



**Interoffice Memorandum**

April 29, 2020

**AGENDA ITEM**

TO: Mayor Jerry L. Demings

-AND-

Board of County Commissioners

THRU: Lonnie C. Bell, Jr., Director  
Community and Family Services Department

*Lonnie C Bell Jr*

FROM: Michael Perkins, Manager  
Regional History Center Division  
(407) 836-8591

SUBJECT: **Consent Agenda Item – May 19, 2020**  
Operating Agreement for the Orange County Regional History Center  
and Orange County, Florida / All Districts

The Regional History Center requests Board approval of the Operating Agreement between the Historical Society of Central Florida and Orange County government regarding the operations and management of the Regional History Center. This Agreement has existed for over 40 years and is renewed every 10 years. The last renewal was in June of 2010.

The Agreement outlines the functions of the Historical Society as they relate to the operations of the History Center, and specifies the role of the History Center Manager as the Executive Director of the Historical Society, giving this person a dual role regarding building planning and operations.

The Agreement also outlines the role of Orange County Government in supporting the History Center, regarding funding and operational support.

**ACTION REQUESTED: Approval and execution of Amended and Restated Operating Agreement for the Orange County Regional History Center between Orange County, Florida and Historical Society of Central Florida, Inc. All Districts.**

MP:jam

Attachment

c: Byron W. Brooks, AICP, County Administrator  
Randy Singh, Deputy County Administrator

BCC Mtg. Date: May 19, 2020

**Amended and Restated  
OPERATING AGREEMENT  
for the  
ORANGE COUNTY  
REGIONAL HISTORY CENTER  
between  
Orange County, Florida  
and  
Historical Society of Central Florida, Inc.**

**MAY 19 2020**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between Orange County, a political subdivision and charter county existing under the laws and Constitution of the State of Florida (the "County") and the Historical Society of Central Florida, Inc., a Florida not-for-profit corporation (the "Historical Society").

**WHEREAS**, the Historical Society and the County have agreed to jointly operate the Orange County Regional History Center, which is used to provide the citizens of Orange County an historical museum for housing exhibits, artifacts, and educational tools and programs about the history of Central Florida, and an outdoor plaza to contribute to the aesthetics and quality of life in Orange County and Downtown Orlando; and

**WHEREAS**, the Historical Society and the County wish to continue to jointly operate the museum, the Orange County Regional History Center, which shall remain the property of the County, and to furnish it with exhibits and artifacts, which shall remain the property of the Historical Society; and

**WHEREAS**, the Historical Society has artifacts and exhibits which have been given to the Historical Society which have tremendous economic and historical value, and has archives of original drawings, books, maps, records and other precious artifacts that donors and other Citizens have entrusted to it to preserve and maintain; and

**WHEREAS**, the Historical Society and the County have previously successfully cooperated over fifty years to operate museums and provide related historical programs at other locations in Orange County as well as at the Orange County Regional History Center; and

**WHEREAS**, such cooperative ventures enrich the cultural and educational opportunities for the community at significantly reduced cost to the taxpayers; and

**WHEREAS**, the Historical Society and the County wish to memorialize the terms of their joint operation of the Orange County Regional History Center in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein the County and the Historical Society hereby agree as follows:

## **Article I**

### **DEFINITIONS**

**1.1 "Artifact"** means any item of historical, artistic or cultural value related to history or prehistory, used in the operation of the Museum and held by the Historical Society under the Collections Policy.

**1.2 "Director"** means the Director of the Orange County Regional History Center, an Orange County employee under the direction of and appointed by the County Mayor, and who is the manager of the History Center Division in accordance with Section 2.3 herein.

**1.3 "Exhibit"** means any device, diorama, case, stand, visual aide, artistic rendition or visual presentation that is designed to display, house, describe or reproduce any artifact or information of historic value, that is used in the operation of the Museum and that is not permanently and irremovably attached to or made part of the Museum Premises.

**1.4 "Fixture"** means any appurtenance, improvement, device or article permanently attached to the interior or exterior of the Museum Premises, and does not include Artifacts, Exhibits or moveable lighting for Exhibits.

