

Project: Santa Barbara County Courthouse
Docent Council at Courthouse
APN: 029-161-001 (Portion of)
Folio: 003954
Agent: CS

SERVICE AND LICENSE AGREEMENT

THIS SERVICE AND LICENSE AGREEMENT (hereinafter "Agreement") is made by and between the

COUNTY OF SANTA BARBARA, a political subdivision of the State of California, hereinafter referred to as "COUNTY,"

and

SANTA BARBARA COUNTY COURTHOUSE
DOCENT COUNCIL a California Non-profit Corporation, hereinafter referred to as "LICENSEE"

with reference to the following:

WHEREAS, COUNTY is the owner of the property known as the Santa Barbara County Courthouse, located on the 1100 block of Anacapa Street in Santa Barbara, California, and also identified as Assessor Parcel Number 029-161-001, shown as the diagonally slashed area on Exhibit "A", attached hereto and incorporated herein by this reference (hereafter "Property" or "Courthouse");

WHEREAS, LICENSEE was founded in 1973, when a small group of concerned residents determined that the Courthouse afforded a unique opportunity to educate people about the history and architecture of the building, and for schoolchildren to experience the process of the legal system. After recruiting members from the Lawyers' Wives Club, Junior League, and Santa Barbara Bar Association, they formed the "Santa Barbara County Courthouse Tours." The group, then consisting of 15 charter docents, held their first public tours of the Courthouse on Law Day, May 1, 1974. The success of these tours spawned approval from the legal community and County offices to conduct such school tours and architecture tours regularly;

WHEREAS, in the fall of 1974, the 15 charter docents and 15 provisional docents completed an intensive 3½-months training program. Between September 1974 and June 1975, the group of docents adopted the term "Council," held weekly architecture tours, and conducted 54 school tours of the Courthouse;

WHEREAS, in the late 1970's, under the leadership of Docent Peggy Hayes, the Council added to their mission the operation of a booth situated in the Courthouse lobby. Following a 1978 earthquake in Santa Barbara, the Council also took interest in Courthouse restoration projects;

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WHEREAS, in 1981, the COUNTY Board of Supervisors designated LICENSEE “official hosts” for the Courthouse building, and included the privilege of “having representation in matters concerning the building” in their declaration. LICENSEE formally incorporated in 1982 as “Santa Barbara County Courthouse Docent Council,” a 501(c)(3) non-profit public benefit corporation. LICENSEE has raised funds for Courthouse restoration, preservation and conservation projects led by Docent Rodney Baker, including the restoration of the 1929 lantern that hangs in the Clock Tower stairwell, replacement of draperies to restore the Loggia, Mural Room conservation, and restoration of the Spirit of the Ocean Fountain; and

WHEREAS, COUNTY recognizes and appreciates LICENSEE’s vast efforts and the numerous hours expended by LICENSEE’s volunteers, and values their collaboration efforts, and therefore COUNTY now desires to memorialize LICENSEE’S place in the Courthouse by providing for the licensing by COUNTY to LICENSEE of the right to use and occupy a portion of the Courthouse, as more particularly described below.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **ADMINISTRATION AND ENFORCEMENT:** The provisions of this Agreement shall be administered and enforced for COUNTY by the Director of the General Services Department (hereinafter referred to as “Director”), or designee.

2. **RIGHTS GRANTED:** COUNTY hereby grants to LICENSEE, and LICENSEE hereby accepts, a personal, revocable, nontransferable license (“License”) to enter and use for the purposes hereafter provided during the Term (defined below), subject to the COUNTY’s rules and regulations (a) that certain 200-square-foot area located on the first floor of the Courthouse, commonly known as the Information Booth and identified as “Booth” and outlined in red on Exhibit “B” attached hereto and incorporated herein by this reference, (b) that certain 300-square-foot area located in the basement of the Courthouse, identified as “Docent Storage” and outlined in red on Exhibit B, and (c) that certain 3,315-square-foot area in the basement of the Courthouse, identified as “Docent SBCH Inventory” and outlined in red on Exhibit B (the Booth, Docent Storage, and Docent SBCH Inventory Room, collectively, the “Premises”). The parties hereto do not intend to create a lease or any other interest in real property for LICENSEE through this Agreement, and the parties hereto only intend to create a license that is revocable at will by either COUNTY or LICENSEE as provided herein.

