

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: November 5, 2013 [ ] Consent [X] Regular  
[ ] Ordinance [ ] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: a Second Amendment to the Third Restated Agreement (R2004-0257) with the Historical Society of Palm Beach County, a Florida non-profit corporation (Society) for the Society's use of the 1916 Courthouse increasing the Premises by 41 SF and requiring continued payment of rent for their administrative offices.

**Summary:** In 2009, the Board approved the Third Restated Agreement with the Society for occupancy of 8,695 SF of space within the 1916 Courthouse for operation of the Palm Beach County History Museum and administrative offices for the Society. The Society pays no rent for the Museum space and \$45,127.95 (\$19.40/SF) in rent for their administrative offices. The term of the Agreement runs through 2038. The Society has requested that County abate the rent for a period of five (5) years. In addition, the Society has requested exclusive use of a 41 SF custodial closet within the second floor women's bathroom. Staff supports the Society's request to have exclusive use of the custodial closet, and this Second Amendment includes that change. Staff does not support allowing the Society to occupy space within the 1916 Courthouse without payment of rent, and the Amendment does not provide for rent abatement unless directed by Board. There is no legal requirement for the Society to pay rent; however, the County funded the entire capital restoration costs for the 1916 Courthouse including the Museum space and space for the fourth floor administrative offices ultimately occupied by Society. The County also funded Society's build out of the Museum itself with funds from a Recreational and Cultural facilities bond issue. The original agreement was structured to require Society to pay market rent for the fourth floor office space since Society could occupy private space for this function and Society's use is displacing County use of the space. As such, the requested five (5) year rent abatement: 1) is inconsistent with the initial terms of the relationship between the parties and 2) would amount to a subsidy of Society's operational costs without the benefit of a competitive review of the needs of other historical organizations or not-for-profits in general. (PREM) District 2/Countywide (HJF)

**Background and Policy Issues:** The Third Restated Agreement allows the Society to use 6,370 SF of space within the Historic 1916 Courthouse for operation of the Richard and Pat Johnson Palm Beach County History Museum for \$10/year. The Agreement also allows the Society to use 2,325 SF of office space on the fourth floor of the Courthouse for Society's administrative offices. Rent for the Society's office space is currently \$45,127.95 (\$19.40/SF) and is increased by the CPI annually. At the commencement of the Agreement, rent was set at \$17.50/SF based upon Staff's estimate of then current market rates for other space which Society could lease for their administrative offices. Comparable space rents for significantly more than the current \$19.40/SF. The Society also has the non exclusive right to use the Ceremonial Courtroom and 13 parking spaces within the County's Fourth Street Parking Lot for employees and volunteers. This Second Amendment does not reduce the rent, but does add the custodial closet within the Premises and also updates standard terms. Should the Board support Society's request for a five (5) year rent abatement, Section 2.01 of the Second Amendment would be modified accordingly.

**Attachments:**

- 1. Location Map
- 2. Second Amendment to Third Restated Agreement

Recommended By: [Signature] Ann Mary Wolf 10/25/13  
Department Director Date

Approved By: [Signature] 10/24/13  
County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	*\$37,606.63	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	=====	=====	=====	=====	=====
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes  No

Budget Account No: Fund 0001 Dept 410 Unit 5250 Object 6225  
 Program \_\_\_\_\_

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

\*If Rent is abated, the County will not receive \$37,606.63 (10 month's rent) in revenue budgeted for FY '14. Future year revenue losses are not projected.

**C. Departmental Fiscal Review: \_\_\_\_\_**

**III. REVIEW COMMENTS**

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

Susan Neary 10/18/13  
 OFMB HN 10/17 10/17

Dr. J. Jacobson 10/20/13  
 Contract Development and Control

**B. Legal Sufficiency:**

J. J. 10/21/13  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

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

## SECOND AMENDMENT TO THIRD RESTATED AGREEMENT

THIS SECOND AMENDMENT TO THIRD RESTATED AGREEMENT (this "Second Amendment"), is made and entered into this \_\_\_\_\_ by and between PALM BEACH COUNTY, Florida, a political subdivision of the State of Florida ("County"), and THE HISTORICAL SOCIETY OF PALM BEACH COUNTY, a Florida Non-Profit Corporation (the "Society").