**1.5 "Fundraising"** means any special event, drive, effort, program or campaign conducted by the Historical Society, and collection of Historical Society membership dues, that generates funds over and above Museum Proceeds. Fundraising shall include without limitation grants, sponsorships, and other routine solicitation efforts.

**1.6 "Fundraising Proceeds"** means any net proceeds from Fundraising.

**1.7 "Investment Policy"** means the Orange County Historical Society Investment Policy attached hereto as Exhibit "A".

**1.8 "Museum"** means the Orange County Regional History Center, an historical museum to be headquartered at the Museum Premises and jointly operated by the County and the Historical Society in accordance with the terms and conditions of and for the purposes set forth in this Agreement. The term Museum also includes the display of Exhibits and Artifacts located at Orange County Fire Station No.3.

**1.9 "Museum Premises"** means the Orange County Regional History Center, the renovated and improved Orange County 1927 Courthouse, located at 65 East Central Boulevard, Orlando, Florida, as a museum facility, and includes all adjacent outdoor improvements, including its plaza, and all exterior and interior improvements and Fixtures now in place or from time to time put in place by the County or Historical Society that opened September 29, 2000.

**1.10 "Museum Proceeds"** means all monetary proceeds and other valuable consideration derived from admissions fees, program fees, rents received for use of the Museum Premises and

proceeds of concessions sales (including but not limited to the sale of books, souvenirs and food and beverages) and fund raising proceeds that take place at the Museum Premises or in connection with the operation of the Museum.

**1.11 "Operating Account"** means the account established under Section 3.1 of this Agreement.

**1.12 "Operating Expenses"** means expenses incurred by the Historical Society in the operation of the Museum and/or the Museum Premises, including cost of goods, services, supplies, utilities, maintenance and improvements, unless expressly deemed not an Operating Expense by this Agreement. Operating Expenses shall include the cost of acquisition or construction of Artifacts, Exhibits except as authorized by Section 4.2 herein. Operating Expenses shall include the salaries and benefits of Historical Society employees housed at the Museum Premises whose duties are devoted primarily to the operation of the Museum.

**1.13 County Funding, History Center Division.** The County supports and funds a portion of the operations and maintenance of the History Center as a Division of Family Services Department, Orange County Government, including security, communications, staff parking, utilities, supplies and improvements to the History Center facility, separate offices and an offsite storage facility, and the salaries and benefits of county employees who work at the History Center. Funding support is currently provided through the Tourist Development Tax as provided by the Tourist Development Plan Amendment approved by the Orange County Board of County Commissioners on October 22, 2019, or any other source as identified by the Orange County Board of County Commissioners.

## **Article II**

### **USE AND OPERATION OF MUSEUM**

**2.1 Operation of Museum.** The Museum shall be jointly operated by the County and the Historical Society in accordance with the terms and conditions of this Agreement, to provide an historical museum for the conservation and display of Exhibits and artifacts and the conducting of educational programs, public events and promotional activities at the Museum Premises and throughout the Central Florida Region in accordance with acceptable national museum standards. Additionally, the Museum shall be operated to provide a meeting hall facility of historical and cultural significance, available for rental by third parties for public and private events. The operation of the Museum may also include the operation of a store and/or concession facility at the Museum Premises. The Historical Society and the County shall cooperate to schedule exhibitions, presentations, programs and events to assure successful operation of the Museum.

**2.2 Use and Occupancy of Museum Premises.** The County and the Historical Society shall jointly occupy and use the Museum Premises in accordance with this Article.

**2.2.1 Use as a Museum.** The Museum Premises shall be used for the operation of the Museum, to display historical Exhibits and Artifacts to the public. The Historical Society and/or County may, in a manner mutually agreeable to the Historical Society and the Director, also use the Museum Premises to:

- a. Provide educational and historical programs, presentations, classes and seminars;
- b. Make Exhibits, Artifacts and Museum facilities available to educational institutions and organizations, and to libraries;
- c. Conduct Fundraising; and
- d. Conduct any other function, program or campaign that is not inconsistent with the purpose and mission of the Museum, the County, and/or the Historical Society (including but not limited to the renting of the Museum Premises to third parties for functions and events) and which does not constitute an unlawful private use of the Museum Premises, Artifacts or Exhibits.

