



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	*\$41,367.26	\$45,127.95	\$45,127.95	\$45,127.95	\$45,127.95
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<b><u>41,368</u></b>	<b><u>45,128</u></b>	<b><u>45,128</u></b>	<b><u>45,128</u></b>	<b><u>45,128</u></b>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes \_\_\_\_\_ No X

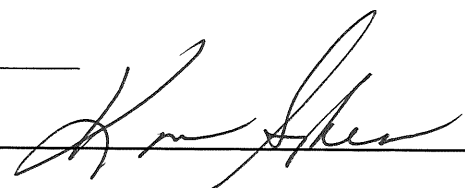
Does this item include the use of federal funds? Yes \_\_\_\_\_ No X

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

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

\*If Rental abatement is extended, the County will forego \$41,367.26 (11 month's rent) in revenue. Future revenue loss is predicated on the Board annual review of expanded programs.

Fixed Asset Number \_\_\_\_\_

C. Departmental Fiscal Review: 

**III. REVIEW COMMENTS**

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

 9/25/18  
 OFMB  9/25/18

 10/5/18  
 Contract Development and Control  10/5/18

**B. Legal Sufficiency:**

 10/9/18  
 Assistant County Attorney

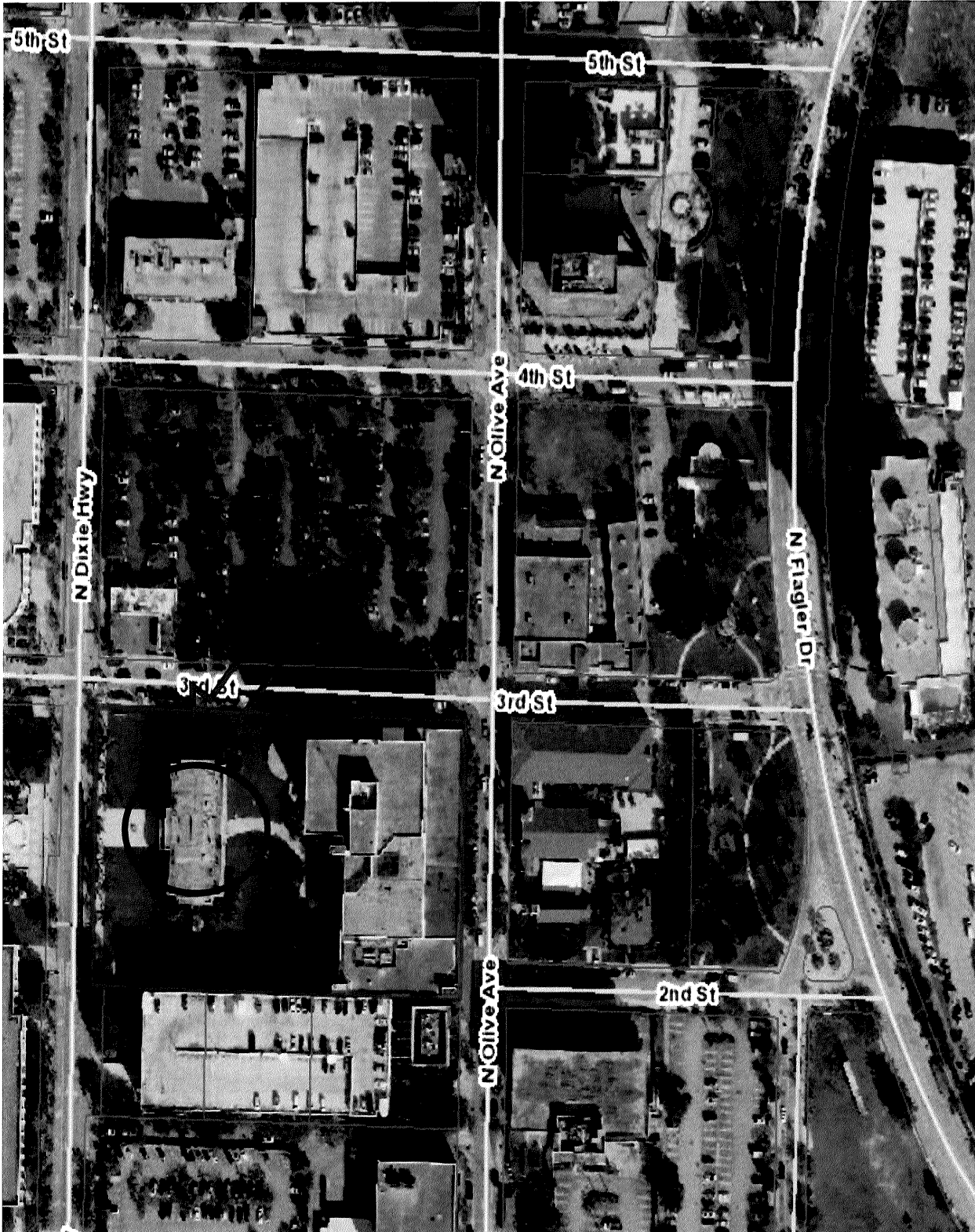
**C. Other Department Review:**

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

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

**Background & Justification (cont'd.):** On October 5, 2010, the Board approved the First Amendment (R2010-1540) allowing Society the right to request consent to make exterior modifications. On November 5, 2013, the Board conceptually approved a Second Amendment (R2013-1606) for rental abatement and exclusive use of a 41sf custodial closet, subject to a review of Society's plans for expenditure of the rental savings. On February 4, 2014, the Board approved the Third Amendment which expanded the premises to include a 41sf custodial closet within the second floor women's restroom, abated the rent until October 31, 2018, subject to an annual review of Society's plans for expenditure of the rental savings, reduced the required security deposit to \$150,000, and replaced the Second Amendment attached to the November 5, 2013, agenda item, which Second Amendment was not