LICENSEE has inspected the Premises and agrees to accept the Premises "AS-IS", "WHERE-IS" and "WITH ALL FAULTS" on the date hereof. COUNTY DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE PREMISES, THE COUNTY’S PERSONAL PROPERTY, OR THE PROPERTY OR THE PREMISES OR PROPERTY INTERESTS, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. **PURPOSE AND USE:** LICENSEE shall have the right to use the Premises under the License for the following purposes, and for no other purpose except as may be agreed upon by COUNTY in writing in its sole and absolute discretion:

(a) Conducting tours of the Courthouse, including docent-guided tours of the Courthouse garden, Seth Thomas clock tours, student tours, and self-guided walking tours, at times and in locations subject to the approval of the Director.

(b) To facilitate the operation and management of LICENSEE's fundraising efforts for restoration projects.

(c) Ongoing 'tour' training of volunteers for the visiting public's awareness and enjoyment of the rich cultural and historical uniqueness of this Santa Barbara County National Historic Landmark.

4. **COMPLIANCE WITH LAWS AND REGULATIONS:**

(a) LICENSEE shall promptly comply with all present and future:

(i) rules and regulations published by COUNTY (if any) including, without limitation, regulations applicable to use, storage, and disposal of substances and waste and other environmental matters, security policies and procedures, which have been published from time to time with respect to the use of and access to the Premises; and

(ii) applicable laws and regulations of all state, federal, municipal, and local governments, departments, commissions and boards and any direction of any public officer pursuant to law (collectively, "Laws") having jurisdiction which shall impose any obligation or duty upon COUNTY or LICENSEE with respect to the Premises; except that such compliance by Licensee shall relate only to Licensee's use and manner of use of the Premises. In addition, Licensee agrees to cooperate with Licensor and do all things reasonably necessary for Licensor to comply with Laws.

5. **TERM:** The initial term of this Agreement shall be for a period of five (5) years, commencing upon the date of execution of this Agreement by COUNTY (the "Initial Term"), subject to sooner termination as hereafter in this Agreement. At the Initial Term, provided that LICENSEE is then in good standing and in compliance with the terms of this Agreement, the term of this Agreement shall renew for successive five-year renewal terms (each a "renewal term" and, together with the Initial Term, the "Term"), subject to earlier termination as provided in this Agreement. Notwithstanding the foregoing, this Agreement shall be revocable by either party hereto at any time during the Term; provided that the terminating party delivers to the non-terminating party thirty (30) days' prior written notice of its election to terminate. The termination notice shall state the date of termination and shall be sent in accordance with the notice requirements of this Agreement. Either party's termination right is subject to no default by the terminating party existing under this Agreement at the time the termination notice is sent and on the actual termination date.

6. **IN CONSIDERATION:** LICENSEE will not be obligated to pay rent for LICENSEE's use of the Premises under the License in consideration of LICENSEE's generous voluntary efforts and support towards the funding of Courthouse restoration projects, in recruiting and training volunteers for Courthouse tours, and maintaining a presence at the Information Booth.

7. **UTILITIES, MAINTENANCE AND REPAIR:** COUNTY agrees not to bill LICENSEE for utilities, including electricity, water or sewer charges. LICENSEE, at its sole cost and expense, agrees to keep the Premises and all improvements thereon in good condition and in substantial repair. LICENSEE agrees to maintain the Premises in a safe and sanitary condition, and in accordance with all applicable Laws.

COUNTY shall have the right to enter upon and inspect the Premises at any time for cleanliness and safety, to post notices, and to perform such maintenance and/or repairs as COUNTY may deem necessary to provide for or protect COUNTY'S interest.