**2.2.2 Placement of Exhibits and Artifacts.** The Exhibits and Artifacts shall be placed in the Museum Premises, and arranged and rearranged from time to time, in a manner determined by the Historical Society, in consultation with the Director.

**2.2.3 Office Space.** The County and the Historical Society shall each be allotted, and shall share, office space reasonably sufficient to house their respective employees, records and operations, as determined by the Director. Employees, furniture and equipment shall be arranged in a manner satisfactory to the Director.

**2.2.4 Maintenance, Management and Utilities.** The County shall maintain and upkeep the Museum Premises, and shall provide utilities services and security services for the Museum Premises, in order to provide a public facility in accordance with the practices and standards of the County.

**2.2.5 Regulatory Compliance.** The County shall be responsible for assuring that the condition of the Museum Premises complies with applicable laws and regulations, including but not limited to building, fire and occupational hazard and ADA codes. The County shall, after consultation with the Historical Society (except in the case of an emergency), have the right to make any changes in use and occupancy of the Museum Premises, and to make any improvement, additions, modification or repairs to the Museum Premises, reasonably necessary to assure compliance with such applicable laws and regulations, and with applicable practices and procedures of the County.

**2.2.6 No Property Right to Historical Society.** Nothing contained in this Agreement shall be construed to grant the Historical Society any property, leasehold, lien hold or other possessory interest in the Museum Premises or any other property of the County. The County shall not be entitled to monetary compensation or other valuable consideration in exchange for the Historical Society's use and occupancy of the Museum, except for performance of the terms and conditions of this Agreement.

The Historical Society shall make every reasonable effort to cooperate with the Director and other County employees and departments to facilitate the County's performance of this Section. The Director shall be the final authority as to the use and occupancy of the Museum Premises by the County and the Historical Society, with the right to require any changes in use or occupancy, reasonably necessary, in his/her opinion, to allow a smooth and efficient operation of the Museum.

**2.3 Role of the Director and Historical Society.** The Director shall be the final authority as to the joint operation of the Museum under the terms and conditions of this Agreement with the right to resolve any disputes that may arise, or to require any operational changes reasonably necessary, in his/her opinion, to allow a smooth and efficient operation of the Museum, so long as such resolution does not require or result in any act that constitutes a breach of this Agreement by either the County or the Historical Society. Subject to the authority of the County Mayor and subject to the provisions of Section 2.4, the Director shall be the final authority as to the day-to-day operational policies of the Museum, including but not limited to employees. The Historical Society shall determine or decide general policy matters regarding admissions, book sales and concessions, and rental rates. The Historical Society shall make every reasonable effort to cooperate with the Director and other County employees and departments to facilitate performance of this Subsection.

**2.3.1 Dual Capacity.** The Director shall function in dual capacity as Director of the Museum and as Executive Director and Chief Executive Officer of the Historical Society. For all decisions made by the Director in his/her capacity as the Director, required of him/her under this Agreement, the Director shall be accountable solely to the County Mayor and Board of County Commissioners, or their designee. For all other decisions made by the Director, he/she shall be accountable to both the County and the Historical Society.

**2.3.2 Liaison between County and Historical Society.** The Director shall be the liaison between the County and the Historical Society, and shall be the primary means of communication between the parties to this Agreement. Nonetheless, there will be occasional communications among the County's personnel, the County, and the officers and directors of the Historical Society. The County Mayor or his/her designee, and/or other County officers or employees, may attend any meeting of the Historical Society's Board of Directors or any meetings of its committees or volunteer groups.

**2.3.3 Appointment of Director.** The Director shall be appointed by the County Mayor, with the advice and input of the Historical Society, and in accordance with the hiring practices of the County. The County shall consider candidates from a list that shall be provided by the Historical Society, but may consider other candidates as well. The Historical Society's president, and one member of the Historical Society's Board of Directors to be selected by the president, shall participate in the selection process for the hiring of the Director by the County.

**2.3.4 Performance Reviews.** The Director's performance shall be reviewed in accordance with the practices and procedures of Orange County. Additionally, the Historical Society, through its president or his designee, shall be allowed input into the Director's periodic performance appraisals, in consultation with the County Mayor or his/her designee.