executed. The Society also has the non exclusive right to use the Ceremonial Courthouse and 13 parking spaces within the County's Fourth Street Parking Lot for employees and volunteers. Society has provided annual reports confirming the expenditures on its planned program expansion exceeds the rental savings. This Fourth Amendment extends the abatement of rent for a period of five (5) years, subject to Society providing annual reports to document the expended program expansion costs exceed the abated rental amount, deletes the security deposit requirement, continues to require Society to maintain no less than \$700,000 in unrestricted reserves, adds exclusive use of the walls of the first floor hallway, the stairwell located in the north corridor closest to the courtroom and the courtroom balcony, adds and updates standard terms, and adds Exhibit "A-1" for the custodial closet within the second floor women's restroom approved in the Third Amendment. A Disclosure of Beneficial Interests was not provided since Society is a not for profit corporation wherein no one individual owns five percent (5%) or more of the corporation.

OK



LOCATION MAP



Attachment #1

1 pg

Attachment 2  
Historical Society letter, dated July 30, 2018



HISTORICAL SOCIETY  
of PALM BEACH COUNTY

July 30, 2018

Board of County Commissioners  
Palm Beach County  
301 N. Olive Avenue  
West Palm Beach, FL 33401

Dear Esteemed Commissioners,

Pursuant to the prescribed five-year review of the lease agreement between the County and the Historical Society of Palm Beach County for 300 North Dixie Highway, West Palm Beach, I respectfully request that the County permanently abate the rent requirement for the HSPBC's administrative offices. I also ask that agreements reached with the County on March 30, 2017, be memorialized in an amendment to the lease; i.e., that the HSPBC is permitted to (1) use the walls of the first- and third-floor stairwells for exhibition, and (2) seek naming opportunities for the third-floor courtroom. Finally, I ask that the requirement for the \$150,000 security bond be relieved.