WITNESSETH:

**WHEREAS**, County is the owner of certain real property upon which the first Palm Beach County Courthouse was constructed in 1916 (the "Historic Courthouse"); and

**WHEREAS**, County and Society entered into a Third Restated Agreement dated March 17, 2009, (R2009-0414), (the "Third Restated Agreement") pursuant to which Society: (i) operates a Museum of Palm Beach County history within the Historic Courthouse; (ii) leases certain premises therein for office space; and (iii) has rights to share in the use of the ceremonial courtroom and other portions of the Historic Courthouse; and

**WHEREAS**, County and Society entered into a First Amendment to the Third Restated Agreement dated October 5, 2010, (R2010-1540), to provide the Society the right to request the County's consent to make alterations to the exterior of the Historic Courthouse and the surrounding grounds; and

**WHEREAS**, Society and County desire to further amend the Third Restated Agreement to allow Society to expand the Premises to include a custodial closet and add certain standard provisions to the agreement.

**NOW, THEREFORE**, in consideration of the sum of Ten Dollar (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The recitals set forth above are true and correct and are incorporated herein by this reference. Terms not defined herein shall have the meaning ascribed to them in the Third Restated Agreement, as amended.
2. Section 1.01 of the Third Restated Agreement is hereby modified to add the following:

The Leased Premises shall also include the custodial closet in the second floor female bathroom depicted on the floor plan attached hereto as Exhibit "A." Access to said closet shall be in strict compliance with the procedures therefore established from time to time by the County.

3. Section 4.07 of the Third Restated Agreement is hereby deleted and replaced with the following:

Society shall assure and certify that it will comply with the Title VI 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, familial status, sexual orientation, gender identity or expression, or disability with respect to any activity occurring on the Premises or conducted pursuant to this Lease. Society warrants that in the event the facilities constructed or operated upon the Premises are public facilities the same shall be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis as to residents of the municipality in which the Premises are located.

4. Section 19.02(b) of the Third Restated Agreement is hereby modified to designate a new contact person for Society as follows:

Name: Jeremy W. Johnson, President & CEO,  
Historical Society of Palm Beach County  
Address: 300 N. Dixie Highway, Suite 371  
Phone Number: (561) 832-4164 ext. 102  
E-mail: [jjohnson@historicalsocietypbc.org](mailto:jjohnson@historicalsocietypbc.org)

5. Article XIX of the Third Restated Agreement is hereby modified to add the following:

**Section 19.24 No Third Party Beneficiary.**

No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizens of County or employees of County or Society.

6. Except as specifically modified by this Second Amendment and the First Amendment, all of the terms and conditions of the Third Restated Agreement shall remain unmodified and in full force and effect in accordance with the terms thereof. In the event of a conflict between the terms and conditions set forth in the Third Restated Agreement and those set forth in this Second Amendment, the terms and conditions of this Second Amendment shall govern.
7. This Second Amendment shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

WITNESS:

THE HISTORICAL SOCIETY OF  
PALM BEACH COUNTY,  
A FLORIDA NON-PROFIT  
CORPORATION

\_\_\_\_\_  
Witness Signature

By: \_\_\_\_\_  
Jeremy W. Johnson, its President

\_\_\_\_\_  
Print Name of Witness

\_\_\_\_\_  
Witness Signature

(SEAL)  
(corporation not for profit)

\_\_\_\_\_  
Print Name of Witness

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

ATTEST:

SHARON H. BOCK,  
Clerk and Comptroller

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

By: \_\_\_\_\_  
Steven L. Abrams, Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO ITS TERMS  
AND CONDITIONS