**2.3.5 Removal of Director.** The Director shall be subject to removal by the County Mayor without the consent of the Historical Society, in accordance with the procedures and practices of Orange County. The County Mayor shall, however, consult with and seek the input of the Historical Society prior to removing the Director. In the event the County Mayor so removes the Director, the Mayor may independently appoint an interim director until such time as a permanent Director can be appointed within a reasonable time in accordance with the provision of Subsection

### 2.3.3.

**2.4 Museum Employees.** Employees of both the County and the Historical Society shall work at the Museum Premises or at a place otherwise assigned to the Museum for the purpose of performing this Agreement. The placement of Museum employees by the County, except for the Director, shall be subject to the availability of funds and the discretion of the County, and shall be reflected in the annual budget generated under Section 3.2. Each party shall be solely responsible for providing compensation and benefits to its respective employees. Except as expressly provided herein, the Director shall be responsible for all employees of the County at the Museum Premises in regard to day to day operations of the Museum. The Historical Society shall be responsible for all employees of the Historical Society to carry out (and in accordance with the provisions of) the official policies of the Board of Directors of the Historical Society. The Historical Society shall cooperate with the Director with regard to such employees of the Historical Society, and the Director shall have day-to-day management authority over such Historical Society employees. The Historical Society shall obtain a fidelity bond for all Historical Society employees charged with handling Museum Proceeds or funds of the Operating Account in an amount reasonably determined by the Orange County Risk Management Department and adjusted from time to time, and in accordance with Subsection 5.5. The cost of obtaining and maintaining such fidelity bonds shall be deemed an Operating Expense.

**2.5 Ownership and Management of Personal Property.** All personal property (including but not limited to furnishings, equipment and supplies) owned by the County or the Historical Society and used in connection with the Museum shall be governed by this Section except for Exhibits and Artifacts, which shall be governed by Article IV.

**2.5.1 Property Purchased With Operating Account Funds.** Personal property purchased with Operating Account funds, except for fixtures, shall remain the property of the Historical Society. Such property shall only be used for the operation of the Museum in accordance with the terms and conditions of this Agreement. The Historical Society shall maintain up-to-date inventories of such property, evidence that such property was purchased with Operating Account funds, and shall make records of such inventories and evidence available, all in accordance with Section 3.6. The maintenance of such personal property shall be an Operating Expense.

**2.5.2 Other Personal Property of the Historical Society.** The Historical Society may place other personal property, purchased with funds other than Operating Account funds, or donated to the Historical Society, in the Museum Premises, in accordance with Subsection 2.2.3. The Historical Society may use such property for any purpose consistent with the mission of the Historical Society, provided it does not unreasonably interfere with the operation of the Museum. The Historical Society shall maintain current inventories of such property, evidence that such property was purchased with funds other than Operating Account funds or donated to the Historical Society, and shall make records of such inventories and evidence available, all in accordance with Section 3.6.

**2.5.3 County Property.** The County may, from time to time, for the purpose of the operation of the Museum, place personal property in the Museum Premises or otherwise make personal property available for the operation of the Museum. The Historical Society shall only use such

property for the operation of the Museum, and only in accordance with the policies and practices of the County. The Historical Society shall maintain inventories of such property, and shall make records of such inventories available, in accordance with Section 3.6 and the property accounting practices and policies of Orange County and the County Comptroller. The County and/or Orange County Comptroller may conduct their own inventories independent of and in addition to such inventories by the Historical Society. Any property placed in the Museum Premises not acquired and maintained in accordance with the terms of Subsections 2.5.1 or 2.5.2 shall be deemed property of the County and governed by this Subsection.

**2.6 No Discrimination Policy.** The Historical Society shall comply with the County's anti-discrimination policy in setting its employment practices and membership policies, and in the use of Historical Society facilities and the use of the Museum Premises and all property governed by the terms of this Agreement.

**2.7 Primacy of Historical Society's Role in Regional History Programs.** The County recognizes the Historical Society as a primary organization for implementation of local and regional history programs and operation of the Museum. The County will not undertake through its agencies, or through other entities, programs which will conflict with or duplicate Historical Society programs without prior consultation by the County with the Historical Society. This Section shall not be read to restrict either party's ongoing efforts to assist existing programs in the areas of historical preservation, ethnic history, photographic restoration or local archaeology, nor shall it be read to limit either party's use of the Museum Premises in accordance with the terms of this Agreement.

