

DEPARTMENT OF THE ARMY LEASE

PRESIDIO OF MONTEREY

MONTEREY COUNTY, CALIFORNIA

THIS LEASE, is made on behalf of the United States, between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and the CITY OF MONTEREY, CALIFORNIA, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee the historic property listed and eligible for the National Register of Historic Places, identified in Exhibits "A", "B", and "C" attached hereto and made a part hereof, hereinafter referred to as the premises, for historical park purposes.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby leased for a term of approximately FIFTY (50) years, commencing on the date execution by the Secretary of the Army, and terminating September 30, 2046, but revocable at will by the Secretary. The Lessee will not exercise the rights and privileges granted herein until Condition No. 2 on OPERATING PLAN, is met or upon written approval by the District Engineer. This lease will be revoked if the Lessee fails to submit an approved Operating Plan one year (365 calendar days) after execution of this lease by the Secretary of the Army.

2. OPERATING PLAN

a. The Lessee shall prepare at its own expense and be guided by an Operating Plan which shows the management activities to be undertaken by the Lessee and any sublessees. The Operating Plan shall address the following: historic property maintenance, including, but not limited to employee and sublessee instruction in the proper care of the historic property, prevention and treatment of vandalism; public ingress/egress; parking; walking trails; operating hours; placement of trash cans, signs and benches;

supervision of area; police patrol; methods of recording park visitation; and pesticide, water and sanitary maintenance and management. Interpretive signs shall not include references to human remains, burials, or specific locations of archaeological sites or materials.

b. The Lessee will prepare and submit an Operating Plan to the District Engineer for review within ninety (90) calendar days of the execution of this lease by the Secretary of the Army. This lease will be revoked if an Operating Plan is not approved by the District Engineer within one year (365 calendar days) from the execution of this lease by the Secretary of the Army. No rights herein granted shall be exercised by the Lessee, unless prior written approval is granted by the District Engineer, until said Operating Plan has been approved in writing by the District Engineer. The approved Operating Plan, which shall be known as Exhibit "D", shall be incorporated herein by reference and implemented as such by the Lessee.

### 3. CONSIDERATION

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

### 4. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to the City Manager, City Hall, Monterey, California 93941; and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, 1325 "J" Street, Sacramento, California 95814-2922, and to the Garrison Commander, Defense Language Institute Foreign Language Center, Attention: ATZP-DPW, Presidio of Monterey, California 93944-5006, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

### 5. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer", "Commander, Defense Language Institute Foreign Language Center and Presidio of Monterey", or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall in-

clude sublessees, assignees, transferees, concessionaires, and their duly authorized representatives.

6. SUPERVISION BY THE INSTALLATION COMMANDER

The use and occupation of the premises shall be subject to the general supervision and approval of the Commander, Defense Language Institute Foreign Language Center and Presidio of Monterey hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer and as otherwise hereinafter provided.

7. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding historic properties, construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 10 U.S.C. § 2667.

b. Prehistoric archeological site CA-MNT-101 is subject to several Federal laws specifically addressing Native American and other cultural values and concerns. Any ground disturbance by the Lessee to the site other than the exemptions listed in Exhibit H shall prompt consultation by said officer and the District Engineer in accordance with those laws. No action by the Lessee shall occur until this consultation is completed and the District Engineer states in writing to the Lessee that the action is approved.

8. CONDITION OF PREMISES

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

b. An inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by said officer, the District Engineer, and the Lessee within ninety (90) calendar days of the execution of this lease by the Secretary of the Army to reflect the condition of said property

and improvements, and shall include a statement of acceptance by said officer, the District Engineer and the Lessee. A copy of said report which shall be known as Exhibit "E", shall be incorporated herein by reference. Within ninety (90) calendar days of the expiration, revocation, or relinquishment of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Conditions on PROTECTION OF PROPERTY and RESTORATION, or, at the election of the District Engineer reimbursement must be made therefor by the Lessee at the then current market value thereof.

c. Within ninety (90) calendar days of the execution of this lease by the Secretary of the Army, an inventory and condition report of all contributing elements to the historic property of the United States included in this lease shall be made by the said officer, the District Engineer and the Lessee to reflect the condition of said historic property, and shall include a statement of acceptance by said officer, the District Engineer and the Lessee. A copy of said report which shall be known as Exhibit "F", shall be incorporated herein by reference. Within ninety (90) calendar days of the expiration, revocation, or relinquishment of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for historic property damaged or destroyed. Any such historic property must be mitigated or brought into compliance with the condition required by the District Engineer.

