss or damage incurred or suffered by County from Licensee's failure to maintain such insurance.

County reserves the right, but not the obligation to review, adjust, reject or accept insurance policies, limits, coverages or endorsements throughout the life of this Agreement. The County reserves the right, but not the obligation, to review or reject any insurer providing coverage because of poor financial condition or due to illegal operation. The County shall provide Licensee written notice of such action and Licensee shall agree to cure or comply with such action within thirty (30) days receipt thereof.

Section 5.03 Waiver by Licensee and Licensee's Insurers of Subrogation

In the event of loss or damage to the Premises and/or any of Licensee's improvements, the Licensee shall look solely to any insurance in its favor without making any claim against the County. Licensee shall obtain and deliver to the County, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the County for loss or damage within the scope of the insurance. Licensee, for itself and its insurers, waives all such insured claims against the County.

Section 5.04 Indemnification of County

Licensee shall indemnify, defend and save harmless the County from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Agreement for any personal injury, loss of life and/or damage to property sustained in or about the Premises

by reasons or as result of the use and occupancy of the Premises by the Licensee, its agents, employees, licensees, invitees and the general public, and from and against any orders, judgments, and/or decrees which may be entered thereon and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim. In the event that the County shall be made a party to any litigation commenced against the Licensee or by the Licensee against any third party, Licensee shall protect and hold harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, including any appeals thereof. Licensee recognizes the broad nature of this indemnification provision and specifically acknowledges the receipt of good and valuable consideration in support thereof. This provision shall survive expiration of this Agreement.

ARTICLE VI ASSIGNMENT AND SUBLETTING

Section 6.01 Assignment and Subletting

Licensee may not assign, mortgage, pledge or encumber this Agreement in whole or in part, nor sublet or rent, nor enter into any concession or license agreement with respect to all or any portion of the Premises, nor grant any easements affecting the Premises, without written consent of the County, which may be granted or withheld at County's absolute discretion. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

ARTICLE VII REVOCATION OF LICENSE

Section 7.01 Revocation of License

Notwithstanding anything to the contrary contained herein, the rights granted to Licensee hereunder amount only to a license to use the Premises, which license is expressly revocable by County for any reason whatsoever upon 120 day notice to Licensee and the County shall have no obligation whatsoever to provide replacement space. Upon Licensee's receipt of notice from County of the revocation of the license granted hereby, this Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Entire Agreement

This Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Licensee unless reduced to writing and signed by them.

Section 8.02 Notices

All notices, consents, approvals, and elections (collectively "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any such notice shall be the date of delivery of the notice if by personal delivery, courier service, or national overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties designate the following addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the County at:
John J. Callahan III, Director
Palm Beach County Library System
3650 Summit Blvd.
West Palm Beach, FL 33406

With a copy to:

- (b) Audrey Wolf, Director
Facilities Development & Operations Department
3200 Belvedere Rd. Building 1169
West Palm Beach, Fl. 33406
- (c) If to the Licensee at:
Palm Beach County Genealogical Society, Inc.
Attn: Linnie Sue Comerford
P.O. Box 1746
West Palm Beach, FL 33402

Section 8.03 Recording

Licensee shall not record this Agreement, or any memorandum or short form thereof, without the written consent and joinder of County.

Section 8.04 Waiver of Jury Trial

The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

Section 8.05 Governing Law and Venue

This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County.

Section 8.06 Time of Essence

Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

Section 8.07 Annual Budgetary Funding/Cancellation

This Agreement and all obligations of County hereunder requiring the expenditure of funds are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.

Section 8.08 Examination of Books and Records

Licensee shall maintain such books and records of its operations as are customarily maintained by not for profit organizations and are necessary to fully and completely account for the operations conducted within the Premises. Such books and records shall be maintained for at least three (3) years following the end of the Licensee's fiscal year. County shall have the right to examine such records for any purpose reasonably related to the County's ownership of the Premises, the operation of the Licensee's programs within the Premises and the County funding of its programs conducted within the Premises.

Section 8.09 Good Standing

Licensee shall at all times during the term of this Agreement remain in good corporate standing as a not for profit corporation with the Florida Secretary of State.