8. **RECORDS, AUDIT AND REVIEW:** LICENSEE shall keep records reflecting LICENSEE's use of the Premises pursuant to this Agreement as would be kept by a reasonably prudent practitioner of the tour guide and fundraising professions, and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such records at any time during LICENSEE's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000) annually, LICENSEE shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY, or as part of any audit of the COUNTY, for a period of three (3) years after termination of this Agreement (Cal. Govt. Code Section 8546.7). LICENSEE shall participate in any and all audits and reviews, whether by COUNTY, or the State, at no charge to COUNTY.

9. **IMPROVEMENTS AND ALTERATIONS:** LICENSEE shall not construct any improvements or alterations within the Premises without the prior written consent of COUNTY, which consent may be withheld in COUNTY's sole and absolute discretion. LICENSEE shall provide to COUNTY a written proposal, including plans and specifications, in form and substance acceptable to COUNTY ("Proposal"), for COUNTY's consideration of any improvements or alterations within the Premises proposed by LICENSEE. COUNTY shall provide to LICENSEE a written approval or disapproval of any Proposal submitted by LICENSEE pursuant to this Section 9. All such approved improvements or alterations, if any, shall be at LICENSEE'S sole cost and expense. Any signage to be used by LICENSEE with respect to the Premises must be approved in writing by COUNTY, which approval may be withheld or conditioned in COUNTY's sole and absolute discretion.

10. **INDEMNIFICATION AND INSURANCE:** LICENSEE shall comply with the Indemnification and insurance requirements set forth in EXHIBIT "C", attached hereto and incorporated herein by this reference.

11. **NONDISCRIMINATION:** LICENSEE shall comply with COUNTY laws, rules and regulations regarding nondiscrimination, including, but not limited to, as set forth in the Santa Barbara County Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth.

12. **NOTICES:** Any notice to be given to the parties hereto shall be in writing and shall be delivered, either personally, electronically, or by mail, to the parties at their respective addresses

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as follows, or as otherwise specified in writing from time to time by the party providing notice of such change of address:

COUNTY: General Services Department
Capital Projects
1105 Santa Barbara Street, 2nd Floor
Santa Barbara, CA
Diane Galt, Project Manager
Tel. (805) 681-4774
Email: dgalt@countyofsb.org

and to: General Services Department
Real Property Services
1105 Santa Barbara Street, 2nd Floor
Santa Barbara, CA 93101
Julie Lawrence, Manager
Tel: (805) 568-3070
Email juliel@countyofsb.org

LICENSEE: Santa Barbara County Courthouse Docent Council
c/o Information Booth
1100 Anacapa Street
Santa Barbara, CA 93101
Docent President
Tel: Info Booth (805) 962-6464
Email: admin@sbcourthouse.org

Such notices shall be delivered by depositing them, addressed as set forth above, postage prepaid, in the U.S. mail, via a reliable overnight courier, by electronic mail to the email addresses set forth above, or by personal delivery. The date of mailing, the date of transmission by electronic mail, or, in the event of personal delivery, the date of delivery, shall constitute the date of such notice.

13. **DEFAULT:** Except as otherwise required herein, should LICENSEE at any time be in material default hereunder with respect to any covenant contained herein, COUNTY shall give notice to LICENSEE specifying the particulars of the default, and LICENSEE shall promptly commence remedial action to cure the default.

14. **TERMINATION:** This Agreement and the License shall terminate, and all rights of LICENSEE hereunder shall cease, and LICENSEE shall quietly and peacefully deliver to COUNTY possession of the Premises, in the same condition as on the Effective Date of this Agreement, normal wear and tear excluded:

- A. Upon LICENSEE's failure to continue to provide the services detailed in Section 3, above;
- B. Upon 30 days' written notice of termination by COUNTY;

- C. Upon 30 days' written notice of termination by LICENSEE; or
- D. At COUNTY'S option due to partial or total destruction of the Premises by fire or other casualty.

15. **NO ASSIGNMENT OR SUBLICENSING:** The License granted hereby is personal to LICENSEE and shall not be assigned, nor shall LICENSEE sublicense or otherwise permit or suffer the occupancy of the Premises by any third party without the prior written consent of COUNTY, which consent may be withheld in COUNTY's sole and absolute discretion.