#### 9. TRANSFERS AND ASSIGNMENTS

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Engineer.

#### 10. COST OF UTILITIES

a. The Lessee shall pay the cost, as determined by the officer having jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the government or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by

which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services and is not to be considered the permanent purveyor of utilities. The Lessee understands that the Government in no way warrants the continued maintenance and adequacy of the utility services furnished. Notwithstanding, and with the exception of the condition on TELECOMMUNICATIONS, the Government will continue to furnish the utilities and/or services presently provided for leased buildings and sites, the cost of said utilities and/or services to be reimbursed to the Government by the Lessee. The Lessee shall maintain both the utilities and/or services within the confines of the leased buildings as well as those utilities that have been installed by the Lessee. Payment for utilities and/or services shall be made in the manner prescribed by said officer and at the rates stipulated in Army Regulation 420-41. The Lessee shall ensure that the telecommunications services provider pays the Army the standard joint-use fee for use of Army poles.

b. All utilities used by the Lessee in the leased area are to be promptly metered by the Lessee, except sewage flow which will be estimated. Water and sewage used as the result of the lease will be included in the Lessee's and not the Army's allocations. The Lessee will install meters, where determined feasible by the Army, for gas, electricity, and water. Any metering requiring excavation shall meet condition on HISTORIC PROPERTIES (and MASTER PLAN, if applicable), even if meeting those conditions delays utility installation. Utility rates will be those stipulated in Army Regulation 420-41 and subject to a separate agreement or Utility Sales Contract.

#### 11. PROTECTION OF PROPERTY

a. The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property, including the historic property, of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire, vandalism and damage from any and all other causes. Any historic property damaged or destroyed by the Lessee or its invitees, incident to the exercise of the privileges herein granted shall be restored or mitigated, whichever is deemed appropriate, in accordance with provisions established by and agreed to in writing by said officer and District Engineer.

b. With the exception of the historic property, any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of said

officer and District Engineer, or, at the election of said officer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to and agreed to in writing by the said officer and District Engineer.

12. INSURANCE

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide for minimum limits of \$500,000 per person in any one claim and an aggregate limit of \$1,000,000 for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting from the operations of the Lessee, and sub-lessees under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every three years or upon renewal or modification of this lease.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days' notice of any cancellation or change in such insurance.

c. In the event the Lessee is self-insured, the Lessee shall certify such self-insurance in writing in the minimum amount specified above to the District Engineer. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees and concessionaires to have insurance from a reputable insurance carrier as set out above.

d. The District Engineer may require closure of any or all of the premises during any period for which the Lessee and/or its sub-lessees and concessionaires do not have the required insurance coverage.

e. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the leased premises to the full

replacement value thereof. The Lessee shall procure such insurance from a reputable company or companies and make the United States a party beneficiary along with the Lessee. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

**13. RIGHT TO ENTER**

a. The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Lessee, and/or to make any other use of the lands as may be necessary in connection with government purposes; and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. The said officer retains the right to continue use of the lease area for traditional activities and ceremonies by the Army. Such use will be coordinated with the Lessee 30 days in advance of the event. The helipad landing site in the Sloat Monument parking area will be maintained by the Lessee and is to remain operational and available to the said officer for emergency and military requirements.

**14. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or

employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**15. RESTORATION**

a. On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the personal property of the Lessee, and restore the premises in compliance with requirements of the District Engineer to a condition as that existing upon the date of commencement of the term of this lease, or other condition set by the District Engineer, less ordinary wear and tear and damage to the leased property covered by insurance and for which the Government shall receive or has received insurance funds in lieu of having the property repaired, replaced, or restored. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said personal property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said personal property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

b. All permanent fixtures and improvements installed or constructed on the premises by the Lessee during the term of this lease shall become the property of the United States, excepting any fixtures and improvements specifically excluded from this provision pursuant to the terms of this lease, any future amendments to this lease, or any written agreement between said officer, the District Engineer and the Lessee. The completed fixtures and improvements shall remain on the premises upon revocation, expiration, termination, or relinquishment of this lease, notwithstanding the restoration requirements specified by the preceding condition on RESTORATION.