IN WITNESS WHEREOF, County and Licensee have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

SHARON R. BOCK,
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

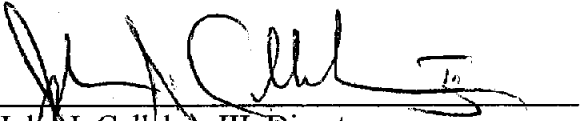
COUNTY:
PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO TERMS AND CONDITIONS

By: Audrey Wolf
Audrey Wolf, Director
Facilities Development & Operations ATD

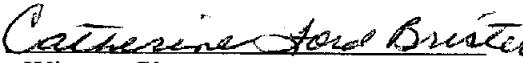
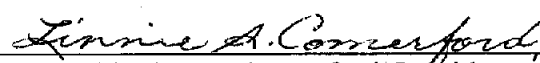
APPROVED AS TO TERMS AND CONDITIONS

By: 
John J. Callahan III, Director
Palm Beach County Library System

LICENSEE:

ATTEST:

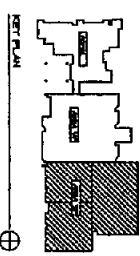
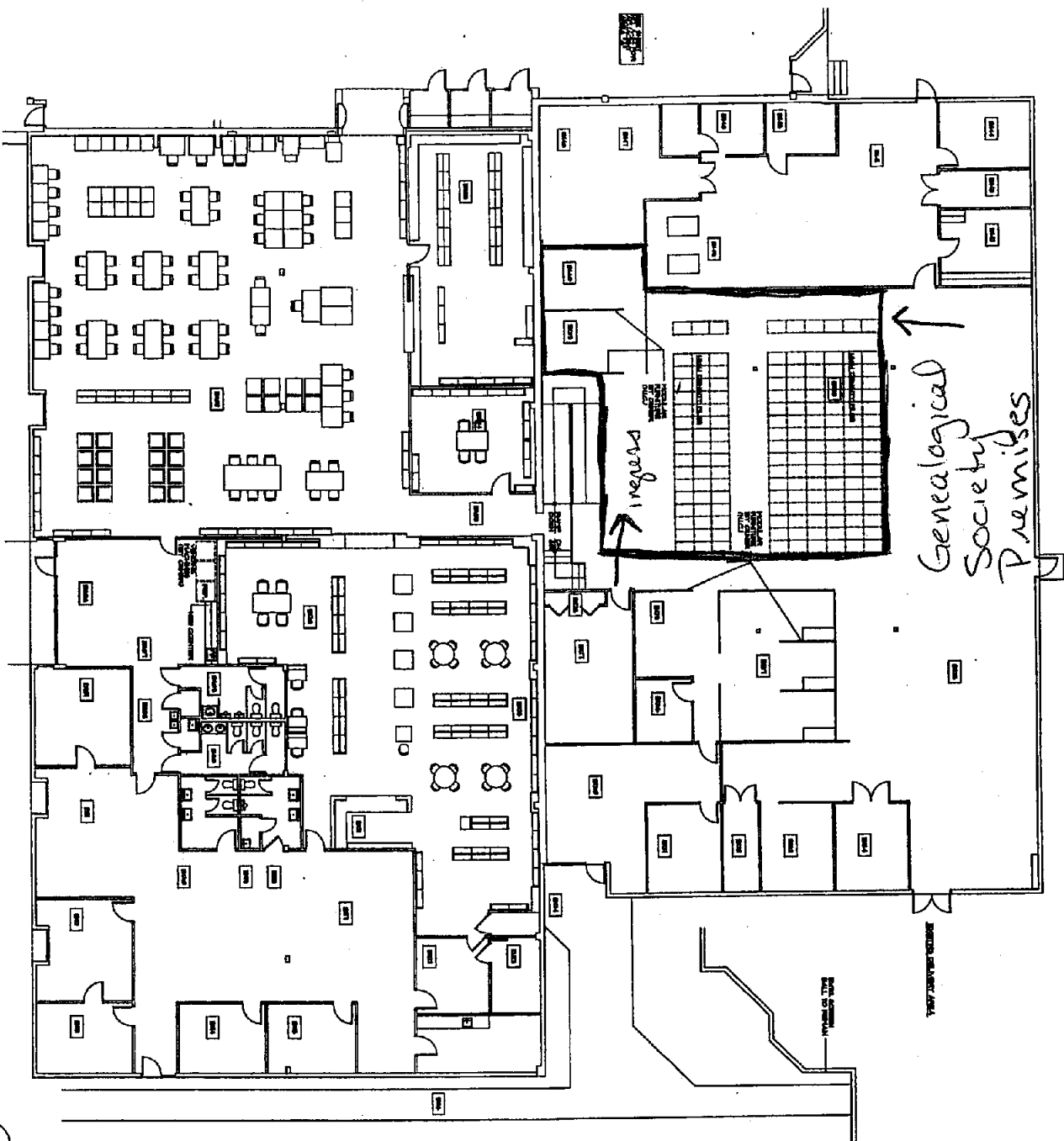
PALM BEACH COUNTY GENEALOGICAL
SOCIETY

By:  By: , Ed.D.
Witness Signature Dr. Linnie Sue Comerford, President

CATHERINE FORD BRISTER
Witness Printed Name

Exhibit "A"
PREMISES

FURNITURE PLAN - AREA 'B'