As I look back over the first ten years of our museum, I feel great pride in the success of this important community institution. Through the Richard and Pat Johnson Palm Beach County History Museum and our programs in the School District, we have impacted over 500,000 students, residents, and visitors. This would not have been possible without our partnership with the County. Relief from the above financial obligations and addition of exhibition space will enable the Historical Society to continue its growth in reaching new and diverse constituencies.

Thank you for your consideration.

Sincerely,

Jeremy W. Johnson, CAE  
President and Chief Executive Officer

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Thomas Anderson & Marc Schappell	Martha DeBrule Mark B. Elhilow	Melanie & Chris Hill Pat Seaton Johnson	Sydelle Meyer Pauline Pitt	Annette Stubbs RADM Philip A. Whitacre USN (Ret.)
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Margaret Cheryl Burkhardt	Frances & Jeffrey H. Fisher	Carol & Thomas M. Kirchoff	Deborah & Chuck Royce	Robert C. Wright
Joseph Chase	Anneli & Robert W. Ganger	Patricia Lambrecht	Frances G. Scaife	
Susan & Christopher Cowie	Lorrain & Malcolm W. Hall	Patricia Lester	Sonja & Mark Stevens	

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*Town of Palm Beach Council*
- Mack Bernard  
*Board of Palm Beach County Commissioners*

**PRESIDENT AND CEO**

Jeremy W. Johnson, CAE

The 1916 Court House  
300 North Dixie Highway  
Downtown West Palm Beach

*Mailing address:*

Post Office Box 4364  
West Palm Beach, FL 33402  
561.832.4164 | hspbc.org



RICHARD AND PAT  
JOHNSON  
PALM BEACH COUNTY  
HISTORY  
MUSEUM

Attachment 3  
2 - Fourth Amendment to Third Restated Agreement  
(9 pages each)

**FOURTH AMENDMENT TO THIRD RESTATED AGREEMENT**

**THIS FOURTH AMENDMENT TO THIRD RESTATED AGREEMENT** (“Fourth Amendment”), is made and entered into this \_\_\_\_\_ by and between **PALM BEACH COUNTY**, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners (“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**, on November 5, 2013, (R2013-1606), County conceptually approved Society’s request to expand the Premises and abate the rent, subject to review of Society’s plans for expenditure of the rental savings, which rent abatement was not included in the proposed Second Amendment to the Third Restated Agreement; and

**WHEREAS**, County and Society entered into a Third Amendment to the Third Restated Agreement dated February 4, 2014, (R2014-0138), to expand the Premises, abate the rent, reduce the security deposit, and add certain standard provisions; and

**WHEREAS**, Society desires to expand the Leased Premises to include the use of the walls of the first floor hallway, the stairwell to the courtroom, and the courtroom balcony within the Historic Courthouse for exhibition purposes; and

**WHEREAS**, Society further desires the required security deposit be relieved; and

**WHEREAS**, the parties wish to modify this Lease on the terms and conditions set forth herein.



**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, Premises, of the Third Restated Agreement is hereby deleted in its entirety and replaced with the following:

**Section 1.01 Premises.**

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of Society to be observed and performed, County demises and leases to Society, and Society rents from County the real property described in **Exhibit "A"** attached hereto and the custodial closet in the second floor female bathroom depicted on the floor plan attached hereto as **Exhibit "A-1"** (access to said closet shall be in strict compliance with the procedures therefor established from time to time by the County) (the "Leased Premises"). In addition, County hereby grants to Society a non-exclusive license to utilize the ceremonial courtroom described in **Exhibit "B"** attached hereto (the "Courtroom"). The Courtroom is referred to herein as Licensed Premises. The Leased Premises and Licensed Premises are collectively referred to herein as Premises. Society shall comply with all rules and regulations as reasonably established by County, and as same may be modified or amended from time to time. The Leased Premises shall include the exclusive use of the walls of the first floor hallway and the stairwell located in the North Corridor closest to the Licensed Premises and shall include the exclusive use of the courtroom balcony within the Historic Courthouse for exhibition purposes. Society shall not install any exhibit on the walls or within the stairwell without the prior written consent of the Director of Facilities Development & Operations (Department), which approval may be granted, withheld or conditioned in the Department's sole and absolute discretion. Such exhibits are subject to approval of the Fire Marshall. In no event shall County be obligated to provide security against any type of vandalism upon any exhibit placed on the walls, Courtroom, courtroom balcony or within the stairwell by Society. The current rules and regulations are attached as **Exhibit "C"** of this Agreement (the "Rules and Regulations"). Notwithstanding the foregoing, in the event of a conflict between this Agreement and the Rules and Regulations, this Agreement shall control.