16. **AMENDMENTS:** This Agreement may be altered, amended or modified only by an instrument in writing signed by duly authorized representatives of each of the parties hereto. Each party hereto waives their future right to claim, contest or assert that this Contract was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

17. **SEVERABILITY:** If any one or more of the provisions contained herein shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. **ELECTRONICALLY TRANSMITTED SIGNATURES; COUNTERPARTS:** This Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute one and the same instrument. In the event that the parties hereto utilize electronically transmitted documents, which include signatures, such documents shall be accepted as if they bore original manual signatures.

19. **CORPORATE AUTHORIZATION:** Each individual executing this Agreement on behalf of LICENSEE shall represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of LICENSEE in accordance with a duly adopted resolution of the Board of Directors of LICENSEE, and that this Agreement is binding upon LICENSEE in accordance with its terms.

20. **ENTIRE AGREEMENT:** The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein. In conjunction with the matters considered herein, this Agreement, including its exhibits, contains the entire understanding and agreement of the parties hereto, and there have been no promises, representations, agreements, warranties or undertakings by any of the parties hereto, either oral or written, of any character or nature hereafter binding except as set forth herein.

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IN WITNESS WHEREOF, COUNTY and LICENSEE have executed this Agreement by the respective authorized officers as set forth below to be effective as of the date executed by COUNTY.

“COUNTY”
COUNTY OF SANTA BARBARA

ATTEST:
MONA MIYASATO,
CLERK OF THE BOARD

By: *Julie Lawrence*
Deputy Clerk

By: *Joan Hartmann*
JOAN HARTMANN, CHAIR
BOARD OF SUPERVISORS

Dated: 9-20-22

RECOMMEND FOR APPROVAL:

By: *Janette D. Pell*
Janette Pell, Director
General Services Department

APPROVED AS TO FORM:
RACHEL VAN MULLEN
COUNTY COUNSEL

By: *Lauren Wideman*
Lauren Wideman
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:
BETSY M. SCHAFFER, CPA
AUDITOR-CONTROLLER

By: *Betsy M. Schaffer*
Deputy Auditor-Controller

APPROVED:

By: *Julie Lawrence*
Julie Lawrence
Real Property Manager

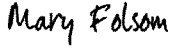
APPROVED AS TO FORM:
GREG MILLIGAN, ARM
RISK MANAGER

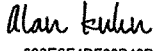
By: *Greg Milligan*
Risk Management

LICENSEE'S SIGNATURE PAGE.

"LICENSEE"

SANTA BARBARA COUNTY COURTHOUSE
DOCENT COUNCIL

DocuSigned by:

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Mary Folsom, President

DocuSigned by:

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Alan Kuhn, Treasurer

POR. PUEBLO LANDS

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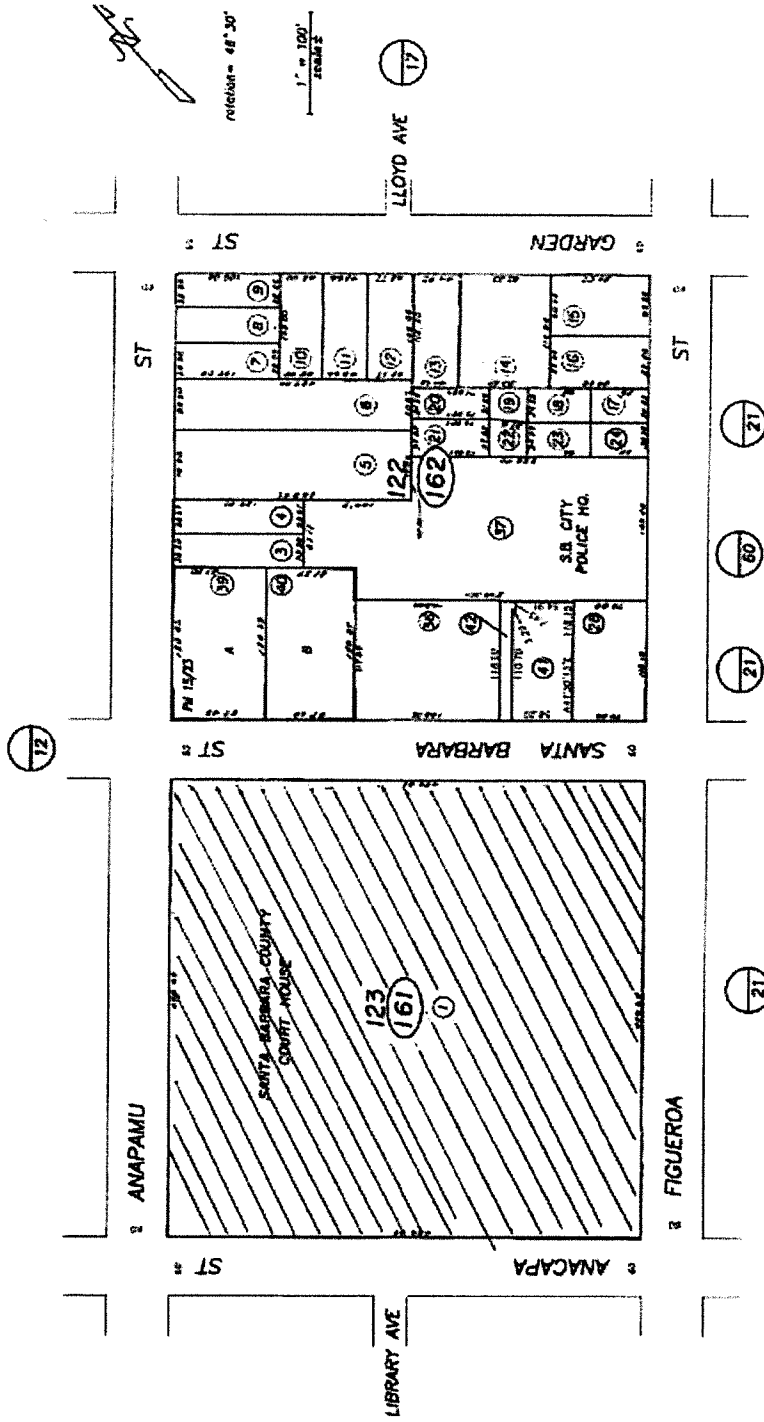