**16. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's



operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assignees.

17. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer and/or the said officer.

18. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

19. COMPLIANCE, CLOSURE, REVOCATION, AND RELINQUISHMENT

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with requests by the District

Engineer and/or the said officer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sub-lessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year's prior written notice to the District Engineer and the said officer in the manner prescribed in the Condition on NOTICES.

## 20. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer and/or the said officer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

## 21. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance. Additionally, the Lessee shall not

permit the installation or operation of cigarette vending machines on the premises.

b. The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

## 22. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized in writing by the District Engineer.

## 23. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) as amended (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c.(2) below.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual,

the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause. Any costs associated with the alternate dispute resolution procedure shall be borne by the Lessee.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the District Engineer.

#### 24. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly

with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal or storage of any toxic or hazardous materials within the leased area is specifically prohibited, except that small amounts of materials necessary for custodial services may be store on site. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, State, interstate, or local governmental agency, are hereby made a condition of this lease. Services for waste disposal shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the Lessee, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

d. Upon relocation of the Transportation Motor Pool (TMP) the Army will be responsible, subject to funding, for the removal and clean up of underground petroleum, oil, and lubricant (POL) storage tanks. The Army will also be responsible for disposal of existing washrack and vehicle hoist in the TMP area. The Army is responsible for any Army-generated hazardous/toxic waste. The Lessee will be responsible for any Lessee generated hazardous/toxic waste. Any such hazardous/toxic waste generated by the Lessee shall be removed and cleaned under provisions of applicable Federal laws including, but not limited to the National Historic Preservation Act.

e. The Lessee is responsible for paying all administrative and/or judicial fines, fees, assessments, and penalties for violations of environmental laws and regulations occurring on the leased premises caused by the actions, omissions, or fault of the lessee.

f. The Army retains future unrestricted access to environmental restoration sites as necessary to conduct cleanup activities. Said sites include Building S-141 (Boy Scout Building) and Buildings 120-124 (Motor Pool Complex).

25. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS), documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit "G". Said exhibit shall be prepared by the Government. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two studies will assist the said officer and District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the conditions on RESTORATION and PROTECTION OF PROPERTY.

26. HISTORIC PRESERVATION

a. The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity from the historic property including the midden deposit itself that constitutes archeological site CA-MNT-101, or the monuments or memorials as identified in Appendix C of this lease. In the event such items are discovered on the premises, the Lessee shall cease work immediately and notify said officer and the District Engineer and protect the site and the material from further disturbance until said officer and the District Engineer have complied with applicable Federal laws regarding the discovery.

b. Any repair of damage to the historic property will take into account any statute, regulation, or applicable Army Policy requirements as identified by the District Engineer. Repair or replacement of non-historic property which may impact the historic property will proceed only after the District Engineer has approved the repair or replacement subject to provisions of Federal laws regarding historic preservation.

c. Historic property maintenance shall be in accordance with the Secretary of the Interior's Standards for Archaeological Site Protection, and Rehabilitation and Guidelines for Rehabilitating Historic Buildings and the appropriate National Park Service Preservation Briefs, including, but not limited to those on Protecting Cultural Landscapes (Preservation Brief 36), and clearing, repairing or painting masonry and other surfaces as described in Preservation Briefs. The guidelines and briefs may be revised by the National Park Service. It is the responsibility the Lessee to maintain the historic property and all its contributing elements in accordance with current methods of preservation as defined by the National Park Service.

27. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer and the District Engineer. The Lessee shall notify the said officer and the District Engineer in writing within five calendar days should any soil erosion appear to affect the historic property. The Lessee shall not undertake any corrective action that may affect the historic property until approved in writing by said officer and the District Engineer.

28. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

29. OFFICIALS NOT TO BENEFIT

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

30. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this lease.

31. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises and shall obtain such permission as may be required on account of any other existing rights.