3. Section 2.06, Rent Abatement, of the Third Restated Agreement, as amended, is hereby deleted in its entirety and placed with the following:

Section 2.06 Rent Abatement. The Rent payable under Section 2.01 hereof shall be abated for the period of November 1, 2018 through October 31, 2023. It is understood that Society will use the monies which otherwise would have been payable as Rent for expansion of its program services. Society shall provide County with an annual report detailing how such monies were expended. County shall annually review said programs and expenditures and shall have the right, at its option and in its sole discretion, to terminate the rental abatement effective ninety (90) days after notice from County to Society.

4. Section 4.07, Non-Discrimination, of the Third Restated Agreement, as amended, is hereby deleted and replaced with the following:

Section 4.07 Non-Discrimination. The County is committed to assuring equal opportunity in the award of leases and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, Society warrants and represents that throughout the term of this Third Restated Agreement, including any renewals thereof, if applicable, all individuals shall be treated equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information with respect to any activity occurring at the Premises or conducted pursuant to this Third Restated Agreement. Failure to meet this requirement shall be considered default of this Third Restated Agreement.

5. Section 5.01, Amount of Deposit, of the Third Restated Agreement, as amended, is hereby deleted in its entirety and replaced with the following:

Section 5.01 Amount of Deposit.

Society shall maintain minimum, unrestricted operating reserves of \$700,000.00, (the "Reserves") at all times during the Term of this Agreement, and shall provide County evidence of the Reserves annually (initially prior to approval hereof by County and thereafter upon each anniversary of the Effective Date) and otherwise upon request of County. In the event Society fails to maintain the Reserves, Society shall provide immediately, upon demand from County, cash, a letter of credit or a performance bond satisfactory to County in its reasonable discretion, in an amount equal to One Hundred and Fifty Thousand Dollars (\$150,000.00) (the "Security Deposit").

In the event Society fails to pay all operating costs for the Museum of History, County shall be entitled, but not obligated, to use the Security Deposit, if being held by County, to pay such operating costs. The Security Deposit may be commingled with other funds of County, and County, shall have no liability for the accrual or payment of any interest thereon. In the event of the failure of Society to keep and

perform any of the terms, covenants and conditions of this Agreement to be kept and performed by Society, then County, at its option, may appropriate and apply the Security Deposit, or so much thereof as County may deem necessary, to compensate County for all loss or damage sustained or suffered by County due to such default or failure on the part of Society. Should any portion of the Security Deposit be so appropriated and applied by County, then Society shall, upon the demand of County, forthwith remit to County a sufficient amount in cash to restore said Security Deposit to the original sum deposited, and Society's failure to do so within five (5) days after receipt of such demand shall constitute a default of this Agreement. Should Society comply with all of the terms, covenants and conditions of this Agreement and promptly pay all of the Annual Rent and Additional Rent herein provided for as it becomes due, Society's operating expenses and all other sums payable by Society to County hereunder, the said Security Deposit shall be returned in full to Society within thirty (30) days of the end of the Term of this Agreement, or upon the earlier termination hereof.

6. Section 19.23, Palm Beach County Office of the Inspector General, of the Third Restated Agreement, as amended, is hereby deleted in its entirety and replaced with the following:

Section 19.23 Palm Beach County Office of the Inspector General Audit Requirements.

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 is authorized with the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a 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.