EXHIBIT A - Property

EXHIBIT B – Premises
Docent Assigned Spaces

Docent Information Booth
200 square feet

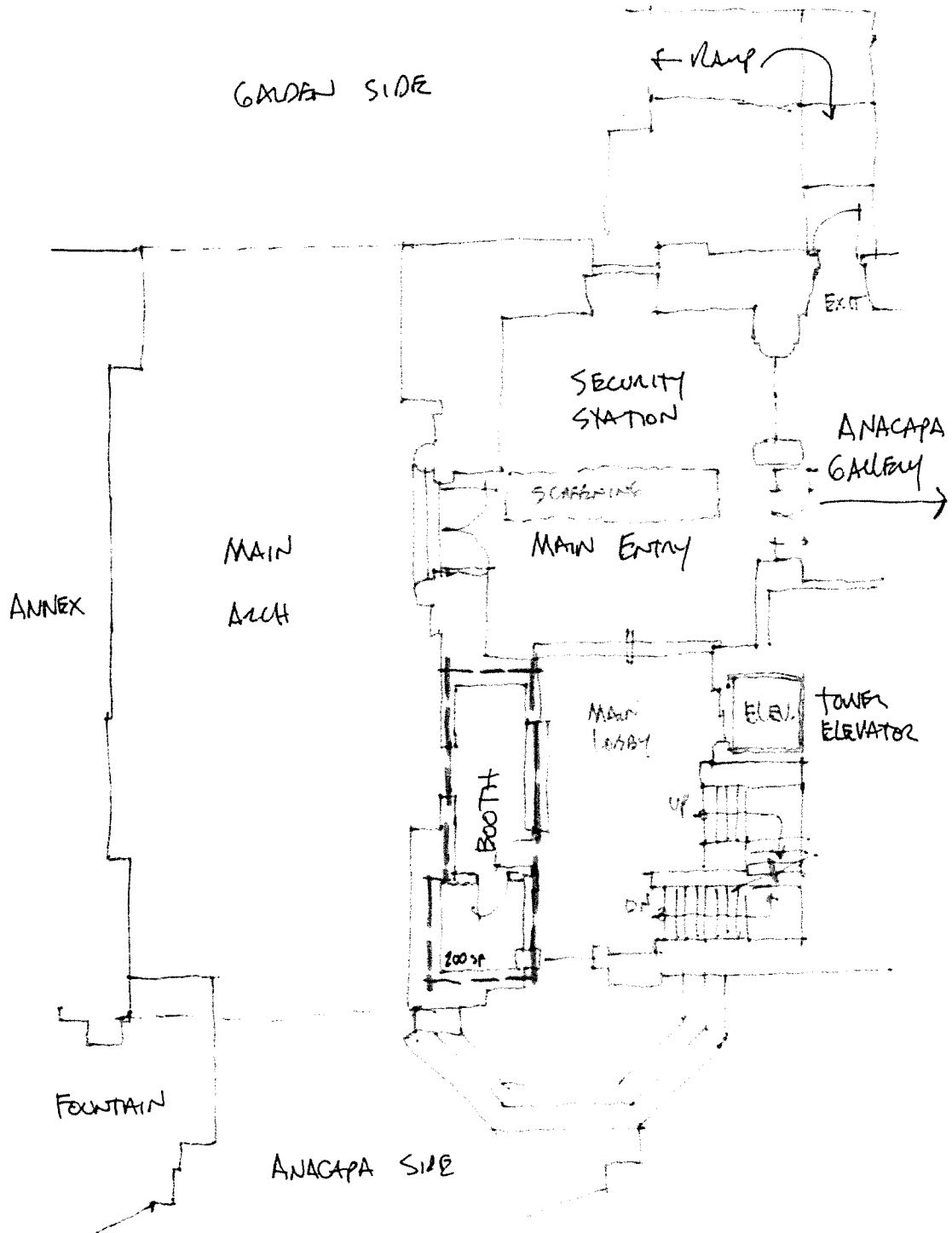
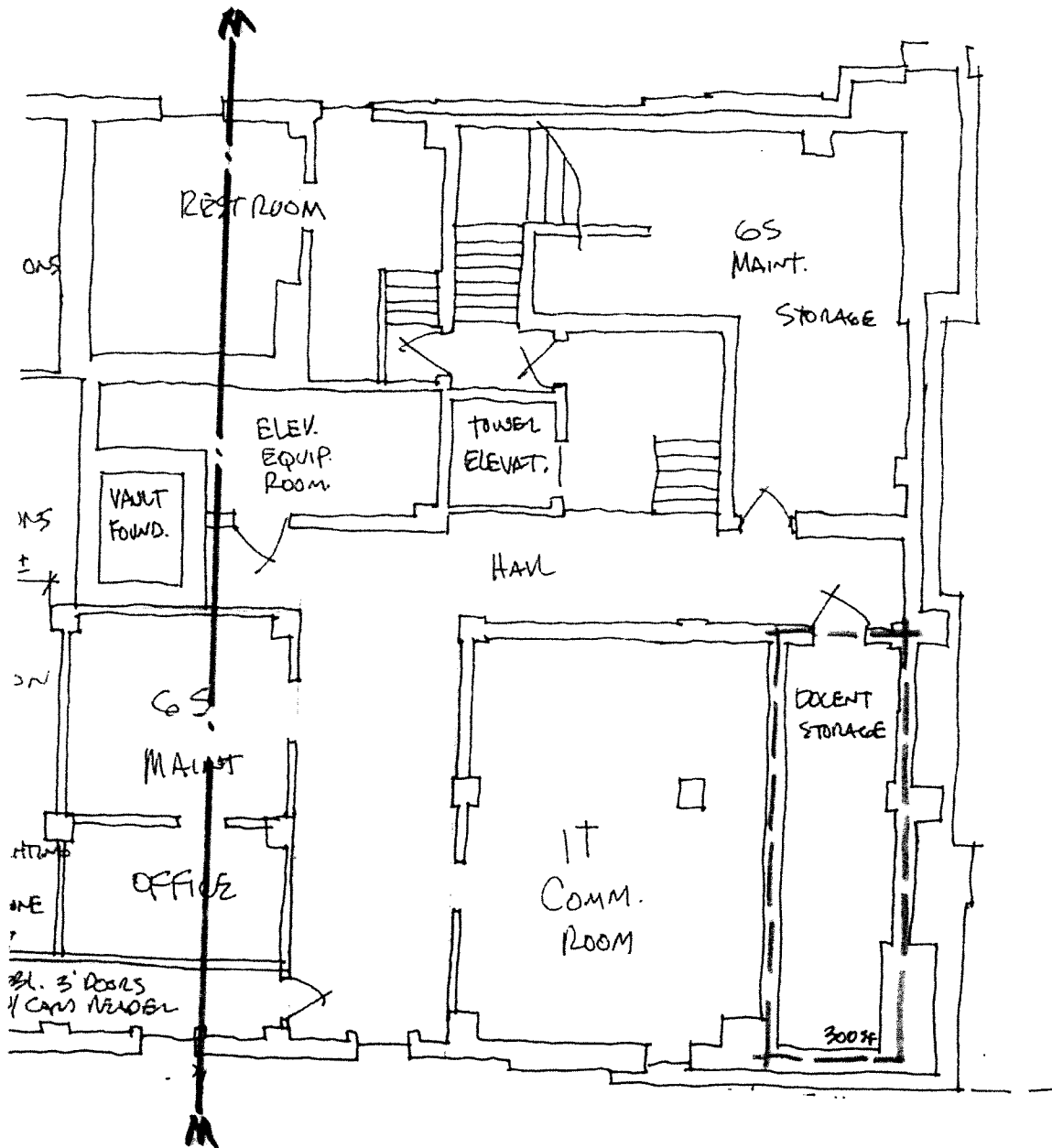
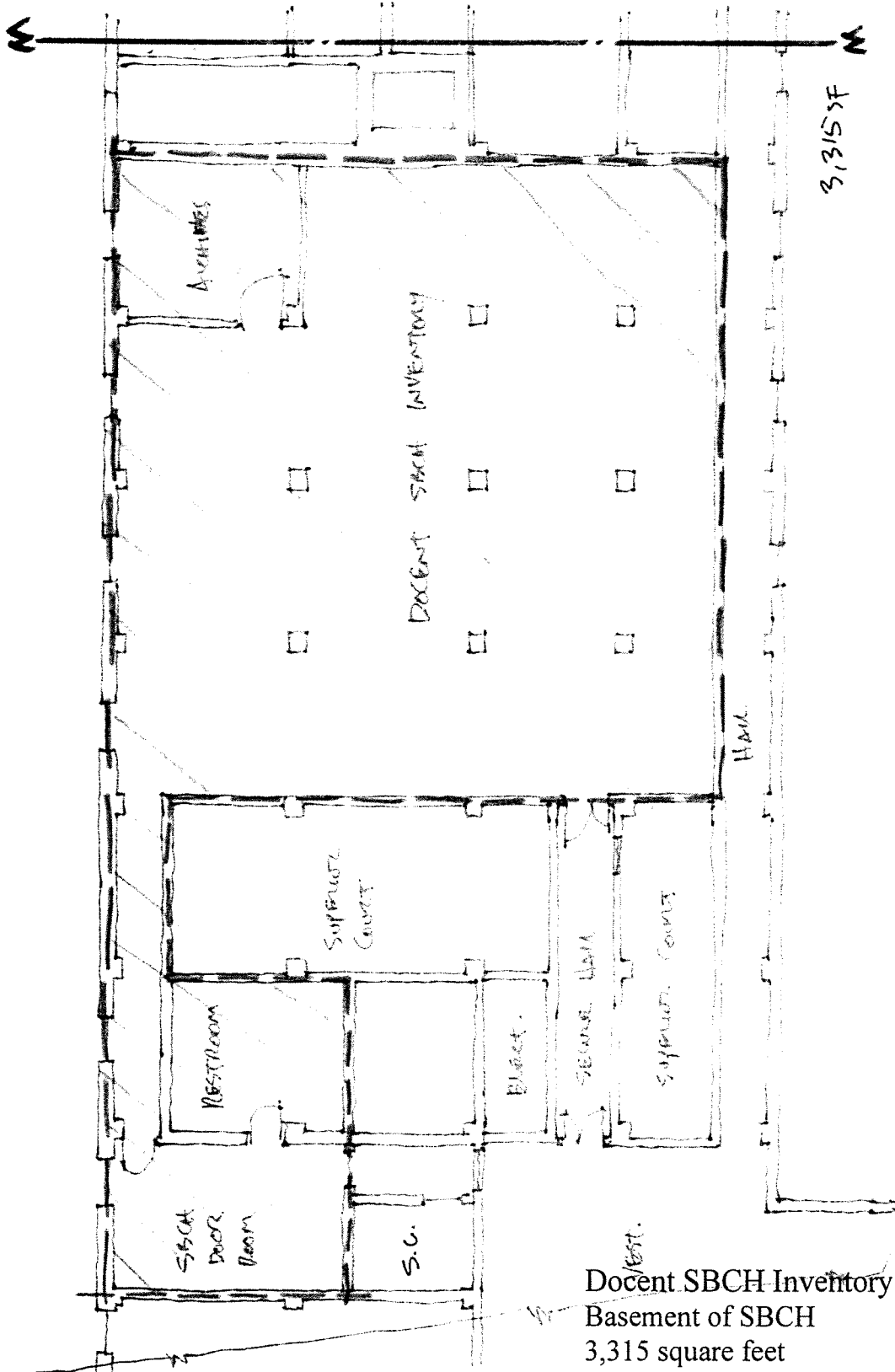