**2.8 Mutuality of Interest.** The County and the Historical Society agree that the regional history programs they present shall be deemed to be delivered by both parties. Program delivery to the public cannot be achieved without the mutual cooperation, in fact and spirit, of both parties. The County and Historical Society will work to ensure their respective governing bodies and employees will work to achieve the most favorable programs and linages possible in the eyes of the public.

### **Article III**

#### **FUNDING AND ACCOUNTS**

**3.1 Operating Account.** The Historical Society shall establish and maintain a separate commercial interest-bearing account at a bank with a local branch in Orange County, Florida, or designate such an existing account, which shall be deemed the Operating Account in accordance with Section 1.11. The Historical Society shall manage the Operating Account and all funds placed therein in accordance with the terms and conditions of this Agreement and with generally accepted accounting principles. Any and all funds placed in the Operating Account shall be used only for the payment of Operating Expenses and for no other purpose.

**3.1.1 Investment of Operating Account Funds.** If the Director with the approval of the Historical Society Board of Directors deems it economically worthwhile to do so, funds in the Operating Account may be invested in a manner in accord with the Investment Policy. Any interest



or investment proceeds earned on funds in the Operating Account shall be deposited in the Operating Account and subject to the same restrictions that applied to the funds upon which they were earned.

**3.2 Contribution of County.** Subject to the availability of funds within the Tourist Development Tax Funds, and/or any other source as part of the annual budget process, and at the discretion of the Orange County Board of County Commissioners, the County shall budget legally available funds, and shall budget funds sufficient to pay for the Museum operations described in this Agreement, sufficient in light of past and projected Operating Expenses, and other expenses of the County, and in accordance with the County Mayor's guidelines through the Family Services Department. No later than August 1st of each year, the Director and the Historical Society shall create a proposed comprehensive annual budget for the forthcoming fiscal year, which shall describe the projected Operating Expenses of the Museum and the proposed funding allocations from both the County and the Society. Neither this Section nor any other provision of this Agreement shall be read as a covenant by the Board of County Commissioners to budget and appropriate funds for the Museum or as a pledge of County revenues.

**3.3 Use of Museum Proceeds.** All Museum Proceeds generated through activities by the Historical Society through the operations of the museum shall be placed directly in the Operating Account and used in accordance with the terms of Section 3.1.

**3.4 Contributions of Historical Society.** The Historical Society may, from time to time, contribute legally available funds from its investment accounts, to the Operating Account. Once such funds have been contributed to the Operating Account they shall be subject to the restrictions imposed upon Operating Account funds under this Agreement. Nothing herein shall be construed to prohibit the Historical Society from maintaining its own separate accounts for, and investments of, its own separate funds.

**3.5.1 Account Records.** The Historical Society shall keep an accurate and complete set of books and accounting records of the funds of the Operating Account in accordance with generally accepted accounting principles. Such records shall include but not be limited to daily receipts, daily bank deposits, bank statements, daily sales, payroll and expenses, with appropriate documentation.

**3.5.2 Reporting.** The Historical Society shall provide the following reports to the County:

- a. An annual profit/loss statement; and revenues and expenses for the year
- b. Any other information prescribed by the Director or required under this Agreement.

**3.5.3 Audits.** The Historical Society shall preserve and make available for audit and examination by the County and the County Comptroller all records described in this Section, as well as a copy of all business and income tax returns. The Historical Society's records shall be open for inspection by the County and County Comptroller for three (3) years after termination of this Agreement. All records will be made available locally at the Director's request within five (5) days of said request. The Historical Society shall allow the County, its auditors and the County Comptroller to inspect said books and records, correspondence, memoranda and other information at all reasonable times.

The Historical Society shall arrange for the Operating Account and records, including all books, records, bank accounts and accounting\_ statements, to be audited as soon as possible (but not later than six months) after the end of each fiscal year, by a Florida licensed certified public accountant(s) named by the Historical Society. The Historical Society may conduct the audit required by this Subsection in conjunction with any general audit of Historical Society accounts.