7. Article XIX of the Third Restated Agreement, as amended, is hereby modified to add the following:

Section 19.25 Condemnation.

If the Licensed Area, or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, County shall be entitled to the entire award therefor, including, without

limitation, any award relating to both Society's leasehold estate and County's reversionary interest in the fee simple estate, without deduction, claim or setoff for any present or future estate of Society. Society hereby assigns and relinquishes to County all right, title and interest in such award and shall execute all documents required to evidence such result. Notwithstanding the foregoing, Society shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses, business damages, and value of any crops. In the event of a total taking of the Licensed Area, the rent shall be prorated to, and this Lease shall terminate upon, the date title vests in the condemning authority. Notwithstanding such termination, Society shall remain liable for all matters arising under this lease prior to such termination. In the event of a partial taking, Rent shall be reduced on a prorata basis. In the event of a temporary taking, Rent shall be abated on a pro rata basis for the period of time Society is unable to use the portion of the Licensed Area temporarily taken. After such period, Rent shall be restored to the Rent which would have been then due without regard to such taking. County shall have no obligation to restore the Licensed Area improvements or otherwise perform any work upon same as a result of any such taking.

#### Section 19.26 Public Records.

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Society: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Society shall comply with the requirements of Section 119.0701, F.S., as it may be amended from time to time, the Society is specifically required to:

Keep and maintain public records required by the County to perform services as provided under the Third Restated Agreement.

Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Society further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Third Restated Agreement term and following completion of the Third Restated Agreement, if the Society does not transfer the records to the County.

Upon completion of the Third Restated Agreement the Society shall transfer, at no cost to the County, all public records in possession of the Society unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Society transfers all public records to the County upon completion of the Third Restated Agreement, the Society shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Society keeps and maintains public records upon completion of the Third Restated Agreement, the Society shall meet all applicable requirements for retaining public records. All records stored electronically by the Society must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Society to comply with the requirements of this article shall be a material breach of this Third Restated Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Society acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE SOCIETY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SOCIETY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS THIRD RESTATED AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST(@pbcgov.org OR BY TELEPHONE AT 561-355-6680.

Section 19.27 Conflict of Interest.

The Society represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The Society further represents that no person having any such conflict of interest shall be employed for said performance of services.

The Society shall promptly notify the County's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the Society's judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business

association, interest or circumstance, the nature of work that the Society may undertake and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest if entered into by the Society. The County agrees to notify the Society of its opinion by certified mail within thirty (30) days of receipt of notification by the Society. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Society, the County shall so state in the notification and the Society shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by the Society under the terms of this Contract.

Section 19.28 Termination of Office Space and Custodial Closet.

Notwithstanding anything in this Third Restated Agreement to the contrary, County may terminate Society's use of the Office Space and storage space, or a portion thereof, as set forth in and as described in Exhibit "A" of the Third Restated Agreement for any reason upon three hundred sixty-five (365) days prior written notice from County to Society.

8. Except as specifically modified by this Fourth Amendment, the Third Amendment, the 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 Fourth Amendment, the terms and conditions of this Fourth Amendment shall govern.

9. This Fourth 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**, the parties have set their hands and seals to this Fourth Amendment as of the date written above.

Signed, sealed and delivered  
in the presence of:

**WITNESS:**

Sharon Poss  
Witness Signature

Sharon Poss  
Print Name of Witness

Musteinhauer  
Witness Signature

Lise M. Steinhauer  
Print Name of Witness

**THE HISTORICAL SOCIETY OF  
PALM BEACH COUNTY,**  
a Florida non-profit corporation

By: [Signature]  
Jeremy W. Johnson, its President

(SEAL)  
(corporation not for profit)

