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PROPERTY DEVELOPMENT DIV
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March 13, 2003

Mr. Arthur Layne
Regional Historic Preservation Officer
Pacific Rim Region
General Services Administration
450 Golden Gate Avenue
San Francisco, CA 94102

REF Hotel San Diego
San Diego, California
Construction of U.S. Courthouse

Dear Mr. Layne:

Enclosed are your copies of the fully executed Memorandum of Agreement for the referenced project. By carrying out the terms of the Agreement, you will have fulfilled your responsibilities under Section 106 of the National Historic Preservation Act and the Council's regulations. You should forward a copy of the agreement to the other signatories; one original copy will remain on file at our office.

Should you have any questions, please contact Ralston Cox at (202) 606-8528.

Sincerely

Don L. Klima
Director
Office of Federal Agency Programs

Enclosure

MEMORANDUM OF AGREEMENT
AMONG THE GENERAL SERVICES ADMINISTRATION,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
CONSTRUCTION OF THE NEW U.S. COURTHOUSE, SAN DIEGO, CALIFORNIA

WHEREAS, the General Services Administration (“GSA”) proposes to construct a new Federal Courthouse (“Undertaking”) on a site bounded by Broadway to the north, the Metropolitan Correctional Center to the south, State Street to the west, and Union Street to the east in the City of San Diego, San Diego County, California, and has determined that the Undertaking will adversely affect the Hotel San Diego, a property determined eligible for inclusion in the National Register of Historic Places (“NRHP”), and could affect archaeological properties that may be located on this site; and

WHEREAS, in an effort to seek prudent and feasible alternatives that could avoid or minimize the adverse effect of the Undertaking on the Hotel San Diego and on prospectively NRHP eligible archaeological properties, the GSA conducted numerous feasibility and structural studies and made a good faith effort to seek a waiver of the “ISC Security Design For New Federal Office Buildings and Major Modernization Projects, Interagency Security Criteria, May 28, 2001” (“ISC”) requirements that apply to the Undertaking and to the alternatives considered by the GSA; and

WHEREAS, the GSA has consulted with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (“ACHP”) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act, as amended (“Act”), regarding the Undertaking’s adverse effect on the Hotel San Diego and prospectively on archaeological properties that may be NRHP eligible, and through such consultation has obtained the concurrence of the SHPO and the ACHP in the GSA’s conclusion that there are no prudent and feasible alternatives that would avoid or minimize adverse effects and also meet the Undertaking’s purpose and need; and

WHEREAS, the GSA, the SHPO and the ACHP agree that the adverse effects of the Undertaking on historic properties will be taken into account through execution and implementation of this Memorandum of Agreement (“MOA”); and

WHEREAS, following an examination of the ISC by the SHPO, the signatory parties to this MOA acknowledge that in planning its undertakings, the GSA must comply with the requirements of the ISC and treat the ISC as a restricted security document, and, having so acknowledged, have agreed that the GSA will offer to attend the next annual meeting of the National Conference of State Historic Preservation Officers (“NCSHPO”) to inform the NCSHPO about the ISC, to present and discuss the challenges that the ISC may pose for the consideration of historic properties in the GSA project planning process, and to determine whether and how the GSA and the

NCHPO may work together to seek ways in which the requirements of the ISC and the requirements of Section 106 of the Act might be accommodated; and

WHEREAS, the City of San Diego, the City of San Diego Historical Resources Board, Save Our Heritage Organization, and the National Trust For Historic Preservation, have participated in the consultation and have been invited to concur in this MOA;

NOW, THEREFORE, the GSA, the SHPO and the ACHP agree that the GSA shall ensure that the following stipulations are implemented in order to take into account the effects of the Undertaking on historic properties, and that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The GSA will ensure that the following measures are carried out:

I. HABS RECORDATION OF THE HOTEL SAN DIEGO

- A. The GSA will record the Hotel San Diego to Level I HABS standards only if the GSA determines that environmental conditions at the site allow for this level of HABS recordation. At a minimum, the Hotel San Diego will be recorded by the GSA to Level II HABS standards. The narrative section of the HABS documentation will include the history of the Hotel San Diego and information about other buildings constructed by John D. Spreckles in downtown San Diego.
- B. The GSA shall ensure that the HABS documentation prescribed hereunder is completed and accepted by HABS prior to any demolition of the Hotel San Diego and that copies of this documentation are made available to the SHPO and to appropriate local archives identified by the GSA in consultation with the City of San Diego Historical Resources Board.
- C. The GSA will complete an inventory of items owned by the GSA that are currently located in the Hotel San Diego. This inventory will be conducted concurrently with the HABS documentation prescribed herein. When the inventory is complete, the GSA will consult with the City of San Diego Historical Resources Board to identify appropriate local depositories for these items and will donate these items to any depository willing to accept them. As necessary, the GSA will negotiate the terms of any donation with the appropriate depository in accordance with any applicable federal regulations or guidelines.

II. TIMING OF DEMOLITION

- A. The GSA will not commence demolition of the Hotel San Diego until the

requirements of Stipulation I.B. have been met and until one of the following has occurred:

1. the submission of the President's budget to Congress which contains a line item for the construction funds for the new courthouse; or
2. approval of project construction by the United States Senate Committee on Environment and Public Works or the United States House of Representatives Committee on Transportation and Infrastructure; or
3. a line item for construction funds for the new courthouse is included in an appropriations act.

B. Nothing in this MOA shall prohibit the GSA from abating lead based paint and asbestos from the Hotel San Diego, performing site investigations, and taking other actions necessary to remedy life/safety issues. The GSA shall provide written notice to the City of San Diego Historical Resources Board, the SHPO and the ACHP of any remediation actions taken pursuant to this stipulation.

III. DESIGN REVIEW AND CONSULTATION

- A. As part of selecting the lead designer for the proposed new courthouse, the GSA invited the City of San Diego and its representatives, including the Centre City Development Corporation, the City of San Diego Historical Resources Board, and other representatives from the Office of the Mayor to review the Design Program which sets forth the defining principles for the proposed new courthouse. The GSA in good faith incorporated into the solicitation documents for design of the new courthouse all comments from the City of San Diego regarding the design relationship of the courthouse to downtown San Diego, including the need for the design to respect the historic pattern of development and the importance of frontage on Broadway Street.
- B. The GSA has requested the Office of the Mayor of the City San Diego to appoint a panel of eight representatives of the City of San Diego to review and comment to the GSA on the concept design documents prepared for the Undertaking. Concept design documents submitted by the GSA to the City of San Diego for review and comment will include exterior plans, exterior elevations and site plans. The representatives on this panel will be subject to the same timeliness requirements for review as imposed upon GSA's internal reviewers. The GSA will take any comments provided by the City of San Diego into account in accordance with 40 USC §619.

IV. INTERPRETATION

The GSA has commissioned an experienced consultant to design temporary

interpretive panels that will be displayed along the perimeter of the new courthouse site during any archaeological investigations prescribed by this MOA and during construction phases of the Undertaking. Interpretive panels will illustrate the chronological history of the site, highlighting the development of the Hotel San Diego. Interpretive panels will also include information on any archaeological investigations prescribed by this MOA, and will feature a rendering of the new federal courthouse. In addition, the GSA will use this information (text and illustrations) to develop a traveling (portable) exhibit that can be temporarily displayed in the lobby of the new courthouse and/or used by the City of San Diego Historical Resources Board and/or the Save Our Heritage Organization (SOHO) for ongoing educational purposes.

V. TREATMENT OF ARCHAEOLOGICAL DISCOVERIES

A. Archaeological Context

Historic contextual studies completed by the GSA indicate that project site was used for both residential and commercial purposes during the 19th and 20th centuries. Such studies indicate that there may also be a possibility of discovering prehistoric archaeological deposits and features on the site.