NO.	DATE	REVISIONS
1	1-20-78	

Project no. 88226-A
sheet 1 of 1

date drawn 1-20-78
checked

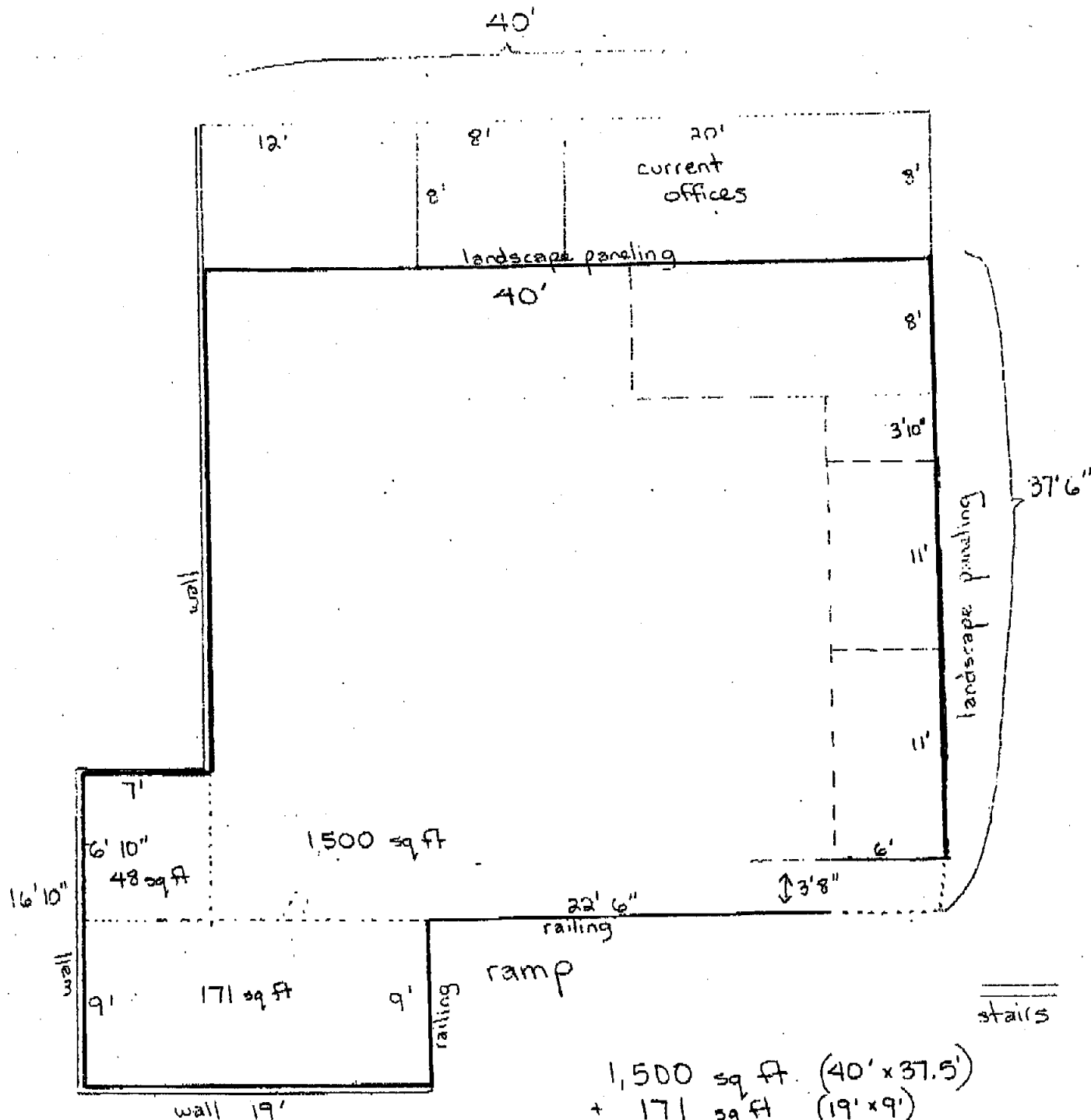
revisions

CENTRAL LIBRARY
EXPANSION AND RENOVATION



PALM BEACH COUNTY
FACILITIES PLANNING, DESIGN & CONSTRUCTION
architectural division
west palm beach, florida (407) 664-4060

Exhibit A-Page 2 Genealogy Library space



1,500 sq ft	(40' x 37.5')
+ 171 sq ft	(19' x 9')
+ 48 sq ft	(7' x 6'10")
<hr style="width: 50%; margin: 0 auto;"/>	
1,719 total sq. ft.	

Main Library