**ATTEST:**  
SHARON H. BOCK,  
Clerk and Comptroller

**PALM BEACH COUNTY, FLORIDA,**  
a political subdivision of the State of  
Florida

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

By: \_\_\_\_\_  
Melissa McKinlay, Mayor

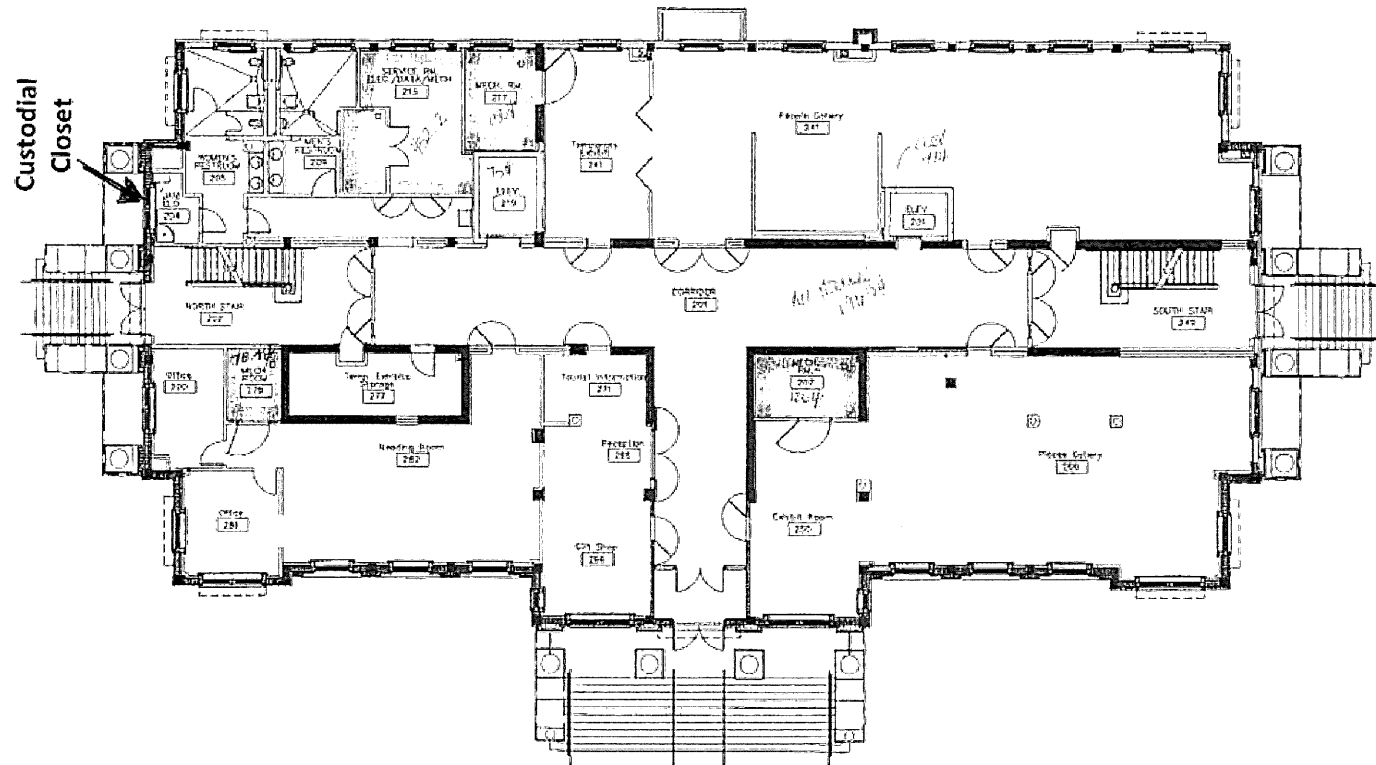
**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: [Signature]  
Assistant County Attorney

By: [Signature]  
Audrey Wolf, Director  
Facilities Development & Operations

EXHIBIT "A-1"  
CUSTODIAL CLOSET 2<sup>ND</sup> FLOOR



HISTORIC 1916 COURTHOUSE  
2<sup>ND</sup> FLOOR PLAN WITH ROOM NUMBERS  
SEPTEMBER 29, 2007