**3.5.4 Notice of Errors.** The Historical Society shall notify the County and Orange County Comptroller in writing within three (3) business days after discovery of any failure to comply with the terms and conditions of this Section. Expenses incurred by the Historical Society and the Museum in performance of the provisions of this Section shall be deemed Operating Expenses.

**3.6 Reimbursement of Unauthorized Expenditures.** In the event any expenditure of funds from the Operating Account that materially violates the terms and conditions of this Agreement is identified, the Historical Society shall promptly reimburse an amount equal to such expense to the Operating Account.

## **Article IV**

### **EXHIBITS AND ARTIFACTS**

**4.1 Use and Placement.** The Historical Society shall store its Exhibits and Artifacts at the Museum Premises or other suitable storage sites and manage and make them available for display in accordance with Subsection 2.2.2. Nothing herein shall be read to prohibit the Historical Society from removing Exhibits and Artifacts from the Museum Premises for display in temporary off-site locations or loaning them to educational institutions, other museums or historical organizations, or removing them for any other valid purpose that does not unreasonably interfere with the operation of the Museum. The Exhibits and Artifacts shall remain the sole property of the Historical Society, such that the County shall have no possessory or other interest in them whatsoever, except as provided in Section 4.2. The cost of maintaining and caring for the Exhibits and Artifacts shall be an Operating Expense.

**4.2 Acquisition and Construction of Exhibits and Artifacts.** The Historical Society shall be primarily responsible for procurement of Artifacts for its collections and the construction of Exhibits. The County and the Historical Society have provided for the construction of the original Exhibits for the Museum by the independent contractor responsible for the renovation of the Museum Premises. The cost of the construction of these original Exhibits installed for the opening of the museum in 2000 were paid by the County from legally available funds, and have been reimbursed by the Historical Society when funds became available (but no later than 30 days after receipt by the Historical Society of such funds) from the capital campaign undertaken in support of the construction of the exhibits.

The parties acknowledge that the outstanding pledge balances of the capital campaign pledges, totaling \$800,000, are uncollectable. The parties agree that the Historical Society shall undertake an endowment fund campaign to raise funds for an endowment to support the operations of the Historical Society and the Museum. Such campaign shall be conducted at such time and with such goals as the Historical Society shall reasonably determine, taking into account factors such as the

general economy and availability of donors. The obligation of the Historical Society to pay the balance of the cost of the original Exhibits in the amount of \$800,000 shall be reduced, dollar for dollar, by the amount of funds received by the Historical Society as contributions to such endowment fund.

## **Article V**

### **INSURANCE, INDEMNIFICATION AND SAFETY**

**5.1 Insurance Requirements.** Historical Society shall procure and maintain at its sole cost and expense, at all times throughout the term of this Agreement, the following insurance coverage through insurance carriers with an A.M. Best's Financial Strength Rating of A- VIII or better and authorized to do business in the State of Florida. These requirements, as well as County's review or acceptance of insurance maintained by Historical Society are not intended to, and shall not in any manner, limit or qualify the liabilities or obligations assumed by Historical Society under this Agreement. Any request for an exception to these insurance requirements must be submitted, in writing, to County for the approval of County's Risk Management Division.

a) Commercial general liability insurance in an amount not less than 1 million (\$1,000,000.00) per occurrence 2 million (\$2,000,000) aggregate to cover the Historical Society, County and any others designated by County against liability for all operations including but not limited to contractual, products and completed operations, injury and/or death of any person or persons and for damage to personal property occasioned by or arising out of any construction, condition, use or occupancy of the Premises. The General Aggregate limit shall either apply separately to this Agreement or shall be at least twice the required occurrence limit. Historical Society agrees to endorse the County as an additional insured with any of the endorsements specified below, or their equivalents, to all commercial general liability policies. Orange County, Florida shall be specifically endorsed onto the policy as an additional insured.

Required Endorsements:

Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.

Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.

b) Commercial auto liability in an amount not less than five hundred thousand dollars (\$500,000) per accident or combined single limit to cover all owned, non-owned and hired vehicles including mobile equipment while being towed or stored on the Leased Premises

c) Workers' compensation coverage for its employees (if any) with statutory workers' compensation limits, and no less than one hundred thousand dollars (\$100,000) for employers' liability. Said coverage shall include a waiver of subrogation in favor of Orange County, its official's, employees and agents.