32. MASTER PLAN

a. In furtherance of the condition on HISTORIC PRESERVATION, the premises are a historic property listed on the National Register of Historic Places including an archeological district, part of a historic district, and several monuments. If required by the lease conditions, the Lessee at its own expense, shall prepare a Master Plan subject to Section 106 review in coordination with and subject to the approval of said officer, the District Engineer, the Advisory Council on Historic Preservation (ACHP), and the State Historic Preservation Officer (SHPO) for any improvement or development of the leased premises if and when such improvements or developments becomes desirable, except as follows: Exemptions to Section 106 Consultation Process, Exhibit H; installation of pathways and signs shall be accomplished after consultation with and the approval of the District Engineer and the said officer in accordance with the Section 106 process and shall not trigger the requirement for a Master Plan. The Lessee shall implement the approved Master Plan following satisfactory completion of the Section 106 review and prior to initiating construction on any improvements or developments.

b. Said Master Plan shall be developed in accordance with the Secretary of the Interior's "Standards and Guidelines for Preservation Planning" (48 FR 44716-20, and any amendments) and the "Section 110 Guidelines," (53 FR 472746, and any amendments).

c. Exceptions to the requirement for a Master Plan are the routine maintenance and operation activities listed in Exhibit H as exemptions. Demolition of any leased structures that are not historic properties shall be accomplished only after consultation with and the written approval by the District Engineer and the said officer and in accordance with applicable law and regulation. Demolition may require archeological and Native American monitors and compliance with applicable Federal laws, regulations and procedures regarding archeological sites. The archaeologist must meet the Secretary of Interior's Qualifications of Professional Archaeologists. The expense of hiring and employing these individuals shall be borne by the Lessee.



33. ANNUAL REPORTING REQUIREMENTS

The Lessee shall submit to said officer and the District Engineer for review and approval, a written annual report and three copies, by 1 May of each year. The District Engineer will forward copies of the report for review and approval, to ACHP and SHPO and other parties identified by the District Engineer. The report will contain the following elements:

a. Historic Property Reporting Requirements.

(1) A statement whether all maintenance and operations activities were in compliance with the Operating Plan and Federal laws and regulations regarding the preservation of the historic property in the manner stipulated in this lease.

(2) A summary statement identifying those maintenance and operations activities that occurred during that year.

(3) If the historic property or any of its contributing elements is damaged, the Lessee shall identify the nature of the damage and outline the measures taken by the Lessee to protect the property from further damage.

(4) A statement indicating the number of historic park visitors for the preceding year if and when such methods of recording park visitation are developed and implemented.

b. Annual certification that all water and sanitary systems on the premises have been inspected and currently comply with Federal, state and local standards.

c. An annual certification that all pesticides were stored, handled and used in compliance with Federal, state and local standards.

d. Statement on any significant modification of policies or procedures which are planned for the following year, those projected for future years, and those implemented in the preceding year.

e. Statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on NON-DISCRIMINATION, noting any deficiencies and providing a schedule for correction.

34. INSTALLATION ROADS, PARKING LOTS, FENCE AND GROUNDS MAINTENANCE

a. The Lessee shall not construct any new roads or make any connections or changes to existing installation roads without the prior written approval of the said officer and the District Engineer. Studies and mitigation measures required as part of new construction will be at the Lessee's expense. The Lessee will maintain in good condition and repair, defined as equal to or better condition than accepted under **CONDITION OF PREMISES**, all roads, and parking lots, as set forth in Exhibit C and all grounds within the leased area that are not under the control of the Army or excluded from the leased premises.

b. The Lessee shall assume maintenance and repair responsibility for the existing fence along the entire boundary of the leased premises.

c. The Lessee shall not undertake any grounds maintenance activities that are not expressly identified in Exhibit H unless the activity has been reviewed and approved in writing by said officer and the District Engineer after said officer and the District Engineer have met Federal requirements regarding historic properties.

35. FIRE PROTECTION

The Lessee will assume fire protection and hazardous material incident responsibility for all facilities, structures, and real estate within the leasehold areas that are under the Lessee's control. Said officer will provide continuous fire protection access to the leased areas and to Army-controlled facilities on the leased premises.

36. CONCURRENT LEGISLATIVE JURISDICTION

The State of California and the United States have concurrent legislative jurisdiction on the leased premises. Law enforcement agencies of the State of California and local governments are thereby entitled to enter onto the premises for law enforcement purposes. Upon execution of this lease, a Memorandum of Understanding addressing jurisdiction and the police responsibilities of the parties to this lease will be prepared by the said officer for execution by the Law Enforcement Command of the Defense Language Institute and Presidio of Monterey and by the City of Monterey Police Department.