2. The historic contextual studies conducted suggest, and the signatories to this MOA agree, that the prospective period of significance encompassed by any historic archaeological deposits and features that may be encountered on the project site is roughly 1850 - 1920. Any discovered historic archaeological materials not encompassed by this prospective period of significance require no further consideration under this MOA.
3. The signatories to this MOA agree that the historic contextual studies conducted to date have not established the historical ground surface of the project site, nor have they usefully taken into account previous episodes of ground disturbance in attempting to predict the most likely locations of possibly intact historic period remains. Examples of such ground disturbance would include excavation of the Hotel San Diego basement, basements associated with construction of the State and the Capri Hotel (formerly known as the Albany-Lamon Hotel), underground storage tanks or garages, episodes of cutting/filling and of building and rebuilding.
4. Owing to the lack of certain information as set forth immediately above, the signatories to this MOA agree that archaeological monitoring of demolition and excavation on the project site shall be conducted in accordance with paragraph B. of this stipulation. Such monitoring will be supervised by a person or persons meeting, at a minimum, the professional qualifications for archaeology set forth in the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44739)".

B. Archaeological Monitoring

1 Block 42 (Partial Block)

GSA's project area is the northern 1/3 of Block 42. At least 1/3 of Block 42 may contain intact remains from previous occupations. Parcels representing 837 State Street and 842 Union Street were residentially occupied from the 1880s into the 1920s. Privies existed in association with these dwellings. One or both parcels could have survived subsequent excavation from construction of an auto repair/dry cleaning facility. In addition, 1850s - 1870s bird's eye views suggest that remains of buildings dating to this period in the northern portion of this block may not have been affected by construction of the State and Capri (formerly Albany-Lamon) Hotels on E Street.

2. Block 55

At least 1/6 of this block could contain intact remains from previous occupations within the prospective period of archaeological significance. In particular, the parcel at 708 E Street was occupied by a house dating from the 1880s into the 1920s. In addition, some buildings were located in areas not subsequently used in constructing the Hotel San Diego.

3. The GSA shall ensure that all ground disturbing activities in the areas defined in items 1., and 2., immediately above, are monitored by a professionally qualified historic archaeologist who will closely examine the contextual study commissioned by the GSA in order to ensure that monitoring occurs in the appropriate locations on site. However, if ground disturbance in these areas, or in any other areas of the project site, consists exclusively of pile driving, no monitoring will be required.
4. The GSA shall in writing empower the monitoring archaeologist to temporarily halt demolition and ground disturbing activities in the area of immediate impact if certain archaeological deposits and features, as specified in item C. below, are discovered in the areas subject to monitoring. The monitoring archaeologist shall be required to notify the GSA promptly of the discovery. The temporary suspension stipulated herein shall remain in place until the protocol set forth in item C. below has been completed. The GSA shall in writing require the construction/project manager on site to comply with the instructions of the monitoring archaeologist in the event of a discovery.

C. Treatment Protocol for Archaeological Materials Discovered During Construction

- 1 Consideration for historic period discoveries is hereunder restricted to hollow-filled features such as backfilled wells, refuse pits and privies and to sheet refuse that appears to be a primary deposit. Such discoveries will only be considered historic properties for purposes of this MOA if in the judgment of

the monitoring archaeologist, the discovery also meets all of the following criteria:

- a. The discovery has focus. That is, it is possible to interpret the behaviors that are represented by the discovery; and
 - b. The discovery appears to have integrity of location and setting with respect to the arrangement of remains. That is, the property appears to retain a significant portion of its original content and condition, and it is in its original location; and
 - c. There is a good probability that the discovery, its content and deposition dates can be accurately dated and assigned to a historically documented household or business.
2. If the monitoring archaeologist determines that a discovery meets all of the preceding criteria, and the GSA does not object, the discovery shall be considered an historic property for purposes of this MOA. If the property is determined to be an historic property, the monitoring archaeologist will implement a program of rapid data recovery that meets currently accepted professional standards for excavation and recordation and that yields, subject to a discard policy, an appropriately representative sample by volume and range of artifacts for subsequent analysis and interpretation. Rapid data recovery methods prescribed hereunder shall be conducted so as to minimize the time frame of temporary construction suspension. The monitoring archaeologist shall promptly notify the GSA and the on site project manager when the field phase(s) of rapid data recovery has been completed. Thereupon, the GSA may authorize construction to resume.
3. If prehistoric archaeological deposits or features are discovered during construction anywhere on the project site, the GSA will require all ground disturbance in the immediate area of the discovery to cease immediately and such cessation shall remain in effect until a professional prehistoric archaeologist concludes an examination of the discovery. If the archaeologist notifies the GSA that the discovery does not appear to be eligible for inclusion in the National Register, the GSA may authorize construction in the area of the discovery to resume forthwith. If the archaeologist notifies the GSA that the discovery appears to be eligible for inclusion in the National Register and the GSA does not object to this recommendation, the GSA shall address the discovery in accordance with 36 CFR 800.13(b)(3). If any discovery addressed by this paragraph contains human remains of Native American origin, that discovery shall be considered to be an historic property for purposes of this MOA.

D. Laboratory Work

GSA will authorize post-field phase laboratory treatment of archaeological materials recovered pursuant to this stipulation. Such treatment will focus on ceramics, glass, buttons, and metal artifacts. Such treatment will include, as appropriate:

1. A provenience-based cataloging system to inventory artifacts.
2. Analysis that focuses on interpretation of individual proveniences or a number of proveniences that have demonstrable historical associations.
3. Intra-site comparisons between proveniences where applicable.
4. A discard policy.

E. Reports and Report Distribution

- 1 The GSA shall ensure that a standard data recovery report is prepared for any treatment carried out in accordance with this stipulation. This report shall include the results of all investigations carried out under the terms of this stipulation and shall interpret those results to the extent possible with reference to the historic contextual studies already completed. The GSA shall ensure that copies of any standard data recovery report prepared pursuant to this stipulation are distributed to the SHPO, the City of San Diego, and the appropriate Information Center of the California Historical Resources Information System.
2. The GSA shall also commission preparation of a popular report that will make the results of any treatment carried out pursuant to this stipulation available to the general public. This report may consist of a short non-technical pamphlet with illustrations or another suitable format. This report shall be made available by the GSA to the ACHP, the SHPO, the City of San Diego, to local public libraries, and to the local public school system.

F. Curation of Archaeological Materials and Records

The GSA shall ensure that all archaeological materials, with the exception of those discarded, and records resulting from the implementation of Sections B. - D., inclusive, of this stipulation, are curated in accordance with 36 CFR Part 79 and as applicable, in accordance with the Native American Graves Protection and Repatriation Act (PL101-601) and 43 CFR 10.

VI. RESOLVING OBJECTIONS

- A. Should any party to this MOA timely object in writing to the manner in which the terms of this MOA are implemented, the GSA will immediately notify the other parties of the objection, request their comments on the objection within 15 days following receipt of the GSA's notification, and proceed to consult with the objecting party for no more than 10 days to resolve the objection. The GSA will

honor the request of the other parties to participate in the consultation and will take any comments provided by those parties into account.

- B. If the objection is resolved during the 10-day consultation period, the GSA may proceed with the disputed action in accordance with the terms of such resolution.
- C. If after initiating such consultation, the GSA determines that the objection cannot be resolved through consultation, the GSA shall forward all documentation relevant to the objection to the ACHP, including the GSA's proposed response to the objection. Within thirty (30) days after receipt of such documentation, the ACHP will exercise one of the following options:
 - 1. Advise the GSA that the ACHP concurs in the GSA's proposed response to the objection, whereupon the GSA will respond to the objection accordingly;
 - 2. Provide the GSA with recommendations, which the GSA will take into account in reaching a final decision regarding its response to the objection; or
 - 3. Notify the GSA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, the GSA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(c)(4).
- D. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the GSA may assume the ACHP's concurrence in its proposed response to the objection.
- E. The GSA shall take into account any ACHP recommendation or comment and any comments from the other parties to this MOA in reaching a final decision regarding the objection. The GSA's responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.
- F. The GSA shall provide all parties to this MOA with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.
- G. The GSA may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.
- H. Should a member of the public file with the SHPO or the ACHP a timely written objection to the manner in which the terms of this MOA are implemented, the signatory party in receipt of the objection shall promptly determine whether the objection has merit under the terms of this MOA. If the applicable signatory party determines that the objection does not have merit, that party shall in writing promptly and concurrently notify the objecting party and the GSA of this determination. Such determination by the applicable signatory party shall be final and conclusive hereunder. Should the applicable signatory party determine that the objection has merit under the terms of this MOA, that party shall promptly refer the