All such coverage shall be primary and non-contributory with any insurance or self-insurance maintained by the County. Historical Society shall provide current certificates of insurance evidencing all required coverage's prior to commencing any operations or occupancy of the

Premises. In addition to the certificate(s) of insurance, Historical Society shall also provide copies of the additional insured and the waiver of subrogation endorsements as required above. Historical Society shall notify the County in writing, not less than thirty (30) days prior to any material change or non-renewal of any of the coverage required in this Agreement, and such insurance provider shall be required to notify the County no less than thirty (30) days prior to any cancellation of any insurance coverage. Certificates shall specifically reference the certificate holder and additional insured as follows:

Orange County, Florida  
Attention: Risk Management Division  
109 E Church Street, Suite 200  
Orlando, Florida 32801

Historical Society shall require and ensure that each and every contractor, sub-contractor, consultant, service provider either under this Agreement and/or providing services in or through the Facility, shall secure and maintain insurance of the types and limits required under this Agreement (a) until completion of their respective services or (ii) for the duration of the Agreement and any extensions thereof.

**5.2 Indemnification.** To the fullest extent permitted by law, Historical Society shall be solely responsible for all claims, including but not limited to, suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature, arising out of its acts, errors and omissions in connection with this Agreement, or the acts, errors and omissions of anyone acting under its direction, control, or on its behalf. Accordingly, Historical Society shall, defend, indemnify and hold harmless the County, its agents, employees and officers, at all times from and against any and all liability, loss or expense arising from said claims except for those claims, losses or expenses due to the sole negligence of the County. However, nothing contained herein shall constitute a waiver by County of its sovereign immunity or the provision of Section 768.28, Florida Statutes.

**5.3 Safety and Protection of Persons and Property.** The Historical Society shall at all times initiate, maintain and supervise all safety precautions and programs in connection with its services or use of the Premises. The Historical Society shall:

- a) Take all reasonable precautions to prevent injury to employees, including employees of County and all other persons affected by their operations.
- b) Take all reasonable precautions to prevent damage or loss to property of County, or of other vendors, consultants or agencies and shall be held responsible for replacing or repairing any such loss or damage.
- c) Comply with all ordinances, rules, regulations, standards and lawful orders from authority bearing on the safety of persons or property or their protection from damage, injury or loss. This includes but is not limited to:
  - Occupational Safety and Health Act (OSHA)
  - National Institute for Occupational Safety & Health (NIOSH)
  - National Fire Protection Association (NFPA)
  - American Society of Heating, Refrigeration & Air-Conditioning Engineers

ASHRAE)

d) Comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address listed below: <http://www.orangecountyfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>.

**5.4 Liability for Programs and Events.** Historical Society assumes all responsibility and liability for the programs and events it hosts upon the Premises. All special events shall be covered either on the Historical Society's commercial general liability policy or on a special events policy purchased by the event organizer. The County shall be listed as an additional insured on all special event policies. A copy of the special events policy shall be provided to the County's Risk Management Division- [insdocs@ocfl.net](mailto:insdocs@ocfl.net).

**5.5 Employee Fidelity Bond.** The Historical Society shall provide coverage in an amount reasonably determined by the Historical Society to adequately cover Museum Proceeds, Operating Account funds, and other property, but not less than \$50,000.00.

## **TERM AND TERMINATION**

**6.1 Term.** This Agreement shall have a term of (10) years, commencing on the date of execution of this Agreement by the last of the parties hereto to execute this Agreement.

**6.2 Option to Renew.** No sooner than ninety (90) days prior to the end of the term, and no later than sixty (60) days prior to the end of the term, the Historical Society and the County shall notify one another if they intend to continue this Agreement for an additional ten (10) years. If both parties, within said thirty (30) days, consent in writing to so continue, the term of this Agreement shall be extended an additional ten years, subject to approval by the Board of County Commissioners.