37. ACTIVITY RELOCATION

The Army will relocate activities within the leased area as funds are available or appropriated. Those facilities are listed in Exhibit C, under "Facilities Included in Lease". Should the facilities in Exhibit C, under "Facilities Excluded From Lease" become excess to the Army's needs, the Lessee may apply to have these facilities added to the lease.

38. TELECOMMUNICATION SERVICES

The Lessee shall acquire telecommunications services from their provider of choice. The pole infrastructure within the parcel will be joint-use between the service provider and the Army for the duration of the lease. Telecommunication signals shall be on other than Army cable. Requests for telecommunications services access shall be submitted to the District Engineer for consultation and approval. Approving such access will be conditional upon the service provider entering into an agreement with the Army for such use and paying the standard fee to the Army. The Lessee shall submit for review and approval all wiring and service communications plans. Said plans shall be submitted to the Directorate of Information Management. All telecommunications facilities installed on behalf of the Lessee shall be removed by the Lessee prior to termination of the lease.

39. TERMINATION

The Government may terminate this lease at any time in the event of national emergency as declared by the President or the Congress of the United States, base closure, deactivation or substantial realignment, in the interest of national defense, or revocation of withdrawal from public domain by the Bureau of Land Management, or in the event the lessee violates any of the terms and conditions of this Lease or the terms and conditions of any operation management, or maintenance plans or agreements herein required and continues and persists in such violation therein for ninety (90) days after written notice thereof, by the said officer. This lease may be terminated by the Lessee at any time by giving the District Engineer at least one year notice in writing.

40. PUBLIC WITHDRAWN LAND

Approximately 140 acres of public land, located in T. 15 S., Rs. 1E and 1W., MDM, were withdrawn by an Executive Order, dated November 23, 1866, for military purposes. On January 8, 1975, approximately 9.25 acres of the withdrawn public land were quit-claimed to the City of Monterey, leaving approximately 131 acres of withdrawn public land. This withdrawal will remain in effect until

either the Department of the Army (DOA) agrees to relinquish the withdrawal or DOA and the Bureau of Land Management agree to modify the term of the withdrawal pursuant to section 204 of the Federal Land Policy and Management Act (43 U.S.C. 1701). If DOA agrees to relinquish the withdrawal, their request will be processed in accordance with 43 CFR 2370-2374. The land covered by this lease is included in the approximately 131 acres of withdrawn public land.

41. The said officer may close the leased area to public access when deemed necessary to protect life, health, property, and for reasons of security or military mission.

42. Lessee is not to derive income from the use of the premises.

-----NO CONDITIONS FOLLOW-----

THIS LEASE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, the United States has caused these presents to be executed by Togo D. West, Jr., Secretary of the Army, and the seal of day of the Department of the Army to be hereto affixed this 16<sup>th</sup>, day of August, 1996.

BY:

Togo D. West, Jr.  
TOGO D. WEST, JR.  
Secretary of the Army

THIS LEASE is also executed by the Lessee this sixteenth day of August, 1996.

APPROVED BY:

DWS  
City Attorney's Office

Samuel Albert

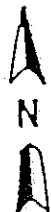
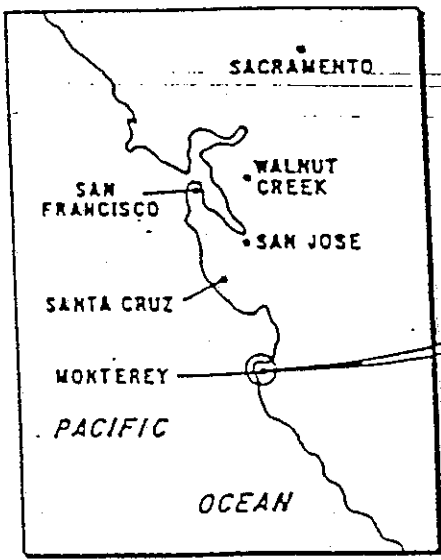
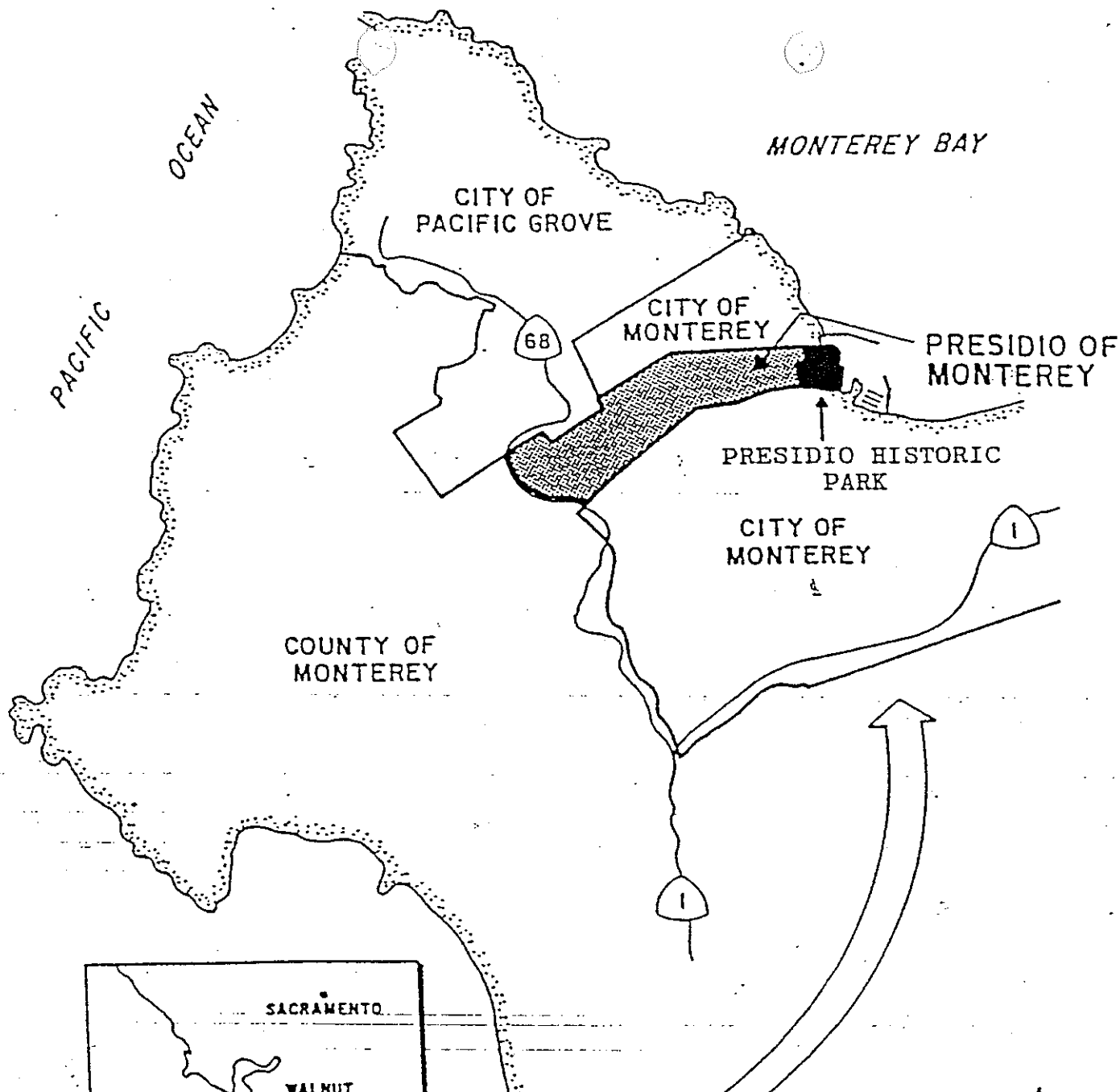
ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Lease, dated \_\_\_\_\_, from the UNITED STATES OF AMERICA to the CITY OF MONTEREY, CALIFORNIA, is hereby accepted by the undersigned representative on behalf of the City of Monterey for itself, its successors and assigns.