By:   
Assistant County Attorney

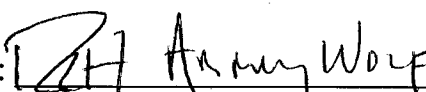
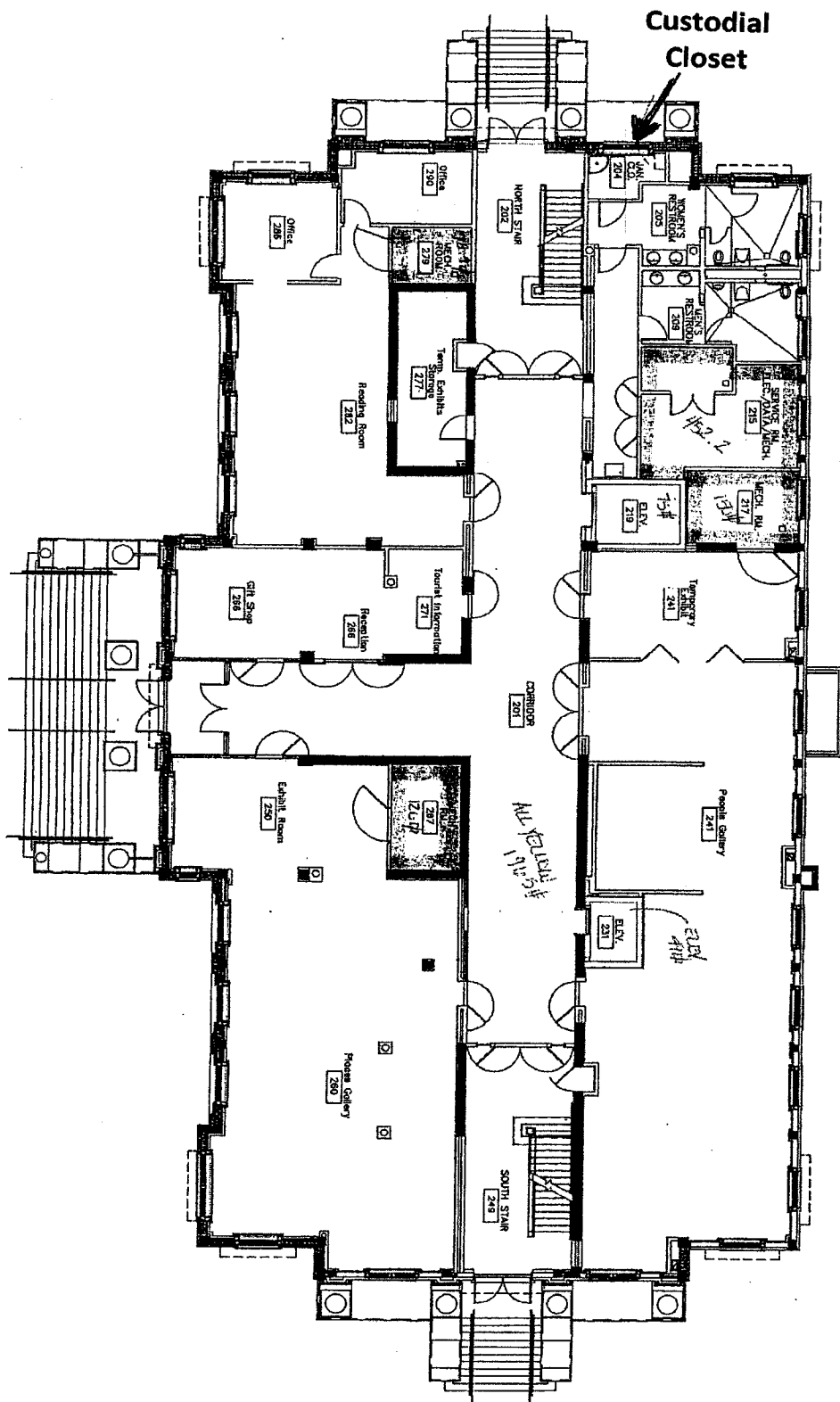
By:   
Audrey Wolf, Director  
Facilities Development & Operations

Exhibit "A"



HISTORIC 1916 COURTHOUSE  
2nd FLOOR PLAN WITH ROOM NUMBERS  
SEPTEMBER 29, 2007