**6.3 Termination.** If either party is substantially in breach of any provision of this Agreement and fails to cure such breach after sixty (60) days written notice of said breach, the other party may terminate this Agreement and:

a. In the event the Historical Society terminates, remove its Exhibits, Artifacts, personal property and employees from the Museum Premises and desist all operations to be conducted hereunder; or

b. In the event the County terminates, remove the Historical Society's Exhibits, Artifacts, personal property (in which case shall place them in reasonably safe storage at its expense) and employees from the Museum Premises and terminate all operations to be conducted hereunder. The County may continue to operate the Museum Premises as the Museum with collections other than the Historical Society's Artifacts and Exhibits.

The foregoing notwithstanding, in the event that the breach is not susceptible of being cured within said sixty (60) day period, then so long as the defaulting party shall commence in good faith to cure such breach within such sixty (60) day period and shall diligently prosecute such cure, then the defaulting party shall have such additional time as is reasonably necessary to cure such breach.

**6.4 Remedies in Event of Breach.** The remedies available to either party hereunder shall be limited to compensation for actual costs incurred as a result of the other party's breach (which may include the cost of moving and, in the case of the County's remedies, storing the Artifacts, Exhibits and personal property), to the exclusion of any and all consequential, expectation or reliance damages, and any other legal or equitable remedies otherwise available, whether sought in law or equity. The provision of this Section 6.4 shall not limit the enforcement of Section 6.3.

## **Article VII**

### **GENERAL PROVISIONS**

**7.1 Validity.** After consultation with their respective legal counsel, the County and the Historical Society each represents and warrants to the other its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature.

**7.2 Ambiguities.** Both parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.

**7.3 Headings.** The headings or captions of Articles, Sections and Subsections used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

**7.4 Severability.** The provisions of this Agreement are declared by the parties to be severable.

**7.5 Governing Law Venue.** This Agreement shall be governed by and construed in accordance with laws of the State of Florida, and venue for any action arising out of or related to this Agreement shall be in the Circuit Court for the Ninth Judicial Circuit in Orange County, Florida.

**7.6 Full Agreement.** This Agreement contains the entire agreement of the parties with respect to the operation of the Museum and use of the Museum Premises. Previous agreements and understandings of the parties with respect to such matters are null and void and of no effect.

**7.7 Amendments and Waiver.** Amendments to this Agreement shall only be deemed enforceable if in writing and signed by all parties hereto. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom it is asserted. Any waiver shall be applicable only to the specified instance to which it relates and shall not be deemed a continuing or future waiver unless expressly deemed otherwise in writing.

**7.8 Notices.** All notices, elections, requests, and other communications hereunder shall be in writing and shall be deemed given in the following circumstances: when personally delivered; or three (3) business days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice as provided herein):

If to County:           Orange County Administrator  
Orange County Administration Center  
201 South Rosalind Avenue, Fifth Floor  
Orlando, Florida 32801-4328  
Facsimile: (407) 836-7399

With copies to:       Orange County Comptroller's Office  
Orange County Administration Center  
201 South Rosalind Avenue, Fourth Floor  
Orlando, Florida 32801-4328  
Attention: County Comptroller  
Facsimile: (407) 836-5599

And  
Orange County Attorney's Office  
Orange County Administration Center  
201 South Rosalind Avenue, Fifth Floor  
Orlando, Florida 32801-4328  
Attention: County Attorney  
Facsimile: (407) 836-5888

If to Historical  
Society:               To the person listed as the Chairman or President of the Historical  
Society in the records of the Secretary of State of the State of  
Florida.

With copies to:       Randolph J. Rush, General Counsel  
Orange County Historical Society  
Winderweeddle, Haines, Ward & Woodman, P.A.  
Post Office Box 880  
Winter Park, Florida 32790-0880  
Facsimile: (407) 645-3728

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified. A party may change its address or officer for notice purposes by giving the other party notice as provided herein.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed

Post Office Box 880  
Winter Park, Florida 32790-0880  
Facsimile: (407) 645-3728

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified. A party may change its address or officer for notice purposes by giving the other party notice as provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.



ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: *Jerry L. Demings*  
for Jerry L. Demings  
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Kate Smith*  
Deputy Clerk

HISTORICAL SOCIETY OF  
CENTRAL FLORIDA

By: *Lenny Bendo*

Name: LENNY BENDO

Title: BOARD PRESIDENT