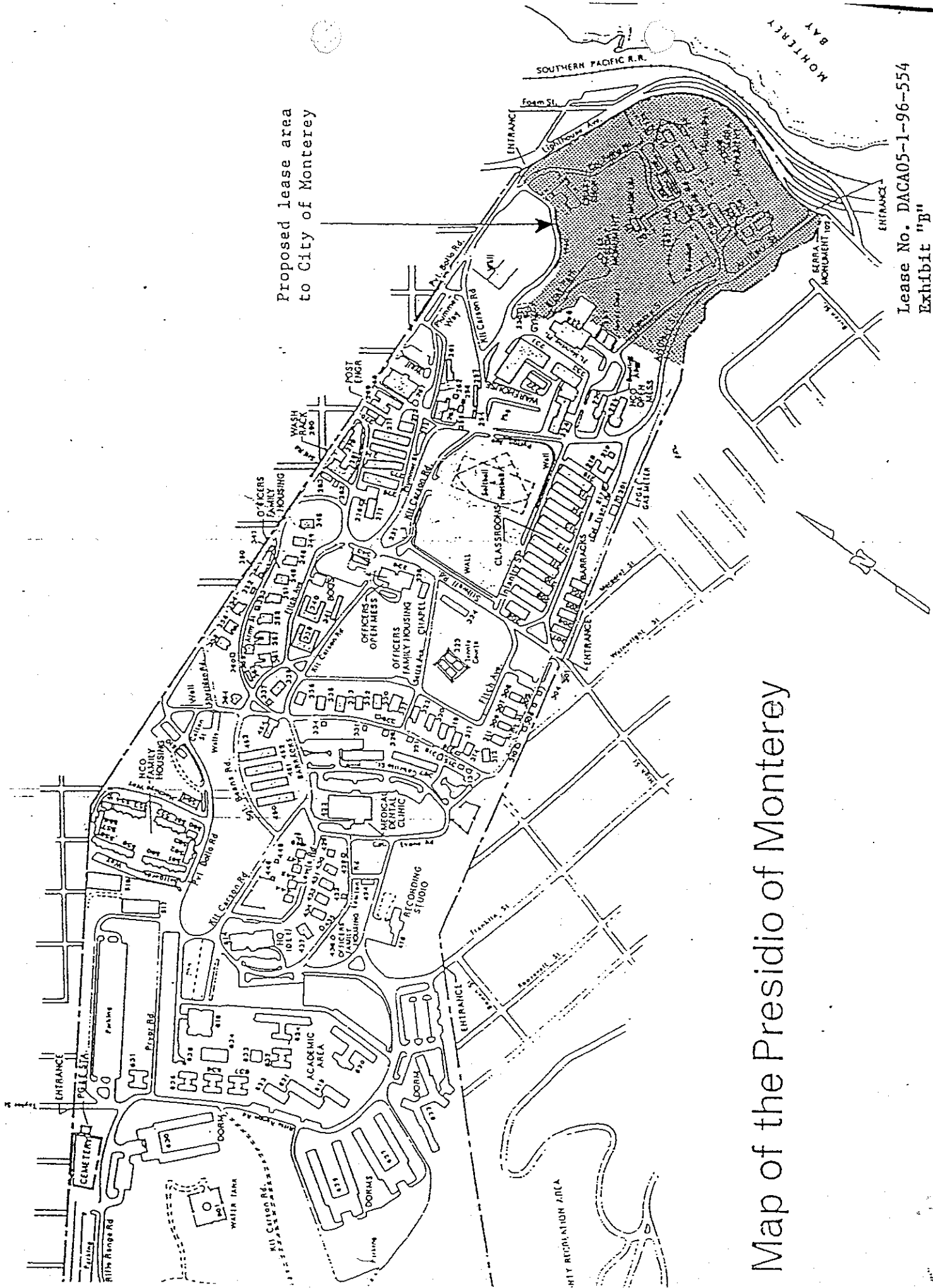
Dated:

16 Aug 96

Samuel Albert  
Monterey, California



REGIONAL LOCATION OF THE PRESIDIO OF MONTEREY



Proposed lease area  
to City of Monterey

# Map of the Presidio of Monterey

Lease No. DACA05-1-96-554  
Exhibit "B"

PRESIDIO OF MONTEREY, CALIFORNIA  
FACILITIES INCLUDED IN THE LEASE  
EXHIBIT C

The following National Register of Historic Places Monuments/Memorials and other Buildings/Facilities, with pertinent parking areas, walkways, and ramps are included in the lease and are the responsibility of the Lessee for preservation, protection, maintenance, and repair. Those with National Register of Historic Places status are noted in the appropriate column.