EXHIBIT B – Premises
Docent Assigned Spaces



Docent Storage Room
Basement of SBCH
300 square feet

EXHIBIT B – Premises
Docent Assigned Spaces



Docent SBCH Inventory Room
Basement of SBCH
3,315 square feet

EXHIBIT C

INDEMNIFICATION AND INSURANCE REQUIREMENTS FOR DOCENTS ONLY (For License Agreements with the Santa Barbara County Courthouse Docent Council)

MUTUAL INDEMNIFICATION

LICENSEE agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. LICENSEE'S indemnification obligation applies to COUNTY'S active as well as passive negligence but does not apply to COUNTY'S sole negligence or willful misconduct.

COUNTY agrees to indemnify, defend and hold harmless LICENSEE and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by LICENSEE on account of any claim except where such indemnification is prohibited by law. COUNTY'S indemnification obligation applies to LICENSEE'S active as well as passive negligence but does not apply to LICENSEE'S sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

LICENSEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

LICENSEE shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the LICENSEE'S operation, and use of the Premises. The cost of such insurance shall be borne by the LICENSEE.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – The COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the LICENSEE including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the LICENSEE'S insurance at (least as broad as ISO Form CG 20 10).
2. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
3. **Waiver of Subrogation Rights** – LICENSEE hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said LICENSEE may acquire against the COUNTY by virtue of the payment of any loss under such insurance. LICENSEE agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
4. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the LICENSEE to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
5. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
6. **Verification of Coverage** – LICENSEE shall furnish the COUNTY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to COUNTY before occupying the premises. However, failure to obtain the required documents prior to the work beginning shall not waive the LICENSEE'S obligation to provide them. The COUNTY reserves the right to require complete, Indemnification and Insurance Requirements (For License Agreements) 2022 03 02 certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.
7. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.

8. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. LICENSEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

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