objection to the GSA. Upon receipt of the referral, the GSA shall consult with the objecting party and, if the objecting party so requests, with the other parties to this MOA, for no more than 15 days. Within 5 days following closure of this consultation period, the GSA will render a decision regarding the objection and notify the other parties of its decision in writing. In reaching its decision, the GSA will take all comments from the other parties into consideration. The GSA's decision regarding resolution of the objection will be final and conclusive hereunder. Following issuance of its final decision, the GSA may proceed with the action subject to objection hereunder in accordance with the terms of that decision.

VII. AMENDMENTS

Any signatory to this MOA may propose that this MOA be amended, whereupon all signatories will consult for no more than 15 days to consider such amendment. 36 CFR §800.6(c)(1) shall govern the execution of any such amendment. If it is not amended, this MOA may be terminated only by the GSA, the ACHP or the SHPO.

VIII. TERMINATION

- A. Only the GSA, the ACHP or the SHPO may terminate this MOA. If this MOA is not amended as provided for in stipulation VII, or if the GSA, the ACHP, or the SHPO proposes termination of this MOA for other reasons, the signatory proposing termination shall in writing notify all other signatories to this MOA, explain the reasons for proposing termination, and consult with the other signatories up to 30 days to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, then the signatories shall proceed in accordance with the terms of that agreement.
- B. Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other signatories to this MOA in writing. Termination hereunder shall render this MOA without further force or effect.
- C. If this MOA is terminated hereunder and if the GSA determines that the Undertaking will nonetheless proceed, then the GSA shall either consult in accordance with 36 CFR 800.6 to develop a new MOA or request the comments of the ACHP pursuant to 36 CFR Part 800.

IX. DURATION OF THIS MOA

Unless terminated pursuant to stipulation VIII., or unless it is superseded by an amended MOA, this MOA will be in effect until the GSA, in consultation with the ACHP and the SHPO determines that all of its stipulations have been satisfactorily fulfilled. Upon a determination by the GSA that all of the terms of this MOA have been satisfactorily fulfilled, this MOA will terminate and have no further force or effect. The GSA will promptly provide the other signatories to this MOA with written notice of its determination and of the termination of this MOA.

X. EFFECTIVE DATE OF THIS MOA

This MOA shall take effect when it has been executed by the GSA, the ACHP and the SHPO.

Execution of the Memorandum of Agreement by the GSA, the ACHP and the SHPO and implementation of its terms by the GSA evidence that the GSA has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, and that the GSA has taken into account the effects of the Undertaking on historic properties.

SIGNATORY PARTIES:

GENERAL SERVICES ADMINISTRATION

BY: Mary M. Filippini DATE: 2/7/03
for DANIEL B. VOLL, ACTING ASSISTANT REGIONAL ADMINISTRATOR

STATE HISTORIC PRESERVATION OFFICER

BY: Dr. K. M. Mellon DATE: 2/10/03
DR. KNOX MELLON, STATE HISTORIC PRESERVATION OFFICER

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: John M. Fowler DATE: 3/14/03
JOHN M. FOWLER, EXECUTIVE DIRECTOR

[signatures continued on next page]

CONCURRING PARTIES:

NATIONAL TRUST FOR HISTORIC RESERVATION

BY: _____ DATE: _____
Its: _____

THE CITY OF SAN DIEGO HISTORICAL RESOURCES BOARD

BY: _____ DATE: _____
Its: _____

SAVE OUR HERITAGE ORGANIZATION

BY: _____ DATE: _____
Its: _____