<u>MONUMENT NUMBER</u>	<u>CAT CODE &amp; DESCRIPTION</u>	<u>HISTORIC PROPERTY</u>	<u>CONDITION</u>
CA-MNT-101	Archeological site, including Prehistoric component, El Castillo and Fort Mervine	Yes	
102	760-20 Serra Monument (1891)	Yes	
109	760-20 Father Serra Statue w/wrought iron fence	Yes	
152	760-20 Sloat Monument	Yes	
Alex Nino Monument		Yes	

NONE OF THE FOLLOWING BUILDINGS/FACILITIES HAVE NATIONAL REGISTER STATUS:

<u>Building/Facility Number</u>	<u>CAT CODE &amp; DESCRIPTION</u>	<u>CONDITION</u>
108 760-20	La Armada Argentina Monument	
T-100	Open Dirt Field	
S-112 730-75	Public Toilet	
S-113 760-10	Museum	



## EXHIBIT C (cont)

NONE OF THE FOLLOWING BUILDINGS/FACILITIES HAVE NATIONAL REGISTER STATUS:

<u>Building/ Facility Number</u>	<u>CAT CODE &amp; DESCRIPTION</u>	<u>USER</u>	<u>USE</u>	<u>CONDITION</u>
T-121	442-62 Veh Storage	DOL	Equipment Storage Military Vehicle Storage	
123	214-54 Veh Wash	DOL	Vehicle Wash	
123A	214-50 Vehicle Grease	DEH	Inoperable	Inoperable
T-124	214-70 Oil House	DOL	Storage Houses Gas Pump Switch	
T-124A	123-11 Gas Sta w/out	DOL	Fuel Dispensing Bldg (Gas Pump & to Military (Underground Fuel Vehicles Storage Tank)	
T-125	214-90 Dispatch Office	DOL	Dispatch Office	
S-141*	740-22 Skill Development Center	POM/ DLI	Boy Scouts Meetings/Storage	

\* The Lessee shall allow continuing use of Bldg. S-141 by the Boy Scouts of America.

EXHIBIT C (cont)  
FACILITIES EXCLUDED FROM LEASE

The following listed buildings/facilities and their adjacent parking areas and roadways are excluded from the lease. They are currently needed to meet Army requirements, but should they become excess to Army needs, the Army will offer the Lessee the right of first refusal to include them in the leased premises. If the Lessee declines the offer, the Army may, at its option, dispose of said buildings in accordance with applicable law and regulation or leave them on the premises under Army control. None of the buildings/facilities unless otherwise indicated, are listed on or are eligible for the National Register of Historic places.

<u>Building/ Facility Number</u>	<u>CAT CODE &amp; DESCRIPTION</u>	<u>USER</u>	<u>USE</u>	<u>CONDITION</u>
T-104	610-50 Admin Gen Purp	ARI	Admin, Research, & Development ARI Headquarters	Fair
T-105	310-50 Human Eng Lab	ARI	Archive Storage	Fair
T-106	740-41 Library	ARI	Storage of Sensitive/Expensive ADP Materials	Fair
T-110	310-50 Human Eng Lab	ARI	Computer Facility/ Relay Station/ Secure Storage	Fair

Roads

Artillery Street Entrance Gate  
 Private Bolio Road  
 Infantry Street  
 Cpl. Ewing Road

Historical Property

Yes  
 Yes  
 Yes  
 No

Cannons

	<u>CAT CODE &amp; DESCRIPTION</u>	<u>Historical Property</u>
153	760-20 Short Barreled Cannon (Circa 1863)	Yes
154	760-20 Long Barreled Cannon (Circa 1863)	Yes
155	760-20 Long Barreled Cannon (Circa 1863)	Yes

Historical Property

Yes  
 Yes  
 Yes

EXHIBIT C (cont)

<u>Cannons</u>	<u>CAT CODE &amp; DESCRIPTION</u>	<u>Historical Property</u>
156	760-20 Long Barreled Cannon (Circa 1863)	Yes
157	760-20 Long Barreled Cannon (Circa 1863)	Yes